

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

JOHNATHAN DUNN,

Plaintiff,

CASE NO.:

v.

EQUITY TRANSPORTATION CO., INC.

Defendant.

COMPLAINT

Johnathan Dunn (“Dunn”), by and through his undersigned attorneys, brings this complaint against the Defendant, Equity Transportation Co., Inc. (“ETC” or “Defendant”), and alleges the following:

I. NATURE OF THIS ACTION

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.* (hereinafter “USERRA”).

II. JURISDICTION AND VENUE

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

3. The United States District Court for the Western District of Michigan is a proper venue for this action under 38 U.S.C. § 4323(c) because Defendant maintains a place of business in this judicial district.

4. All statutory conditions precedent to the initiation of this lawsuit have been fulfilled.

III. PARTIES

5. Plaintiff is a former employee of Defendant and resides in Tullahoma, TN.
6. Defendant ETC maintains a place of business at 3685 Dykstra Dr NW, Grand Rapids, MI 49544.
7. Defendant is an employer within the meaning of USERRA, 38 U.S.C. § 4303(4)(A) because it paid Dunn's salary for the work he performed while he was a permanent employee and had control over his employment opportunities while he was employed at ETC.

IV. FACTS

8. At all times material hereto, Dunn is a Sergeant in the United States Army National Guard serving with the 230th Sustainment Brigade DET1 out of Smyrna, TN. He has been in the National Guard since August 8, 2008. Dunn served two tours of active duty in Iraq from 2009 through 2010 and again from 2011 through 2012.
9. Dunn began work at ETC on July 24, 2012. He was hired to be a diesel truck mechanic and trailer maintenance technician at Defendant's truck and trailer maintenance facility in Athens, AL.
10. Dunn informed his supervisor at ETC on or around August 10, 2012 that he had weekend drill duty with his Army National Guard unit from August 17-19, 2012. On or around the same time, he received verbal orders that he was being called-up for a five week tour with the Army National Guard's Counter-Drug Taskforce from August 27 through September 27, 2012.
11. Upon receiving his verbal order, Dunn immediately informed his supervisor at ETC of this upcoming military obligation and asked for leave on August 20, 2012 to fill out his required paperwork for his upcoming military leave.

12. Dunn served the full length of his military leave from August 27, 2012 through September 27, 2012 and was honorably released from active duty.

13. On September 27, 2012, Dunn contacted his supervisor at ETC by phone and text to inform him of his release from his orders and his desire for reemployment starting on Monday, October 1, 2012. On the phone call, his supervisor told Dunn that he did not know Dunn still worked there, and that Dunn had been replaced.

14. Dunn was subsequently informed by Defendant that he had been dismissed on August 24, 2012 for too many absences from work and would not be reemployed. Dunn was not informed on August 24, 2012 that he had been fired and he anticipated being reemployed by Defendant following his leave.

15. Dunn has not been contacted again by Defendant and has not been reemployed.

16. As a direct result of Defendant's failure to reemploy Dunn following his military leave, he has lost substantial wages and benefits.

17. In accordance with Section 4322(a) of USERRA, Dunn filed a complaint in 2012 with the Veterans' Employment and Training Services (VETS) of the United States Department of Labor. VETS conducted an investigation and concluded that Plaintiff's rights were violated under USERRA. The Department of Labor referred Plaintiff's claims to the Department of Justice with a finding of merit.

V. USERRA CLAIMS

18. Plaintiff re-alleges and incorporates Paragraphs 1 through 18 as if fully set forth herein.

19. USERRA provides that "[a]ny person whose absence from a position of employment is necessitated by reason of service in the uniformed services is entitled to the reemployment rights and benefits of [USERRA] . . ." 38 U.S.C. § 4312(a).

20. In September 2012, Defendant violated USERRA by failing to reemploy Dunn following his military leave with the Army National Guard.
21. Plaintiff satisfied all of the pre-requisites for reemployment under USERRA, 38 U.S.C. §§ 4312(a)(1)-(3), by giving advance notice of his leave, serving less than five years and timely requesting reemployment from his employer.
22. Defendant cannot avoid USERRA's reemployment requirements under 38 U.S.C. § 4312(a) because ETC's reemployment of Dunn would not have been unreasonable due to changed circumstances and would not have been undue hardship on ETC due to a needed accommodation under 38 U.S.C. § 4312(d).
23. Dunn's employment prior to his leave was non-temporary and he reasonably expected reemployment following his leave under 38 U.S.C. § 4312(d).
24. Defendant's violation of USERRA was willful and in reckless disregard of Plaintiff's rights under the statute.

VI. PRAYER FOR RELIEF

Wherefore, Plaintiff requests this Court enter judgment against Defendant, as follows:

- A. Declare that Defendant's actions were in violation of USERRA's reemployment provisions, 38 U.S.C. § 4312;
- B. Order that Defendant comply with the provisions of USERRA;
- C. Order that Defendant pay Plaintiff all amounts due to him for loss of wages, future employment opportunities and other benefits of employment cause by Defendant's violation of USERRA;
- D. Award Plaintiff liquidated damages in an amount equal to the amount of lost wages and other benefits of employment suffered by reason of Defendant's willful violations of USERRA, pursuant to 38 U.S.C. § 4323(d)(1)(C); and

E. Grant any other such relief as may be due and just.

Respectfully submitted this 11th day of December, 2014.

VANITA GUPTA
ACTING ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

By:

/s/ Delora L. Kennebrew

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