

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID D. SWEATT,)
)
Plaintiff,)
)
v.)
)
AMERICRAFT CARTON, INC.,)
)
Defendant.)

Civil No. _____ **1:09-cv-227**
Gordon J Quist
U.S. District Judge

COMPLAINT

Plaintiff, David D. Sweatt ("Sweatt"), 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 - 4333 ("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)(2). Defendant Americraft Carton, Inc. ("Americraft"), is a private employer that maintains a place of business in the district of this United States district court, and a substantial part of the events giving rise to the claims occurred in this district.

PARTIES

4. Sweatt resides in Sturgis, Michigan, which is within the jurisdiction of this Court.

5. Americraft is a Missouri corporation that operates a manufacturing plant in Sturgis,

Michigan.

COUNT I (SECTION 4311)

6. In September 2002, Sweatt enlisted in the Michigan Army National Guard (“National Guard”). Sweatt remains a member of the National Guard’s 1463rd Transportation Company and currently serves on active duty in Iraq.

7. Sweatt started his employment with Americraft at its Sturgis, Michigan plant on or about May 29, 2007. Sweatt worked in production at the plant in the classification of “feeder/utility.”

8. John Westra was the Plant Manager at Americraft’s Sturgis, Michigan plant and a supervisor of Sweatt during his employment with Americraft.

9. Linda Large was the Office Manager at Americraft’s Sturgis, Michigan plant during Sweatt’s employment with Americraft.

10. Sweatt was on leave from Americraft from on or about July 28, 2007 through on or about August 10, 2007 for his annual military training.

11. Westra attempted to postpone Sweatt’s hire-in date for purposes of Sweatt being able to join the union that represented employees at Americraft’s Sturgis plant, Local Lodge No. 46 of the International Association of Machinists and Aerospace Workers (“union”), because of Sweatt’s July - August 2007 military leave. An individual had to be employed at Americraft for 60 days in order to be eligible to join the union.

12. In late August 2007, Sweatt learned that he was scheduled to go to required “88M” (Military Transport Operator) Army schooling in New Mexico starting in September 2007. Sweatt brought to the attention of Americraft his orders to attend this schooling as soon as he

received them.

13. On September 17, 2007, Americraft noted on the leave request that Sweatt submitted to attend the required Military Transport Operator schooling that “no future leave will be granted in excess of the dates required and outlined on the [military] schedule provided.”

14. In October 2007, Sweatt learned that the Border Patrol was looking for volunteers to help secure the border between the United States and Mexico. Sweatt volunteered for this active duty work assignment (“border mission assignment”) with the National Guard.

15. In November 2007, the National Guard provided Sweatt with orders for the border mission assignment.

16. In November 2007, Sweatt provided Americraft with a copy of his orders for the border mission assignment, which provided for a period of military service from November 13, 2007 to June 30, 2008.

17. On April 3, 2008, Sweatt returned home from his border mission assignment in Arizona.

18. On April 7, 2008, Sweatt went to Americraft to inform the company that he had returned from his military leave and sought reemployment. At this time, Sweatt provided his upcoming military drill and training schedule.

19. On April 8, 2008, Sweatt told Large at Americraft that he wanted to be reemployed, and they discussed his returning to work.

20. On April 15, 2008, Sweatt received a call from a sergeant in his National Guard unit telling him that Americraft was looking for him.

21. Within minutes of the sergeant’s call, Sweatt called Americraft. Americraft told

Sweatt to come in to work the next morning.

22. On April 16, 2008, Sweatt reported to work at Americraft and was terminated.

23. On April 16, 2008, Sweatt filed a grievance with the union because of his termination.

24. On or about May 2, 2008, Westra called Sweatt and told him that Americraft had negotiated an agreement with the union whereby Sweatt could come back to work and that Sweatt should report to work at Americraft on May 5, 2008.

25. On May 5, 2008, Westra presented Sweatt with an "Employment Reinstatement" memorandum that contained the terms pursuant to which Americraft would reinstate Sweatt.

26. The "Employment Reinstatement" memorandum, which had been signed by Westra, included provisions requiring Sweatt to provide Americraft with written orders in advance of any leave granted for required military service and stipulating that Americraft would not grant Sweatt leave for any voluntary military service.

27. Sweatt refused to agree to and did not sign the "Employment Reinstatement" memorandum. Westra then asked Sweatt to leave the premises of Americraft.

28. Americraft did not reinstate Sweatt after his termination.

29. Sweatt went on active military duty with his National Guard unit on or about June 22, 2008, and deployed to Iraq on or about September 3, 2008.

30. Americraft violated Section 4311 of USERRA, 38 U.S.C. § 4311, among other ways, by discriminating against Sweatt, terminating him, and failing or refusing to reinstate him because of his membership, service, application to perform service, and/or obligation to perform service in a uniformed service.

COUNT II (SECTION 4312)

31. Paragraphs 1 through 29 above are realleged and incorporated by reference as if set forth fully herein.

32. Sweatt gave Americraft notice of his military service in November 2007, prior to his departure on his border mission assignment.

33. Sweatt notified Americraft of his intent to return to employment with the company by reporting to Americraft and requesting reemployment within 14 days of his return in April 2008 from military service on his border mission assignment.

34. Americraft violated Section 4312 of USERRA, 38 U.S.C. § 4312(a), by failing or refusing to reemploy Sweatt after his return from military service, in April 2008.

COUNT III (SECTION 4316)

35. Paragraphs 1 through 29 above are realleged and incorporated by reference as if set forth fully herein.

36. Sweatt performed military service, which was for more than 30 days and less than 180 days, from on or about November 11, 2007, to on or about April 3, 2008.

37. Sweatt alleges that he was not reemployed by Americraft after his return from military service in April 2008 in violation of Section 4312 of USERRA, 38 U.S.C. § 4312.

38. In the alternative, Americraft violated Section 4316 of USERRA, 38 U.S.C. § 4316, by terminating Sweatt without cause, on or about April 16, 2008, within 180 days of his reemployment.

39. Americraft's violations of USERRA were willful, as alleged in the above counts.

40. Sweatt has suffered a loss of earnings and other benefits as a result of Americraft's

violations of USERRA.

41. All conditions precedent to the filing of suit have been performed or have occurred.

PRAYER FOR RELIEF

WHEREFORE, Sweatt prays that the Court enter judgment against Americraft, its officers, agents, employees, successors, and all persons in active concert or participation with it, as follows:

A. Declare that Americraft's termination of Sweatt and its failure or refusal to reinstate him, as well as its failure or refusal to reemploy him, were unlawful and in violation of USERRA;

B. Order that Americraft fully comply with the provisions of USERRA by removing all references to termination or quitting from Sweatt's employment records; and by paying Sweatt for his loss of earnings and other benefits suffered by reason of Americraft's failure and refusal to comply with the provisions of USERRA;

C. Award Sweatt prejudgment interest on the amount of lost compensation found due;

D. Declare that Americraft's violations of USERRA were willful under Section 4323(d) of USERRA, 38 U.S.C. § 4323(d);

E. Order that Americraft pay Sweatt as liquidated damages an amount equal to the amount of his lost wages and other benefits suffered by reason of Americraft's willful violations of USERRA;

F. Order Americraft to comply fully with the provisions of USERRA and place Sweatt at the appropriate seniority, status, and compensation that he would have attained had he

remained employed continuously with Americraft until the present, including during the time of his active duty service in the National Guard;

G. Enjoin Americraft from taking any action against Sweatt that fails to comply with the provisions of USERRA; and

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

Date: March 13, 2009

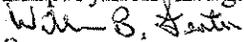
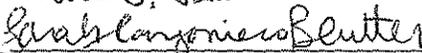
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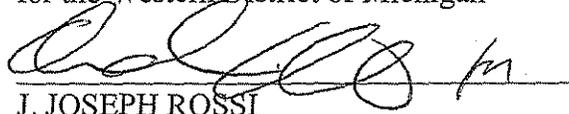
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