

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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| ELTON WILSON; MICHAEL ROBERTS, | § | |
| | § | |
| Plaintiffs, | § | CIVIL ACTION NO. 4:18-cv-4218 |
| v. | § | |
| | § | |
| UNIVAR USA, Inc. | § | JURY TRIAL DEMANDED |
| | § | |
| Defendant. | § | |

ORIGINAL COMPLAINT

Plaintiffs Elton Wilson and Michael Roberts (collectively “Plaintiffs”), by and through their attorneys, bring this action for damages and other legal and equitable relief from Defendant, Univar USA, Inc. (“Defendant”), for violations of Title VII of the Civil Rights Act of 1964 (“Title VII”), as amended, 42 U.S.C. §§ 2000e *et seq.*, the Civil Rights Act of 1866, as amended, 42 U.S.C. §§ 1981 *et seq.* (“§ 1981”), the Texas Employment Discrimination Act, as amended, Tex. Lab. Code §§ 21.001 *et seq.* (“TLC”), and any other cause(s) of action that can be inferred from the facts set forth herein.

INTRODUCTION

1. This is an action brought by Plaintiffs seeking damages from Defendant for acts of discrimination and retaliation based on their race and/or color. Defendant’s acts of discrimination are in violation of Title VII, § 1981, the TLC, and any other cause(s) of action that can be inferred from the facts set forth herein.

2. Defendant utilizes a “shoulder tap” promotion policy to the disadvantage of qualified Black employees, including Plaintiff Wilson.

3. Defendant is one of the largest chemical distribution companies within the United States and employs more than five thousand (5,000) employees.

ORIGINAL COMPLAINT

4. Defendant owns and operates numerous facilities throughout the United States, including a facility located in Houston, Texas.

5. Defendant employs Plaintiffs as drivers at its facility in Houston, Texas. Throughout Plaintiffs' employment with Defendant, Plaintiffs have been subjected to discrimination and retaliation.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States, and pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 28 U.S.C. § 2201; 42 U.S.C. §§ 2000e et seq., as amended, and (iii) 42 U.S.C. §§ 1981 et seq., as amended.

7. The Court's supplemental jurisdiction is invoked to 28 U.S.C. § 1367(a), which confers supplemental jurisdiction over all non-federal claims arising from a common nucleus of operative facts such that they form part of the same case or controversy under Article III of the United States Constitution.

8. Venue is proper in this Court in as much as the unlawful employment practices occurred in this judicial district. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (c), in that Defendant maintains offices, conducts business and resides in this district.

PARTIES

9. Plaintiff Wilson is a person who has been aggrieved by Defendant's actions. He is and has been, at all relevant times, a Black citizen of the United States of America and is a resident

of Brazoria County, Texas.

10. Plaintiff Roberts is a person who has been aggrieved by Defendant's actions. He is and has been, at all relevant times, a Black citizen of the United States of America and is a resident of Harris County, Texas.

11. At all relevant times, Plaintiffs were Defendants' employees at its facility located at 777 Brisbane Street, Houston, Texas 77061, and therefore covered by Title VII, § 1981, and the TLC.

12. Defendant is a publically traded Delaware corporation with its principal place of business located at 3074 Highland Parkway, Suite 200, Downers Grove, Illinois 60515.

13. Upon information and belief, Defendant employs more than five thousand (5,000) employees.

14. During all relevant times, Defendant has been an employer covered by Title VII, § 1981, and the TLC.

15. Defendant transacted and continues to transact business in Texas by, among other things, employing persons at its facility located within Texas and within this judicial district.

EXHAUSTION OF FEDERAL ADMINISTRATIVE REMEDIES

16. Plaintiff Wilson, who has herein alleged claims pursuant to Title VII, has timely filed a complaint of discrimination with the Equal Employment Opportunity Commission ("EEOC"), which constitutes a cross-filing with the Texas Commission on Human Rights.

17. Plaintiff Wilson has received his Notice of Right to Sue letter from the EEOC prior to the filing of this Complaint. On or around August 9, 2018, the EEOC mailed Plaintiff Wilson his Notice of Right to Sue letter.

18. Plaintiff Roberts, who has herein alleged claims pursuant to Title VII, has timely filed a complaint of discrimination with the EEOC, which constitutes a cross-filing with the Texas Commission on Human Rights.

19. Plaintiff Roberts has received his Notice of Right to Sue letter from the EEOC prior to the filing of this Complaint. On or around August 28, 2018, the EEOC mailed Plaintiff Roberts his Notice of Right to Sue letter.

STATEMENT OF FACTS

I. Facts Pertaining to Plaintiff Wilson

20. Plaintiff Wilson has been employed by Defendant for thirteen years.

21. Throughout his employment, Plaintiff Wilson has been subjected to discriminatory treatment from his supervisors and co-workers.

22. For example, in or around March 2013, a White male employee made intimidating, offensive statements to Plaintiff Wilson and yelled at him. Instead of diffusing the situation, a White supervisor told Plaintiff Wilson to “take it outside.” The White male employee was not disciplined and is still employed by Defendant.

23. In contrast, Plaintiff Wilson has received several disciplinary write-ups for minor incidents. For example, in or around January 2016, Plaintiff Wilson was incorrectly written up for an incident. The write-up stated that a fence had been knocked down, even though it had not.

24. In or around April 2016, during a mandatory meeting, Plaintiff Wilson wanted to offer a suggestion to the group. Plaintiff Wilson’s White male supervisor interrupted him and said that Plaintiff Wilson needed to go outside and sit in a chair. Plaintiff Wilson then got up to get a breakfast pastry. The White male supervisor, who was larger and taller than Plaintiff Wilson, stood

up and towered over him in an intimidating manner. This White supervisor again told Plaintiff Wilson to go out of the meeting and sit in a chair.

25. Plaintiff Wilson reported this incident to Human Resources.

26. Upon information and belief, there was no investigation into the incident and the supervisor was not disciplined.

27. In or around June 16, 2017, Plaintiff Wilson met with Human Resources. During this meeting he learned that none of the formal complaints he had made had been kept by Human Resources or placed into any official record.

28. Though Plaintiff Wilson received numerous awards and certificates from Defendant and asked for a promotion to a dispatch position, he was never promoted. Instead, Defendant promoted a Hispanic employee to the dispatch position, even though this employee had less driving experience than Plaintiff Wilson. This dispatch position was never posted and Plaintiff Wilson was denied even the opportunity to apply for the position given to that employee.

II. Facts Pertaining to Plaintiff Roberts

29. Plaintiff Roberts has been employed by Defendant for four years.

30. Throughout his employment, Plaintiff Roberts has been subjected to discriminatory treatment from his supervisors and co-workers.

31. For example, Plaintiff Roberts' White supervisor oversees fifteen to sixteen drivers. Only five of those drivers are Black. Plaintiff Roberts' White supervisor consistently assigns Plaintiff Roberts tasks that are more strenuous than the tasks assigned to Plaintiff Roberts' White co-workers.

32. Though the dispatch tries to evenly distribute loads, the White supervisor speaks to the dispatch to ensure that White drivers are given easier loads and Plaintiff Roberts is given heavier loads that require more intense physical labor.

33. Plaintiff Roberts tried to speak with his White supervisor about this discriminatory behavior. However, the supervisor responded that Plaintiff Roberts had to do all the work assigned or he would be written up.

34. Plaintiff Roberts has been written up five times by this White supervisor because he could not do all of the strenuous work that had been disproportionately assigned to him.

35. The White supervisor also began referring to Plaintiff Roberts as “PeeWee.” Plaintiff Roberts spoke to this supervisor and told him that the nickname was racially offensive. The White supervisor continued to call Plaintiff Roberts “PeeWee” and some of his co-workers began calling him “PeeWee” as well.

36. Upon information and belief, drivers at Univar are not supposed to drive more than fourteen hours straight. However, this same White supervisor frequently made Plaintiff Roberts log off his computer and clock out after fourteen hours, but continue working. The supervisor would threaten to write-up Plaintiff Roberts if he refused to continue working off the clock. The White supervisor allowed White drivers to leave early and did not require them to work off the clock like this.

37. Plaintiff Roberts has made numerous complaints to Human Resources about this White supervisor’s discriminatory behavior.

38. Plaintiff Roberts also made complaints about the top two management employees in the facility. These two management employees frequently called Black employees “you guys,” and treated White and Hispanic employees more favorably than Black employees. Though these

two management employees were fired, the White supervisor has not received any discipline and is still employed by Defendant.

39. After Plaintiff Roberts filed his EEOC charge, he was subjected to a retaliatory suspension.

AS AND FOR A FIRST CAUSE OF ACTION FOR A VIOLATION OF
Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*
(Discrimination)

40. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

41. The conduct alleged herein violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*, as Defendant has engaged in the practice of discrimination with respect to the terms and conditions of Plaintiffs' employment.

42. Plaintiffs' requests for relief are set forth below.

AS AND FOR A SECOND CAUSE OF ACTION FOR A VIOLATION OF
Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*
(Retaliation)

43. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

44. Plaintiffs lodged complaints with Defendant regarding the discrimination to which they was subjected, and as such, engaged in protected activity under Title VII.

45. Defendant retaliated against Plaintiffs by, among other things, subjecting them to unwarranted discipline.

46. The conduct alleged herein violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.*

47. Plaintiffs' requests for relief are set forth below.

AS AND FOR A THIRD CAUSE OF ACTION FOR A VIOLATION OF
Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 *et seq.*
(Discrimination)

48. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

49. The conduct alleged herein violates Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 *et seq.*, as Defendant has engaged in the practice of discrimination with respect to the terms and conditions of Plaintiffs' employment.

50. Plaintiffs' requests for relief are set forth below.

AS AND FOR A FOURTH CAUSE OF ACTION FOR A VIOLATION OF
Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 *et seq.*
(Retaliation)

51. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

52. Plaintiffs lodged complaints with Defendant regarding the discrimination to which they were subjected, and as such, engaged in protected activity under § 1981.

53. Defendant retaliated against Plaintiffs by, among other things, subjecting them to unwarranted discipline.

54. The conduct alleged herein violates Section 1981 of the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 *et seq.*

55. Plaintiffs' requests for relief are set forth below.

AS AND FOR A FIFTH CAUSE OF ACTION FOR A VIOLATION OF
The Texas Employment Discrimination Act, as amended, Tex. Lab. Code §§ 21.001 *et seq.*
(Discrimination)

56. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

57. The conduct alleged herein violates the Texas Employment Discrimination Act, as amended, Tex. Lab. Code §§ 21.001 *et seq.*, as Defendant has engaged in the practice of discrimination with respect to the terms and conditions of Plaintiffs' employment.

58. Plaintiffs' requests for relief are set forth below.

AS AND FOR A SIXTH CAUSE OF ACTION FOR A VIOLATION OF
The Texas Employment Discrimination Act, as amended, Tex. Lab. Code §§ 21.001 *et seq.*
(Retaliation)

59. Plaintiffs are members of a protected class and repeat and re-allege the allegations contained in the paragraphs above, as if fully set forth herein.

60. Plaintiffs lodged complaints with Defendant regarding the discrimination to which they were subjected, and as such, engaged in protected activity under the Texas Employment Discrimination Act, as amended, Tex. Lab. Code §§ 21.001 *et seq.*

61. Defendant retaliated against Plaintiffs by, among other things, subjecting them to unwarranted discipline.

62. The conduct alleged herein violates the Texas Employment Discrimination Act, as amended, Tex. Lab. Code §§ 21.001 *et seq.*

63. Plaintiffs' requests for relief are set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment against Defendant as follows:

- A. A judgment declaring that the practices complained of herein are unlawful and in violation of the Civil Rights Act of 1871, as amended, 42 U.S.C. § 1981 *et seq.*; the 1991 Civil Rights Act, as amended, 42 U.S.C. § 1981a *et seq.*; Title VII of the Civil Rights Act of 1964, as amended and 42 U.S.C. § 2000e *et seq.*; the Texas Employment Discrimination Act, as amended, Tex. Lab. Code §§ 21.001 *et seq.*;

- B. All damages which Plaintiffs have sustained as a result of Defendant's conduct, including back pay, front pay, benefits, general and specific damages for lost compensation, and job benefits they would have received but for Defendant's discriminatory practices, and for emotional distress, humiliation, embarrassment, and anguish;
- C. Exemplary and punitive damages in an amount commensurate with Defendant's ability and so as to deter future malicious, reckless, and/or intentional conduct;
- D. Awarding Plaintiffs the costs and disbursements incurred in connection with this action, including reasonable attorney's fees, expert witness fees and other costs;
- E. Pre-judgment and post-judgment interest, as provided by law;
- F. That the Court retain jurisdiction over Defendant until such time as it is satisfied that they have remedied the practices complained of and are determined to be in full compliance with the law; and
- G. Granting Plaintiffs other and further relief as this Court finds necessary and proper.

Plaintiffs also seek injunctive relief, including, but not limited to:

- H. Training on the subject of employment discrimination for all of Defendant's employees;
- I. Implicit bias training for all managers conducted by reputable outside vendors;
- J. Supervisory discipline up to and including termination for any supervisor who engages in unlawful discrimination;
- K. Active monitoring of the work areas to ensure compliance with discrimination policies;

L. Monitoring by the Court or a federal agency to ensure that Defendant complies with all injunctive relief; and

Plaintiffs further demand that they be awarded such other and further legal and equitable relief as may be found appropriate and as the Court may deem just or equitable.

Dated: November 6, 2018

Respectfully submitted,



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