

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JARED N. CALDWELL,

Plaintiff,

v.

ACME TOWING, INC.,

Defendant.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

Plaintiff, Jared N. Caldwell ("Caldwell"), by the undersigned attorneys, makes the following averments:

1. This is a civil action 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).

**PARTIES**

4. Caldwell, who temporarily resides in Chester, Virginia, maintains a residence in Albuquerque, New Mexico, within the jurisdiction of this Court.

5. Acme maintains a place of business at 8705 Broadway, S.E., Albuquerque, New Mexico, 87105, within the jurisdiction of this Court.

**CLAIM FOR RELIEF**

6. On or about June 3, 2004, Caldwell commenced full-time employment as a Driver with Acme. At that time, Caldwell was also a Platoon Sergeant in the United States Army Reserve ("USAR") and was subject to a schedule of monthly military service commitments.

7. On or about January 1, 2005, Caldwell was promoted to acting First Sergeant in the USAR, with increased military training requirements.

8. During the period from January 2005 through June 2005, Caldwell received a series of orders from his USAR Unit requiring his attendance at annual and/or active duty training on approximately nine occasions.

9. On or about February 20, 2005, Acme promoted Caldwell to the position of Driver Supervisor, a management level position with responsibilities for oversight of other Acme Drivers.

10. On or about June 10, 2005, Eddie Ray ("Ray"), the majority owner of Acme, met with Caldwell and Brent Sweitzer ("Sweitzer"), another Acme management-level employee, to inform them that they would begin managing Acme on a daily basis so that Ray would be able to spend more time away from the business. Among other things, Ray requested that Caldwell draft a written description of his responsibilities as Driver Supervisor.

11. After giving notice to Acme, on June 11, 2005, Caldwell left for two weeks of annual training with the USAR.

12. On June 24, 2005, his first day back at Acme after completing his annual training

Caldwell was informed by Ray that the position of Driver Supervisor had been eliminated. Caldwell was given the option of either returning to his previous status as a Driver or being terminated. Caldwell accepted the Driver position. Subsequent to his demotion, Caldwell voiced his concern with Acme that his demotion was the result of his absences for military duty. Caldwell attempted to provide Acme with information concerning the employment protections afforded members of the uniformed services under USERRA.

13. In late July 2005, Caldwell informed Ray that he had received orders to attend an additional two-week military training program in August, 2005. Because of Ray's reaction to the possibility that Caldwell would again be absent for such a length of time, Caldwell felt compelled to cancel his participation in the training program for fear that he would be terminated from his position with Acme.

14. On or about August 24, 2005, Caldwell and his fellow Acme employee Jason Doxey ("Doxey") had a disagreement concerning the appropriate charge for a service call. The same day, Caldwell was terminated by Acme. Its internal investigation of the incident did not include any input from Caldwell, who had no prior disciplinary record. Doxey was not subjected to any discipline.

15. Acme violated Section 4311 of USERRA, among other ways, by discriminating against Caldwell, demoting him from the position of Driver Supervisor, and discharging him because of his membership, service, or obligation to perform service in, the uniformed services.

16. Caldwell has suffered substantial loss of earnings and other benefits of employment as a result of Acme's violations of USERRA.

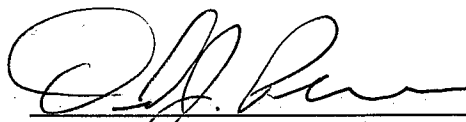
**PRAYER FOR RELIEF**

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

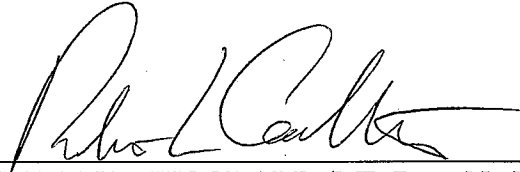
- A. Declare that Acme's demotion and discharge of Caldwell was unlawful and in violation of USERRA;
- B. Require that Acme fully comply with the provisions of USERRA by paying Caldwell for his loss of salary and other benefits suffered by reason of Acme's failure or refusal to comply with the provisions of this law;
- C. Enjoin Acme from taking any action against Caldwell that fails to comply with the provisions of USERRA;
- D. Award Caldwell prejudgment interest on the amount of lost salary found due; and
- E. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

RENA J. COMISAC  
Acting Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice

BY:



DAVID J. PALMER (DC Bar No. 417834)  
Chief



---

KAREN D. WOODARD (MD Bar - No Number Issued)

Deputy Chief

ROBERT L. GALBREATH (DC Bar No. 460389)

Trial Attorney

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section

950 Pennsylvania Avenue, NW

Patrick Henry Building, Room 4035

Washington, DC 20530

Telephone: (202)514-3831

Facsimile: (202) 514-1005

LARRY GOMEZ  
Acting United States Attorney



---

VIRGIL H. LEWIS II  
Assistant U.S. Attorney  
P.O. Box 607  
Albuquerque, New Mexico 87103  
(505) 346-7274  
Facsimile: (505) 346-7205  
Email: [Virgil.lewis@usdoj.gov](mailto:Virgil.lewis@usdoj.gov)