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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

FRANTZ JULIEN,

Plaintiff,

v.

SYMPHONY DIAGNOSTIC SERVICES, INC.
(d/b/a MobilexUSA),

Defendant.

09 1049

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Frantz Julien ("Julien"), by the undersigned attorneys, makes the following averments:

1. This civil action is brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 - 4335 ("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 judicial district under 38 U.S.C. § 4323(c)(2) because defendant, Symphony Diagnostic Services, Inc. (doing business as MobilexUSA) ("Mobilex"), exercises authority, is located in and does business within this judicial district. Additionally, the Court has jurisdiction under 28 U.S.C. § 1391(b) because events giving rise to this lawsuit occurred in this judicial district.

PARTIES

4. Julien resides in Irvington, Essex County, New Jersey.

5. Mobilex is a Maryland Corporation, with, among other locations, offices in Horsham, Montgomery County, Pennsylvania, located within the jurisdiction of this Court and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIMS FOR RELIEF

6. In November 1988, Julien joined the New York Army National Guard ("National Guard") and continues to serve in the National Guard.

7. On April 20, 2000, Julien began working as a Staff Mobile Radiologic Technologist for Mobilex.

8. In January 2003, the National Guard notified Julien that his unit would be activated for service in March 2003 with the United States Army ("Army"). Julien immediately notified his supervisor at Mobilex, Scott Kearns, and a Mobilex human resources department employee, Marcia Bothel, of his impending military activation.

9. On or about March 3, 2003, Julien received a written copy of his National Guard orders ("orders"), stating that his active duty began on March 3, 2003. Shortly thereafter, he provided a copy of his orders to Mobilex.

10. In 2003, after Julien began his active military service, Kearns contacted Julien and requested that Julien attend a meeting at Mobilex. Julien told Kearns that, due to his military duties, he (Julien) could not attend the meeting. Julien faxed a copy of his orders to Mobilex.

11. Shortly thereafter, Mobilex sent Julien a letter terminating Julien's employment with Mobilex.

12. Julien gave Mobilex's employment termination letter to a military Judge Advocate, who contacted Kearns to discuss the matter. Kearns later called Julien and told Julien that the Judge Advocate had cleared up the matter. Julien told Kearns that, when Julien was discharged from the Army, he would return to Mobilex with his military discharge papers.

13. On February 28, 2007, Julien completed his military duty with the Army and received an honorable discharge.

14. In mid-March 2007 and on April 9, 2007, Julien applied for reemployment with Mobilex but was told that Mobilex had no positions available.

15. On February 8, 2008, Julien filed a complaint under USERRA with the U.S. Department of Labor ("Department of Labor").

16. The Department of Labor's Veterans' Employment and Training Service ("VETS") conducted an investigation of Julien's complaint.

17. In April 2008, during the course of the VETS investigation, Mobilex offered Julien reemployment.

18. On April 28, 2008, Julien began his reemployment with Mobilex at a rate of approximately \$21.00 per hour.

19. Upon information and belief, Mobilex pays new, entry-level Staff Mobile Radiologic Technologists at a rate of approximately \$22.00 to \$23.00 per hour.

20. Upon information and belief, Mobilex pays Staff Mobile Radiologic Technologists who began employment with Mobilex in or around the year 2000 (the year in which Julien began employment with Mobilex) in excess of \$24.00 per hour.

21. Mobilex violated Sections 4312 and 4313 of USERRA by, *inter alia*, failing to promptly reemploy Julien upon his return from active service to either the position he would have held had his employment not been interrupted by his military service, or a position of like seniority, status and pay.

22. Mobilex's violations of USERRA were willful.

23. Because of Mobilex's conduct, Julien suffered monetary damages, including lost wages and benefits, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Julien prays that the Court enter judgment against Mobilex and, further, that the Court:

24. Declare that Mobilex's refusal to reemploy Julien promptly was a violation of Section 4312 of USERRA;

25. Declare that Mobilex's reemployment of Julien at a lower wage and benefits than the wage and benefits he would have received had he been continuously employed by Mobilex and had not served in the Army, was a violation of Section 4313 of USERRA;

26. Require that Mobilex comply with the provisions of USERRA by offering to employ Julien in a position of like pay, status and benefits to the position he would have had if he had been continuously employed by Mobilex and had not served in the Army;

27. Require that Mobilex fully comply with the provisions of USERRA by paying Julien all amounts due to him for his loss of wages, lost benefits and lost opportunities caused by Mobilex's failure or refusal to comply with the provisions of USERRA;

28. Declare that Mobilex's violations of USERRA were willful;

29. Order that Mobilex pay Julien as liquidated damages an amount equal to the amount of his lost compensation and other benefits suffered by reason of Mobilex's willful violations of USERRA;

30. Enjoin Mobilex from taking any action against Julien that fails to comply with the provisions of USERRA;

31. Award Julien prejudgment interest on the amount of lost wages and benefits found due; and

32. Grant such other and further relief as may be just and proper.

JURY DEMAND

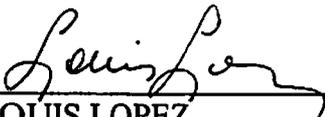
33. Julien hereby demands a trial by jury of all issues so triable.

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