

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

_____)
WILLIAM O. MANN)
)
Plaintiff,)
)
v.)
)
PENSKE TRUCK LEASING CO., L.P.)
)
Defendant.)
_____)

2:14 cv 204

COMPLAINT

Plaintiff, William O. Mann ("Mann"), 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, *et seq.*, ("USERRA" or "Act").

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) and 28 U.S.C. § 1391(b)(2). Defendant Penske Truck Leasing Co., L.P. ("Penske") is a private employer that maintains places of business in the district of this United States District Court, and a substantial part of the events giving rise to the claims in this action occurred in this district.

PARTIES

4. Mann now resides in Severn, Maryland.

5. Penske is a Delaware corporation that operates business facilities in Chesapeake, Virginia and is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

FACTUAL ALLEGATIONS

6. On December 12, 2006, Mann was first hired by Penske and began working at Penske's Chesapeake, Virginia facility.

7. Prior to his date of first employment by Penske, Mann had served on active duty with the United States Army, from 1987 to 1990. Thereafter, in 1995, Mann enlisted in the Army Reserve, was activated in 1997 and elected to re-enter the regular Army. He served on active duty, in the United States and abroad, until his honorable discharge to civilian status in 2005.

8. After commencing his employment with Penske, Mann enlisted in the Air Force Reserve and was called to active duty with the Air Force on August 6, 2007. He was on active duty until honorably discharged to reserve status in September of 2009. Upon his discharge from active service, Mann returned to work for Penske, in the capacity of Service Technician II, at Penske's Chesapeake Virginia facility.

9. In August of 2010, while still working for Penske, Mann received orders from the Air Force Reserve directing him to return to active duty with the 512 Mortuary Affairs Squadron, at Dover Air Force Base, Delaware. Mann immediately notified Penske of his pending return to active duty and, as ordered, he reported for active duty on September 10, 2010. Mann served this tour of active service with the Air Force at various locations in the United States.

10. While on active duty, Mann suffered a fracture to his left wrist. Mann was treated for this condition by the Air Force and was referred to a civilian orthopedic surgeon, who performed corrective surgery on April 7, 2011.

11. In April of 2011, Mann was advised by the Air Force that he would be released from active service and returned to civilian status. While still under military orders, in late April of 2011, Mann went to Penske's Chesapeake facility to advise Penske of his pending release from active duty and desire to be reemployed.

12. Mann was honorably discharged to reserve status as a Staff Sergeant on May 21, 2011.

13. Mann reported for reemployment with Penske on May 23, 2011, two days after the completion of his active duty tour.

14. Mann spoke to a District Manager about returning to work and Mann informed the district manager that he would have temporary medical restrictions on his work capabilities due to his service-related injuries.

15. Mann was not returned to work in any position. Instead, Penske placed him on a short term paid leave of absence.

16. In October 2011, Mann was re-examined by his doctors and found to require more time to recover from his service-related injuries. Mann notified Penske of this new recovery timetable.

17. In December 2011, Penske terminated Mann's employment.

18. Although Penske may assert to the contrary, between May 2011 and the present, Penske has not made any efforts to reemploy Mann or assist Mann in becoming qualified for a position with the company.

19. On February 20, 2012 Mann filed a complaint with the United States Department of Labor alleging that Penske violated his rights under USERRA.

20. The Department of Labor investigated Mann's complaint and determined that his USERRA rights had been violated and his claim had merit. The Department of Justice agreed, resulting in the filing of this case.

COUNT 1: FAILURE TO REEMPLOY MANN IN VIOLATION OF USERRA

21. Mann repeats the allegations contained in paragraphs 1 through 20.

22. USERRA requires employers to promptly reemploy servicemembers in the job the person would have held had the person remained continuously employed, or a position of like seniority status and pay so long as the person is qualified for the job or can become qualified after reasonable efforts by the employer (the "escalator" position).

23. USERRA also requires that the employer must make reasonable efforts to accommodate a person's service-related illness or injury so that the person can perform the duties of his or her proper reemployment position, or a position that is the nearest approximation in terms of seniority, status, and pay consistent with the circumstances of such person's case.

24. As written and set forth in Paragraphs 14 through 20 above, Penske violated USERRA by, among other ways, (i) failing to reemploy Mann upon his return from military service in his appropriate escalator position with an accommodation for his temporary medical restrictions; and (ii) placing Mann on a paid disability leave of absence rather than creating a suitable reemployment position consistent with the circumstances of his case.

25. Because of Penske's actions in violation of USERRA, Mann suffered a substantial loss of earnings and other benefits.

COUNT 2: MANN'S TERMINATION IN VIOLATION OF USERRA

26. Mann repeats the allegations contained in paragraphs 1 through 25.

27. USERRA extends a servicemember's entitlement to reemployment for a period of up to two years when he or she is convalescing from a service-connected injury or illness.

28. Penske violated USERRA by terminating Mann while he convalesced from his service-connected injury before the expiration of the two-year period during which he was entitled to reemployment.

29. Because of Penske's actions in violation of USERRA, Mann suffered a substantial loss of earnings and other benefits.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Mann prays that this Court grant the following relief:

A. Declare that defendant Penske's failure or refusal to properly reemploy plaintiff Mann was unlawful and in violation of USERRA;

B. Declare that defendant Penske violated USERRA by terminating Mann during the two-year period when Mann was entitled to convalesce from his service-connected injuries without losing his USERRA-protected reemployment rights;

C. Declare that Penske's violations of USERRA were willful;

D. Order defendant Penske to comply fully with the provisions of USERRA by paying plaintiff Mann for his loss of earnings and other benefits suffered by reason of Penske's failure and refusal to comply with the provisions of USERRA and an equal amount of liquidated damages;

E. Order defendant Penske to comply fully with the provisions of USERRA by offering to reemploy plaintiff Mann in an appropriate position or provide appropriate front-pay;

F. Award plaintiff Mann prejudgment interest on the amount of lost earnings and other benefits found due;

G. Enjoin defendant Penske from taking any action in violation of USERRA; and

H. Grant plaintiff Mann such additional relief as may be just and proper, together with its costs and disbursements in this action.

JURY DEMAND


Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury.

Date: May 5, 2014

Respectfully submitted,

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By:


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