

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHRISTOPHER ROBBINS,

Plaintiff,

v.

The Dufresne Spencer Group, LLC
f/k/a DSG Indiana, LLC
d/b/a Ashley Home Store,

Defendant.

Civil Action No. 1:21-cv-01315

Jury Trial Demanded

COMPLAINT

Plaintiff, Christopher Robbins, by and through the undersigned attorneys, alleges the following:

1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4333 (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b)(3).

3. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because Defendant, The Dufresne Spencer Group, LLC f/k/a DSG Indiana, LLC, maintains a place of business in this judicial district. Additionally, venue is proper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to this action occurred in this judicial district.

4. Venue is proper in the Indianapolis Division of the district court because all or a substantial part of the events or omissions giving rise to this cause of action took place in Greenwood, Indiana, which is located in this Division of the district court.

PARTIES

5. Plaintiff, Christopher Robbins (“Robbins”) resides in Indianapolis, Indiana which is located within Marion County, Indiana. Marion County is within the jurisdiction of this Court.

6. The Dufresne Spencer Group, LLC f/k/a DSG Indiana, LLC (“Defendant” or “DSG”) is a corporation organized and existing under the laws of Delaware and doing business in Indiana under the name Ashley Home Store.

7. At all times relevant to this action, Defendant owned and operated an Ashley Home Store located at 733 Loews Boulevard, Greenwood, Indiana 46142.

8. Defendant is an “employer” within the meaning of 38 U.S.C. § 4303(4)(A) and is subject to suit under USERRA under 38 U.S.C. § 4323(a).

FACTS

9. Captain Christopher Robbins is a member of the Indiana Army National Guard. He has served honorably in the Guard since 2006.

10. In December of 2014, Defendant hired Robbins to work as a sales associate at Defendant’s Ashley Home Store in Greenwood, Indiana. In or around the Spring of 2017, Defendant assigned Robbins to a senior sales associate position.

11. Throughout his employment with Defendant, Robbins reported directly to the Greenwood store manager Kenneth Gaddis (“Gaddis”).

12. As a member of the Indiana Army National Guard, Robbins was, on occasion, required to take time away from work to perform military duties.

13. When his military duties required him to take time off from work, Robbins would inform Gaddis in advance and provide his supporting military orders.

14. At no time during Robbins' employment with Defendant did his cumulative length of absences due to military service exceed five years.

15. In the summer of 2017, Robbins' Army National Guard unit was ordered to participate in month-long Joint Readiness Training Center exercises ("JRTC") in Louisiana, beginning in mid-July.

16. Robbins had informed his store manager, Gaddis, more than a year in advance, that he would be required to attend and participate in this training. Though the exact dates were not known at that time, Robbins had informed Gaddis that this training would last approximately one month.

17. On or around July 4, 2017, during the lead up to JRTC training, Robbins spoke to Gaddis and confirmed with him that he would be attending the training in mid-July.

18. During his conversation with Gaddis, Robbins told Gaddis that because his military duties would last more than 30 days, by law he would have 14 days to return to work.

19. In addition, prior to leaving for JRTC training, Robbins provided Gaddis a copy of his orders.

20. From July 12, 2017 through August 13, 2017, Robbins participated in JRTC training in Louisiana.

21. On August 22, 2017, Robbins returned to the Greenwood store to speak with Gaddis about returning to work. After a brief discussion, Gaddis suggested a return to work date of September 1, 2017. After Robbins agreed to that date, Gaddis told Robbins to call the DSG-Human Resources Department ("DSG-HR") to let them know.

22. On August 25, 2017, following Gaddis' instructions, Robbins called DSG-HR to let them know of the agreed upon start date.

23. In response, DSG-HR told Robbins that he had left without taking military leave, that the company did not have a copy of his military orders, and that he had not worked since his return from military duty. DSG-HR informed Robbins that it considered those days he had not worked since returning home from military duty "unexcused absences."

24. Robbins responded that he and Gaddis had agreed on a September 1, 2017 return to work date, that he had provided notice of his military duty, and that under USERRA he had 14 days to return to work.

25. DSG-HR stated that they needed his orders to "determine his status with the company," and ended the conversation by telling Robbins that they would call him Monday, August 28, 2017, to let him know.

26. At the conclusion of the call, Robbins, again, provided DSG-HR a copy of his military orders confirming that he had been on military duty from July 12 through August 13, 2017.

27. Defendant did not call Robbins on August 28, 2017.

28. On August 29, 2017, having received no word from Defendant regarding his status with the company or when he could return to work, Robbins called Defendant to inquire about these matters, but did not receive an answer.

29. Later that day, Robbins received a phone call from Gaddis during which Gaddis indicated that Robbins had been terminated. Gaddis instructed Robbins to call DSG-HR for any additional information.

30. Robbins immediately reached out to Defendant but received no response.

31. On August 29, 2017, Defendant processed paperwork officially terminating Robbins from his employment with Defendant.

32. On August 31, 2017, Robbins again reached out to Defendant and eventually received confirmation from Defendant that he had been terminated for unexcused absences.

33. On March 9, 2018, Robbins filed a complaint with the United States Department of Labor, Veterans Employment and Training Service (“VETS”), alleging Dufresne Spencer Group had violated USERRA when it terminated and failed to reemploy him upon his return from military service.

CLAIM FOR RELIEF
38 U.S.C. §§ 4312, 4313
(failure to reemploy)

34. Plaintiff repeats and incorporates by reference the factual allegations set forth in paragraphs 9-33.

35. Defendant violated Sections 4312 and 4313 of USERRA when it terminated Robbins in lieu of allowing him to return to work on September 1, 2017.

36. Robbins’ military duties required him to temporarily take time away from his job. When he did so, he provided advance notice of his military duty to his employer and provided his employer with his supporting military orders.

37. Robbins’ military service lasted for a period of more than 30 days, but less than 180 days.

38. Under the relevant provisions of USERRA, a service member returning from active duty of more than 30 days is entitled to up to 14 days of transition leave before returning to work

39. Within the fourteen days allotted by USERRA, Robbins timely requested reemployment.

40. Defendant initially suggested and reached agreement with Robbins that he would return to work on September 1, 2017 but then refused to allow him to return to work on that date, instead terminating him on August 29, 2017.

41. Defendant did so even after Robbins informed Defendant of his rights under USERRA.

42. Defendant's actions violated Robbins' federally protected rights under USERRA.

43. Defendant's violation of USERRA was willful.

44. Because of Defendant's actions in violation of USERRA, Robbins has suffered lost earnings and other benefits in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Robbins prays that the Court enter judgment against Defendant and, further, grant him the following relief:

a) declare that Defendant's failure to promptly reemploy Robbins upon his return from military service (and after his request to be so reemployed) was unlawful and in violation of USERRA;

b) declare that Defendant's violation of USERRA was willful;

c) order Defendant to comply fully with the provisions of USERRA by paying Robbins for his lost wages and other benefits suffered by reason of DSG's violation of USERRA;

d) order Defendant to comply fully with the provisions of USERRA by paying Robbins liquidated damages in an amount equal to the amount of his lost wages and related

benefits suffered by reason of Defendant's willful failure or refusal to comply with the provisions of USERRA

- e) award prejudgment interest on the amount of lost wages and benefits due;
- f) enjoin Defendant from taking any action with respect to Robbins that fails to comply with USERRA; and
- g) grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

JURY DEMAND

45. The United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

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