

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

ROCCO SYLVESTER, JR.,

Plaintiff,

v.

MORT'S CONCRETE, INC.,

and

KEVIN MORTIMER,

Defendants.

Civil Action No. 09-cv-608

**COMPLAINT**

Plaintiff Rocco Sylvester, Jr. ("Sylvester"), by the undersigned attorneys, alleges as follows:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 *et seq.* ("USERRA").

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) and 28 U.S.C. § 1391(b), because defendant Mort's Concrete, Inc., ("Mort's") maintains a place of business in this judicial district, and defendant Kevin Mortimer ("Mortimer") is the owner and president of that business.

**PARTIES**

4. Sylvester resides in Portage, Wisconsin, within the jurisdiction of this Court.

5. Mort's maintains its headquarters in Rio, Wisconsin. Mortimer resides in Rio, Wisconsin. Mort's and Mortimer are within the jurisdiction of this Court and are "employers" under USERRA.

**CLAIM FOR RELIEF**

6. Sylvester began his employment with Mort's in August 2003. As of June 2004, he was employed by defendants as a foundational foreman laying concrete foundations for construction projects. As a foundational foreman, he was paid \$25 an hour. He supervised his own work crew and was given exclusive use of a truck provided by defendants to conduct his work. Sylvester typically worked 40 hours per work week.

7. Sylvester is an active member of the Wisconsin Army National Guard. In June 2004, Sylvester gave timely notice to defendants of his need to take military leave. Sylvester served on active duty, primarily in Iraq as part of Operation Enduring Freedom, from June 2004 until November 2005.

8. During Sylvester's military absence, defendants hired two foundational foremen to replace Sylvester.

9. Sylvester was released from active duty in November 2005 and was reemployed by defendants on November 21, 2005. Upon his reemployment, however, defendants placed him in a regular, non-supervisory laborer position. He no longer supervised a work crew and no longer had use of a company truck. Sylvester received significantly fewer workhours from defendants than he had received before his military deployment. He also received significantly fewer workhours from defendants than the two foundational foremen who had been hired while he was

on deployment. Accordingly, although his hourly rate of pay remained the same, he received less monetary compensation.

10. Due to Sylvester's lack of sufficient workhours and his diminished status after being reemployed by defendants, Sylvester resigned from his job effective February 11, 2006.

11. Defendants' failure to reemploy Sylvester in the position that he would have held but for his military service, or in a position of like seniority, status, and pay, following his return from military service in 2005 violated Sections 4312 and 4313 of USERRA.

**PRAYER FOR RELIEF**

WHEREFORE, Sylvester prays for judgment against defendants Mort's and Mortimer as follows:

A. Declare that defendants Mort's and Mortimer violated USERRA by failing to reemploy Sylvester into the position that Sylvester would have had but for his military service, or a position of like seniority, status, and pay;

B. Order defendants Mort's and Mortimer to fully comply with USERRA by paying Sylvester his lost wages and benefits caused by defendants' failure to comply with USERRA;

C. Award Sylvester prejudgment interest on the amount of lost wages and benefits found due; and

D. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

THOMAS E. PEREZ  
Assistant Attorney General  
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BY:

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