

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
By: MARK OSMOND
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2713
Email: mark.osmond@usdoj.gov

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN CHEWENS,

Plaintiff,

v.

LIBERTY CENTRAL SCHOOL DISTRICT,

Defendant.

COMPLAINT

No. 24 Civ. 5754

Plaintiff John Chewens (“Chewens”), by his attorney, Damian Williams, United States Attorney for the Southern District of New York, pursuant to 28 U.S.C. § 4323, alleges as follows:

1. This civil action is brought under the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301–4355 (“USERRA”).

JURISDICTION AND VENUE

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

3. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because defendant Liberty Central School District (“Liberty”) maintains a place of business in this

judicial district and is considered a “private employer” under 38 U.S.C. § 4323(i). Additionally, venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

PARTIES

4. Chewens currently lives in West Islip, New York and was an employee of Liberty at all relevant times.

5. Liberty is a school district located in Sullivan County, New York.

6. Liberty is an employer within the meaning of 38 U.S.C. § 4303(4)(A).

FACTUAL ALLEGATIONS

7. Chewens, who is a Captain in the U.S. Army National Guard, began his employment as a middle school teacher at Liberty in September 2016.

8. Liberty pays its teachers according to a salary schedule by which a teacher’s base annual salary is determined by the teacher’s step.

9. Liberty’s teachers typically advance one step per year, which results in an increase in the teacher’s base annual salary.

10. During the 2016–17 school year, Chewens was paid at step 1, which corresponded to a base annual salary of \$44,594.

11. If a teacher holds a graduate degree or satisfies certain other criteria, the teacher can earn additional pay on top of the teacher’s annual base salary.

12. Chewens holds two master’s degrees, and his salary was correspondingly slightly above the applicable base salary amount.

13. At the start of 2017–18 school year, Chewens advanced to step 2, which corresponded to a base annual salary of \$47,863.

14. On March 1, 2018, Chewens was ordered to report for active-duty service starting on March 14, 2018, in support of Operation Enduring Freedom.

15. Liberty approved a leave of absence for Chewens from March 14, 2018, to April 1, 2019.

16. By letter dated April 1, 2019, Chewens was informed that he would be rehired and paid at step 3, which corresponded to an annual base salary of \$51,133, for the remainder of the 2018–19 school year.

17. By letter dated June 14, 2019, Chewens was informed that he would again be paid at step 3 for the 2019–20 school year.

18. Upon information and belief, Liberty did not provide Chewens with a step increase for the 2019–20 school year because he did not work at least five months of the 2018–19 school year.

19. Chewens did not work at least five months of the 2018–19 school year because of his military service.

20. Because Liberty paid Chewens at step 3 for two school years, his salary has been lower than it would have been in each subsequent school year had he not been deployed.

21. Liberty always granted Chewens's requests for leaves of absence to accommodate his military service and has always reemployed him after the completion of his service.

22. In or around June 2022, however, Chewens learned that he had not been paid at the proper step after he resumed his employment following the above-referenced deployment. He asked Liberty to correct his step level, but Liberty refused to do so.

23. On September 27, 2022, Chewens filed a claim with the Veterans' Employment and Training Service of the United States Department of Labor in accordance with section 4322(a) of USERRA.

24. Chewens was deployed for active-duty service again starting on August 1, 2022, for which Liberty approved a leave of absence.

CLAIM FOR RELIEF FOR VIOLATIONS OF USERRA

25. Chewens repeats and realleges the allegations in paragraphs 1 through 24 with the same force and effect as if set forth fully herein.

26. USERRA prohibits employers from discriminating or retaliating against servicemembers because of their past, current, or future military obligations.

27. USERRA also secures employment benefits for servicemembers who are absent from employment because of their service in the military.

28. Section 4313(a)(2)(A) of USERRA provides that a servicemember whose employment is interrupted by more than 90 days of military service is, upon return to the employer, entitled to a "position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by [military] service, or a position of like seniority, status and pay." 38 U.S.C. § 4313(a)(2)(A).

29. Liberty has violated USERRA by failing to pay Chewens the salary that he would have earned but for his military service.

30. Liberty knew or showed reckless disregard that its failure to pay Chewens the salary that he would have earned but for his military service was prohibited by USERRA.

REQUEST FOR RELIEF

WHEREFORE, Chewens requests that the Court enter judgment against Liberty as follows:

A. Declaring that Liberty's failure to compensate Chewens at the rate at which he would have been paid but for his military deployments violates USERRA, 38 U.S.C.

§ 4313(a)(2)(A);

B. Ordering that Liberty comply with the provisions of USERRA;

C. Ordering that Liberty pay Chewens lost wages caused by Liberty's violations of USERRA;

D. Awarding Chewens prejudgment interest on the amount of lost wages due;

E. Ordering that Liberty pay Chewens liquidated damages for its willful violations of USERRA; and

F. Granting such other relief as may be just.

Dated: July 30, 2024

New York, New York

Respectfully submitted,

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

Attorney for the United States of America

By: /s/ Mark Osmond

Mark Osmond

Assistant United States Attorney

86 Chambers Street, 3rd Floor

New York, New York 10007

Tel.: (212) 637-2713

Email: mark.osmond@usdoj.gov