

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

JERIMIAH MACINTIRE,

Plaintiff,

v.

PAN-O-GOLD BAKING COMPANY (d.b.a.  
Village Hearth Bakery); and SELECT  
PERSONNEL SERVICES, INC. (d.b.a. Remedy  
Intelligent Staffing),

Defendants.

Civil Action No. 08-CV-134

Jury Trial Demanded

**COMPLAINT**

Plaintiff, Jeremiah Macintire, 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).

3. Venue is proper in this district under 38 U.S.C. § 4323(c)(2) because Defendant Pan-O-Gold Baking Company and Defendant Select Staffing are located in this judicial district, and under 28 U.S.C. § 1391(b) because this judicial district is where a substantial part of the events or omissions giving rise to the claims occurred.

PARTIES

4. Plaintiff Jerimiah Macintire (“Macintire”) resides in Dane County, Wisconsin, within the jurisdiction of this Court.

5. Defendant Pan-O-Gold Baking Company (d.b.a. Village Hearth Bakery) (“Village Hearth”) owns and operates Village Hearth Bakery. Village Hearth Bakery is located in Dane County, Wisconsin.

6. Defendant Select Personnel Services, Inc. (d.b.a. Remedy Intelligent Staffing) (“Remedy”) is a staffing service that operates in, among other places, Dane County, Wisconsin.

7. Defendant Village Hearth and Defendant Remedy are both employers within the meaning of 38 U.S.C. § 4303(4)(A).

CLAIM FOR RELIEF

8. Macintire has been a member of the Army Reserves (“Reserves”) since 1997. As a regular part of his Reserves obligations, Macintire is required to report for duty one full weekend per month and two full weeks per year.

9. Defendant Village Hearth acquires employees through Defendant Remedy for the operation of Village Hearth Bakery.

10. Employees provided to Defendant Village Hearth by Defendant Remedy for the operation of Village Hearth Bakery are hired on a probationary basis. During the probationary period, the employee is paid by Defendant Remedy, but all work duties, including when the employee is scheduled to report to work, are dictated by Defendant Village Hearth.

11. Generally, after a period of satisfactory performance, Defendant Village Hearth hires probationary employees provided by Defendant Remedy to full-time, permanent positions. When a probationary employee transitions to a permanent position, Defendant Village Hearth

provides the employee with a substantial wage increase and other employment benefits.

12. In May 2005, Macintire filed an employment application with Defendant Remedy for a position at Village Hearth Bakery. As proof of his eligibility for employment, Macintire provided Defendant Remedy with his military identification card. Macintire informed Defendant Remedy of his membership in the Army Reserves and offered to provide Defendant Remedy a copy of his Army Reserves drill schedule.

13. On or about May 10, 2005 Macintire started working as a loader/checker at Village Hearth Bakery. As with other probationary employees provided to Defendant Village Hearth by Defendant Remedy, Macintire's duties, including work start and stop times, were dictated by Defendant Village Hearth, but Macintire's wages were to be paid by Defendant Remedy.

14. On Macintire's first day of work at Village Hearth Bakery, Macintire provided Chad Kaltenberg, the Shipping Lead for Defendant Village Hearth, verbal and written notice that Macintire was a member of the Army Reserves ("Reserves") and needed various weekends off from work for required Reserves duty, including the upcoming weekend. Kaltenberg notified other supervisory personnel at Village Hearth Bakery of Macintire's military obligations and need for time off for Reserves duty, including Natasha Brown, Defendant Village Hearth's Shipping Manager.

15. On or about May 10, 2005, after being notified of Macintire's need for time off for Reserves duty, Brown, Shipping Manager for Defendant Village Hearth, contacted Defendant Remedy and informed Defendant Remedy that Macintire's military obligations were problematic because Defendant Village Hearth required that its employees work weekends. Defendant Village Hearth instructed Defendant Remedy to terminate Macintire's assignment at Village Hearth Bakery.

16. Macintire worked at Village Hearth Bakery the remainder of the week, through Friday, May 13, 2005.

17. Macintire participated in his weekend Reserves duty from May 14 to May 15, 2005 as scheduled.

18. On Monday, May 16, 2005, the day after the conclusion of his weekend Reserves duty, Macintire contacted Defendant Remedy to obtain his Village Hearth Bakery work schedule for that week. Defendant Remedy informed Macintire that he was not being allowed to return to work at Village Hearth Bakery because his military obligations limited his availability to work on weekends.

19. Defendant Village Hearth and Defendant Remedy violated Section 4311 of USERRA by denying Macintire reemployment at Village Hearth Bakery and/or refusing to retain Macintire as an employee at Village Hearth Bakery because of Macintire's military membership, performance of military service, and/or his military obligations.

20. Defendant Village Hearth and Defendant Remedy violated Sections 4312 and 4313 of USERRA, among other ways, by failing and refusing to allow Macintire to be reemployed in the position of employment at Village Hearth Bakery in which Macintire would have been employed if the continuous employment of Macintire had not been interrupted by Macintire's military service from May 14, 2005 to May 15, 2005.

21. Macintire has suffered substantial loss of earnings and other benefits of employment as a result of the Defendants' violations of USERRA.

PRAYER FOR RELIEF

WHEREFORE, Macintire prays that the Court enter judgment as follows:

A. Declare that Defendant Village Hearth's and Defendant Remedy's denial of

Macintire's reemployment at Village Hearth Bakery and/or refusal to retain Macintire as an employee at Village Hearth Bakery in his pre-military service position following the completion of his Reserves duty in May 2005 and that Defendant Village Hearth's and Defendant Remedy's failure and refusal to allow Macintire to be reinstated in the position at Village Hearth Bakery in which Macintire would have been employed if the continuous employment of Macintire had not been interrupted by Macintire's military service from May 14, 2005 to May 15, 2005 were unlawful and in violation of USERRA;

B. Enjoin the Defendant Village Hearth from failing or refusing to reinstate Macintire to employment at Village Hearth Bakery in the position he presently would be in, at the appropriate level of seniority, status and compensation, had he been reinstated to employment at Village Hearth Bakery upon his return from Reserves duty in May 2005 and not been subjected to denial of reemployment because of his military membership, performance of military service, and/or his military obligations;

C. Enjoin the Defendant Village Hearth and Defendant Remedy, as appropriate, from failing and refusing to provide sufficient monetary relief, including prejudgment interest, to Macintire to make him whole for the monetary loss and related benefits loss he has suffered as a result of the Defendant Village Hearth's and Defendant Remedy's failure or refusal to comply with the provisions of USERRA;

D. Enjoin the Defendant Village Hearth and the Defendant Remedy, as appropriate, from failing and refusing to comply in the future with all provisions of USERRA; and


E. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

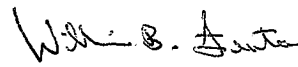
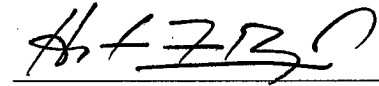
JURY DEMAND

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

GRACE C. BECKER  
Acting Assistant Attorney General  
Civil Rights Division

BY:

  
\_\_\_\_\_  
JOHN M. GADZICHOWSKI (WI Bar No. 1014294)  
Acting Chief

  
  
\_\_\_\_\_  
WILLIAM B. FENTON (DC Bar No. 414990)  
Deputy Chief  
HECTOR F. RUIZ, JR. (TX Bar No. 24029814)  
Senior 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)514-9694  
Facsimile: (202) 514-1005

Attorneys for Plaintiff