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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVE AXTELL,

Plaintiff,

v.

JAMES J. WILLIAMS BULK SERVICE
TRANSPORT, INC., TRANS-SYSTEM, INC.,
and SYSTEM TWT TRANSPORTATION,
INC.,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff, Dave Axtell (“Mr. Axtell”), by and through his undersigned attorneys, brings this Complaint against James J. Williams Bulk Service Transport, Inc. (“JJW”), Trans-System, Inc. (“Trans-System”), and System TWT Transportation, Inc. (“TWT Transportation”) (collectively hereinafter, “Defendants”) and alleges as follows:

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 - 4335 (“USERRA”). Defendants willfully violated Mr. Axtell’s USERRA rights, first, by failing to promptly and properly reemploy him following his honorable discharge from active duty with United States Air Force and, subsequently, by improperly terminating his employment. Mr. Axtell seeks his lost wages and benefits, as well as liquidated damages for Defendants’ willful violation of USERRA.

1 **II. JURISDICTION AND VENUE**

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

4 3. The United States District Court for the Western District of Washington is a proper
5 venue for this action under 38 U.S.C. § 4323(c)(2) because Defendant JJW is a company that
6 maintains a place of business in this judicial district. Additionally, venue is proper under 28
7 U.S.C. § 1391(b) because all or a substantial part of the events giving rise to this action occurred
8 in this district.

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

10 **III. PARTIES**

11 5. Mr. Axtell maintains a residence in University Place, Washington.

12 6. Defendant JJW maintains a place of business at 490 S. Hendrickson Drive, Kalama,
13 WA 98625, which is within the jurisdiction of this Court. Defendant JJW employed, managed,
14 and controlled Mr. Axtell's daily activities during his employment with JJW.

15 7. Defendant Trans-System is the parent company of Defendant JJW, paid Mr. Axtell's
16 wages in 2005, and directed the operations of JJW. Trans-System maintains a place of business
17 in Spokane, Washington.

18 8. Defendant TWT Transportation is a subsidiary of Trans-System that assisted with the
19 direction of JJW and paid Mr. Axtell's wages in 2009. TWT Transportation maintains a place of
20 business in Cheney, Washington.

21 **IV. FACTS**

22 **A. Following his Honorable Discharge from Active Duty, Defendants Failed to**
23 **Timely and, Then, to Properly Reemploy Mr. Axtell.**

24 9. JJW is a trucking company that specializes in hauling hazardous materials throughout
25 the Northwest United States and western Canada.

26 10. On or about on April 4, 1996, Mr. Axtell commenced full-time employment as a truck
27 driver with JJW/Defendants.
28

1 11. In approximately 1998, Duane Johnsen (“Mr. Johnsen”), the General Manager for
2 JJW at the time, offered Mr. Axtell the position of Driver Supervisor with a \$32,000 annual
3 salary and a work week capped at 45 hours. Mr. Axtell accepted the position.

4 12. As a Driver Supervisor, Mr. Axtell trained and supervised truck drivers, performed
5 dispatch duties, performed special assignments for the General Manager, responded (along with
6 others) to accidents and spills, and ensured that truck drivers had all appropriate disposable
7 equipment.

8 13. At the time he was a Driver Supervisor, Mr. Axtell lived in University Place,
9 Washington and performed his duties at both JJW’s Pacific, Washington and Kalama,
10 Washington (near Longview, Washington) locations. He commuted on a weekly basis between
11 these two duty locations. Defendants provided Mr. Axtell with a gas card to account for his
12 driving expenses, and lodged him in a motel when he was in Kalama.

13 14. On or about April 25, 2005, Mr. Axtell was called into active duty and, shortly
14 thereafter, deployed overseas in support of Operation Enduring Freedom by the United States
15 Air Force. Mr. Axtell had given Mr. Johnsen and Defendants at least two weeks’ notice of this
16 service obligation. At the time of his departure for military service, Mr. Axtell held the position
17 of Driver Supervisor.

18 15. The day after his honorable release from active duty, on or about April 13, 2009, Mr.
19 Axtell contacted Defendants seeking reemployment as a Driver Supervisor.

20 16. Defendants failed to promptly reemploy Axtell. Instead, even after being informed
21 of their obligations under USERRA, JJW personnel informed Mr. Axtell that he would be
22 required to obtain a current commercial driver’s license (“CDL”) and to pass a Department of
23 Transportation (“DOT”) physical and drug test, before he would be considered for
24 reemployment and permitted to work for Defendants.

25 17. Additionally, JJW employees, including new JJW General Manager Francis McGee
26 and JJW Human Resources Representative Jeff Benesch (“Benesch”), informed Mr. Axtell that
27 his former Driver Supervisor position “no longer existed” in Pacific and that, if he wanted a
28 position at Defendants’ Kalama location, he had to live within 30 minutes of Kalama. As known

1 to JJW, Mr. Axtell's residence in University Place was more than 30 minutes from Kalama.
2 Moreover, the so-called "30 minute" policy was both unwritten and previously unheard of.

3 18. Over three months later, on or about July 14, 2009, after he obtained his CDL and
4 passed his DOT physical and drug test, Defendants reemployed Mr. Axtell as a new truck driver.
5 The truck driving position did not have the same or comparable duties to the Driver Supervisor
6 position that Mr. Axtell held prior to his military deployment. In addition, the truck driver
7 position was not salaried, and Mr. Axtell worked longer hours than he had worked as a Driver
8 Supervisor. Furthermore, as he was a "new" employee, Defendants required Mr. Axtell to attend
9 new employee orientation and initially required him to be trained by drivers whom he himself
10 had previously trained, at half his already-reduced pay and without full benefits.

11 **B. Defendants Improperly Terminated Mr. Axtell**

12 19. On or about August 17, 2009, Mr. Axtell contacted a representative from The
13 National Committee for Employer Support of the Guard and Reserve ("ESGR") regarding
14 concerns about JJW's non-compliance with USERRA. The ESGR representative thereafter
15 contacted JJW human resources representative Benesch concerning Mr. Axtell's complaint.
16 Nonetheless, Defendants still refused to reinstate Mr. Axtell into the Driver Supervisor or
17 comparable position, and restore his status as a salaried employee.

18 20. On September 3, 2009, the vehicle that Mr. Axtell was driving incurred a small (half
19 of one gallon) oil spill on the highway. While Mr. Axtell quickly cleaned the spill, a
20 Washington State Patrol Officer conducted an inspection that uncovered a broken spring on the
21 trailer. The Officer permitted Mr. Axtell to drive the vehicle to the customer's yard for repairs,
22 and the vehicle was back in service the following day.

23 21. During September 2009, Mr. Axtell raised objections to improper documentation
24 practices regarding the hauling of hazardous materials by certain JJW customers, with the
25 knowledge, participation and approval of Jerrod Stockton, JJW's Regulatory Compliance and
26 Safety Manager.

27 22. According to Defendants' own written progressive disciplinary policy, Mr. Axtell
28 should have received a "Level One" probation for the September 3 incident involving the oil

1 spill. Instead, on October 1, 2009, Defendants imposed the more severe and unwarranted “Level
2 Two” probation. Level Two probation meant that any additional discipline within the next 120
3 days would result in automatic termination.

4 23. On October 28, 2009, Defendants terminated Mr. Axtell’s employment after an
5 incident that allegedly occurred on or about October 16, 2009. Defendants claimed that Mr.
6 Axtell was hauling a load without proper paperwork, despite its knowledge of evidence
7 indicating that Mr. Axtell had been unaware of the missing paperwork, had acted reasonably and
8 professionally, and that other employees were at fault for the incident. Upon information and
9 belief, other employees involved in the incident were not disciplined.

10 24. On or about March 30, 2010, Mr. Axtell filed a complaint with the United States
11 Department of Labor (“DOL”), alleging that JJW had violated his rights under USERRA. The
12 DOL’s Veterans Employment and Training Service (“VETS”) conducted an investigation into
13 Mr. Axtell’s claim and determined that the claim had merit. In accordance with 38 U.S.C. §
14 4323(a)(1), DOL referred Axtell’s complaint to the Attorney General of the United States.

15 **V. USERRA CLAIMS**

16 25. Paragraphs 1 through 24 are realleged and incorporated by reference.

17 26. Defendants violated 38 U.S.C. §§ 4312 and 4313 of USERRA, among other ways, by
18 failing or refusing to:

19 (a) promptly reemploy Mr. Axtell;

20 (b) reemploy Mr. Axtell in the position in which he would have been employed had his
21 employment not been interrupted by military service, or a position of like seniority, status and
22 pay, the duties of which Mr. Axtell was qualified to perform.

23 27. Defendants violated 38 U.S.C. § 4316 of USERRA, among other ways, by
24 discharging Mr. Axtell from his employment with Defendants without cause within one (1) year
25 of his reemployment.

26 28. As a result of the Defendants’ unlawful conduct in violation of USERRA, Mr. Axtell
27 has suffered a loss of earnings and other benefits of employment in an amount to be proven at
28 trial.

1 29. Mr. Axtell seeks liquidated damages in an amount to be proven at trial because
2 Defendants' violations of USERRA were willful.

3 **VI. PRAYER FOR RELIEF**

4 WHEREFORE, Mr. Axtell prays that the Court enter judgment against Defendants and
5 their officers, agents, employees, successors and all persons in active concert or participation
6 with them, as follows:

7 A. Declare that the termination of Mr. Axtell's employment by Defendants was unlawful
8 and in violation of USERRA;

9 B. Enjoin Defendants from taking any action against Mr. Axtell that fails to comply with
10 the provisions of USERRA;

11 C. Order that Defendants fully comply with the provisions of USERRA by paying Mr.
12 Axtell for his loss of wages and other benefits suffered by reason of their failure or refusal to
13 comply with the provisions of this law;

14 D. Order that Defendants fully comply with the provisions of USERRA by paying Mr.
15 Axtell liquidated damages thereof by reason of their willful failure or refusal to comply with the
16 provisions of this law;

17 E. Award Mr. Axtell prejudgment interest on the amount of lost wages found due; and

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

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1 Dated this 30th day of June, 2011.
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3 Respectfully submitted,

4 THOMAS PEREZ
5 Assistant Attorney General

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*Conditional Admission Pending