

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Telephone: (202) 305-8686

Plaintiff,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
600 Fifth Street, N.W.
Washington, DC 20001
Telephone: (202) 962-2820

Defendant.

Case No. 1:08-CV-01661 (RMC)

SETTLEMENT AGREEMENT

I. INTRODUCTION

This action was brought by the United States of America ("United States") against the Washington Metropolitan Area Transit Authority ("WMATA") to enforce the provisions of Title VII of the Civil Rights Acts of 1964, as amended, 42 U.S.C. § 2000e, et. seq. ("Title VII"). In its complaint, the United States alleges that WMATA is engaged in a pattern or practice of discrimination against prospective and current employees on the basis of religion, in violation of Section 707 of Title VII, 42 U.S.C. § 2000e-6. In particular, the United States alleges that:

(1) WMATA failed or refused to reasonably accommodate prospective and current employees whose religious observances, practices and/or beliefs required an accommodation from portions

of WMATA's uniform policy for bus operators and similarly situated employees; and
(2) WMATA failed or refused to hire prospective employees whose religious observances, practices and/or beliefs required an accommodation from portions of WMATA's uniform policy for bus operators and similarly situated employees.

The United States also alleges that WMATA discriminated against Gloria Jones ("Jones") on the basis of her religion, in violation of Section 703(a) of Title VII by: (1) failing or refusing to reasonably accommodate the religious observance, practice and/or belief of Jones that precluded her from complying with a portion of WMATA's uniform policy; and (2) failing or refusing to hire Jones because she could not comply with a portion of WMATA's uniform policy due to her religious observance, practice and/or belief.

WMATA denies that it has discriminated against any individual on the basis of his or her religious observance, practice and/or belief in a manner inconsistent with Title VII, and denies that it has engaged in a pattern and practice of discrimination on the basis of religious observance, practice and/or belief.

The United States and WMATA, desiring that this action be settled by an appropriate Settlement Agreement ("Agreement") and without the burden and expense of litigation, agree to the entry of this Agreement.

The United States and WMATA agree to the jurisdiction of the Court over the parties and the subject matter of this action. For purposes of this Agreement, and subject to its approval and entry by the Court, the parties waive a hearing and findings of fact and conclusions of law on all issues, and further agree to the entry of this Agreement as final and binding between themselves

as to the issues raised in the complaint filed by the United States in this case and the matters resolved by this Agreement. This Agreement, being entered with the consent of the parties, shall not constitute an admission, adjudication or finding on the merits of the allegations made in the complaint.

Accordingly, it is hereby ORDERED and ADJUDGED as follows:

II. PARTIES

1. The parties to this Agreement are the United States of America, by the United States Department of Justice, and the Washington Metropolitan Area Transit Authority.
2. WMATA and its current, former, and future agents, employees, officials, designees and successors in interests are hereinafter referred to collectively as "WMATA."

III. GENERAL INJUNCTIVE RELIEF

3. WMATA, its employees, supervisors and agents, jointly and severally, will not engage in any act or practice that unlawfully discriminates against any employee or prospective employee because of his or her religious observance, practice and/or belief, including when such observance, practice and/or belief requires a reasonable accommodation to WMATA's uniform policy for bus operators and similarly situated employees.¹
4. WMATA will not retaliate against or adversely affect any person because that person has complained about religious discrimination, requested a religious accommodation, or because of that person's participation in or cooperation with the initiation, investigation, litigation or administration of this action or this Agreement.

¹ The parties agree that for purposes of this Agreement the term "similarly situated employees" does not include employees of WMATA's Transit Police Department.

**IV. WMATA'S POLICIES AND PROCEDURES
REGARDING RELIGIOUS ACCOMMODATION**

5. Within sixty (60) days from the date of entry of this Agreement, WMATA shall provide to the United States a written policy on religious accommodation ("religious accommodation policy"), subject to comment and approval by the United States, applicable to all employees and prospective employees who are subject to WMATA's uniform policy for bus operators and similarly situated employees. The religious accommodation policy will comply with Title VII's prohibition against religious discrimination and with Title VII's requirement to reasonably accommodate the religious observances, practices and/or beliefs of all employees and prospective employees. At a minimum, the religious accommodation policy will include the following:

- a. A prohibition of unlawful discrimination on the basis of religion;
- b. A statement explaining that "religion" means all aspects of religious observance, practice and/or belief;
- c. A statement explaining that the employer has a duty to reasonably accommodate an employee's request for religious accommodation based on the employee's religious observance, practice and/or belief unless the employee's request would place an undue hardship on the employer;
- d. A request form for employees who wish to request a religious accommodation requiring the employee to specify the accommodation requested and requiring the employer to specify whether the request is approved or disapproved with the reasons for any disapproval;

- e. A description of the procedure to be used by employees who wish to request a religious accommodation, including to whom requests should be addressed, and how an employee may appeal the denial of a request for religious accommodation;
 - f. A statement requiring supervisory personnel to contact the appropriate individual(s) at WMATA, who shall serve as the agency's religious accommodation coordinator(s) and who is/are trained in responding to requests for religious accommodation, for guidance in the event that a supervisor believes that an employee's request for accommodation cannot be granted without causing undue hardship; and
 - g. A description of the process for making an internal complaint regarding religious accommodation issues, including each step in the complaint process, the individual(s) to whom complaints are to be made including the contact information for the religious accommodation coordinator(s), the time periods for bringing, investigating, and resolving the complaint, the manner in which the investigation and resolution process is to be conducted, and a statement that an employee may bypass the internal complaint procedure and file a timely complaint with the Equal Employment Opportunity Commission.
6. The United States shall review the policy within twenty-five (25) days of its

receipt.

7. Within one hundred twenty (120) days of receiving approval from the United States on the religious accommodation policy, WMATA shall:

- a. distribute the religious accommodation policy to all current employees subject to the uniform policy for bus operators and similarly situated employees, shall post it on WMATA's Intranet site where other non-discrimination policies are posted, and shall post it manually in all WMATA locations where other non-discrimination notices are posted;
- b. distribute the religious accommodation policy to all attendees of any WMATA orientation or training program for new employees; and
- c. include reference to the policy in its job application materials.

V. TRAINING

8. Within two hundred and forty (240) days from the date of the United States' approval of the religious accommodation policy, WMATA will provide mandatory training regarding religious discrimination and accommodation for all WMATA supervisors, managers, administrators and human resources officials, and continuing through the life of this Agreement, all newly hired or promoted supervisors, managers, administrators and human resources officials, in all divisions of WMATA responsible for enforcing WMATA uniform policies, making determinations regarding requests for religious accommodation, and reviewing complaints of religious discrimination by WMATA employees. This training may take the form of video or computer-based training, which the United States will have an opportunity to review and approve. Within ninety (90) days from the United States' approval of the religious

accommodation policy, WMATA will submit to counsel for the United States a description of the proposed training program and training provider, and a list of employee positions (with titles) designated to be trained. The United States shall review and approve the proposed training program within thirty (30) days thereafter.

9. All persons who undergo the training described in Paragraph 8, above, will sign an acknowledgment of attendance at the training. Every six (6) months throughout the duration of this Agreement, WMATA will provide the United States with the number of persons, by title, who have attended the training. Thirty (30) days prior to the expiration of this Agreement, WMATA will provide the United States with written confirmation that all persons covered by Paragraph 8 attended the training. WMATA will keep on file all signed acknowledgments for the duration of the Agreement.

VI. INDIVIDUAL RELIEF FOR JONES

10. Within seven (7) days of the date of entry of this Agreement, pursuant to the notice procedure set forth in Paragraph eleven (11), below, WMATA will offer to Jones a total of \$47,323.71, which includes:

- a. A monetary award of thirty-nine thousand nine hundred ninety-eight dollars and fifty-six cents (\$39,998.56), which is designated as back pay. This monetary award shall be subject to any applicable federal, state, and local taxes, in addition to payroll tax withholding deductions, and shall be reported to the IRS on Form W-2. WMATA shall separately pay all employer's contributions to the Social

Security fund due on the monetary award; the employer's contribution shall not be deducted from the monetary award to Jones.

- b. A monetary award in the amount of two thousand three hundred twenty-five dollars and fifteen cents (\$2,325.15), which is designated as accumulated interest on the back pay. This amount shall not be subject to withholding deductions and WMATA shall report this amount to the IRS on Form 1099-INT.
- c. A monetary award of five thousand dollars (\$5,000.00), which will be considered compensatory damages. This amount is not subject to withholding deductions, and WMATA will issue a Form 1099 to Jones for this amount, checking Box 3 for "other income."
- d. WMATA will not be obligated to pay Ms. Jones until it receives a W-9 form from her.

11. WMATA will notify Jones of the individual relief being afforded her under the terms of this Agreement within seven (7) days of the date of its entry by mailing to her, by certified mail, return receipt requested, a Notice Letter as set forth in Appendix A ("Notice Letter"), the Release and Election forms set forth in Appendix B, and a copy of this Agreement. The Notice Letter will advise Jones that, in order to accept the individual relief offered her, she must execute the Release and Election forms, sign the W-9 form and return them to WMATA, by hand or certified mail, within thirty (30) days of her receipt of the Notice Letter, unless she can demonstrate good cause, to be determined by the United States, for her failure to do so.

12. WMATA will pay to Jones the monetary award specified in Paragraph 10, above, within fifteen (15) days of its receipt of the executed Release and W-9.

VII. ADDITIONAL INDIVIDUAL RELIEF

13. Within seven (7) days of the date of entry of this Agreement, WMATA will grant the following individuals reasonable accommodations for religious observances, practices and/or beliefs as specified below:

- a. Daphne Miminger (“Miminger”): permission to wear a Hijab in a manner that does not cover the WMATA identification patch or interfere with peripheral vision; and
- b. Davida Brahame/Taylor (“Brahame/Taylor”): permission to wear a Hijab in a manner that does not cover the WMATA identification patch or interfere with peripheral vision.

14. Within seven (7) days of the date of entry of this Agreement, pursuant to the notice procedure set forth in Paragraph (15), below, WMATA shall offer to pay Miminger and Brahame/Taylor a monetary award of two thousand five hundred dollars (\$2,500.00) each, for a total of five thousand dollars (\$5,000.00) which shall be considered compensatory damages. These amounts are not subject to withholding deductions, and WMATA shall issue Form 1099s to each individual for \$2,500.00, checking Box 3 for “other income.”

15. WMATA will notify Miminger and Brahame/Taylor of the individual relief being afforded them under the terms of this Agreement within seven (7) days of the date of its entry, by mailing to them, by certified mail, return receipt requested, Notice Letters as set forth in

Appendix C, the Release and Election forms set forth in Appendix D, and a copy of this Agreement. The Notice Letters shall advise Miminger and Brahame/Taylor that in order to accept the individual relief offered them, they must execute the Release and Election forms and return them to WMATA, by hand or certified mail, within thirty (30) days of receipt of the Notice Letter, unless they can demonstrate good cause, to be determined by the United States, for failure to do so.

16. WMATA will pay to Miminger and Brahame/Taylor Jones the monetary awards specified in Paragraph 14, above, within fifteen (15) days of its receipt of the executed Release.

17. WMATA has represented that no other current or prospective employees requested and were denied religious accommodations with respect to its uniform policies within the six years preceding the entry of this Agreement. If the parties learn during the duration of this Agreement that any other prospective or current employee of WMATA requested and was denied a religious accommodation to the uniform policy for bus operators and similarly situated employees, the parties shall fashion appropriate relief. If the parties are unable to agree upon such relief, the dispute shall be submitted to the Court for resolution. This provision applies only to those individuals who requested an accommodation within the three (3) years prior to the entry of this Agreement.

VIII. RECORD KEEPING AND REPORTING

18. WMATA will retain all records, including electronic mail, that come into its possession relating to complaints or charges of employment discrimination based on religion

made against WMATA or its employees, agents or representatives: (a) through the WMATA's internal grievance procedure; (b) with the United States Equal Employment Opportunity Commission; or (c) through or with any other federal agency authorized to receive such complaints. WMATA will provide copies of such complaints or charges to counsel for the United States within ten (10) days of its receipt of such complaints or charges. The United States will have the right to inspect and copy all documents related to such complaints or charges upon reasonable notice to WMATA.

19. For a two-year period beginning on the entry date of this Agreement, WMATA will provide the United States copies of any modifications or revisions to WMATA's policies and procedures pertaining to religious accommodation, copies of all religious accommodation requests made that resulted in decisions of the WMATA Religious Accommodations Panel and/or the Director of the WMATA Office of Civil Rights, and copies of all related decisions of the Panel and/or the Director.

IX. ADDITIONAL PROVISIONS

20. The United States may review compliance with this Agreement at any time. The United States will allow WMATA at least twenty-one (21) days to provide a response to the United States' request. WMATA will provide copies of documents relevant to WMATA's compliance with this Agreement upon the request of the United States.

21. The parties will attempt to resolve informally any dispute that arises under this Agreement, and failing such agreement, shall submit the dispute to the United States District Court's Mediation Program, as specified in Local Civil Rule 84. If mediation is unsuccessful,

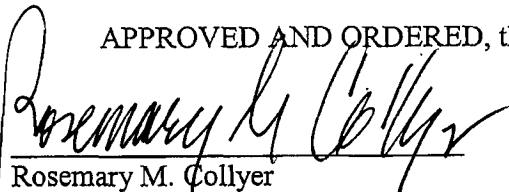
either party may move this Court for a resolution of the issue provided that written notice has been provided to the other party ten (10) days prior to any motion filed.

22. After two (2) years from the date of the final entry of this Agreement, this Agreement shall dissolve and this action shall be dismissed, without further order of this Court, unless it is extended by the Court. With respect to the various time frames for completion of activities set forth in this Agreement, those time frames may be modified upon mutual written consent of the parties. The parties may jointly agree to other modifications of this Agreement with the approval of the Court.

23. During the life of this Agreement, the Court shall retain jurisdiction over this Agreement for the purposes of enforcing its provisions, resolving any disputes that may arise between the parties under it and entering such orders as may be appropriate.

24. The parties shall bear their own costs, expenses and attorney's fees in this action, including the costs of compliance or monitoring, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Agreement and require resolution by this Court.

APPROVED AND ORDERED, this 4 day of February 2009.


Rosemary M. Collyer
UNITED STATES DISTRICT JUDGE

District of Columbia

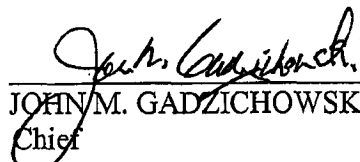
AGREED AND CONSENTED TO:

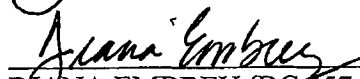
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Area Transit Authority:


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