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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION

ANTHONY K. LINCOLN,

Plaintiff,

v.

FIRST EXPRESS, INC.,

Defendant.

Civil Action No. 05-2742
(WJM)

JURY DEMAND

COMPLAINT

Plaintiff, Anthony K. Lincoln ("Lincoln"), 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) because Defendant, First Express, Inc. ("First Express"), maintains a place of business in this judicial district.

PARTIES

4. Lincoln resides at 1945 JFK Boulevard, Jersey City, New Jersey, within the jurisdiction of this Court.

5. First Express maintains a place of business at 97 Third Street, South Kearny, New Jersey 07032. South Kearny is in Hudson County, and is within the jurisdiction of this Court.

CLAIM FOR RELIEF

6. Lincoln joined the United States Army National Guard on or about December 30, 1997. He is a member of the E Company, 50th MFB, located at 678 Montgomery Street, Jersey City, New Jersey 07306.

7. On or about June 30, 2003, Lincoln commenced employment for First Express as a truck driver.

8. On or about May 3, 2004, Lincoln informed First Express, through Steve Won, its owner ("Won"), that he expected to be activated as a member of the Army National Guard in

support of Operation Iraqi Freedom within the following month. Lincoln also informed First Express, through Won, of his interest in returning to his position as truck driver upon his discharge from active duty military service. Won of First Express told Lincoln to contact First Express when he returned home from active duty.

9. On or about May 24, 2004, Lincoln again provided verbal notification to First Express, through Won, of his impending military deployment.

10. By orders issued on June 2, 2004, Lincoln was ordered to active duty as a member of his Reserve Component Unit for a period not to exceed 545 days. He was also ordered to active duty for a period of no less than thirty days for mobilization processing, which was to include medical and dental screening and care.

11. On June 6, 2004, Lincoln reported to his Home Unit Station pursuant to his military orders. He then reported to Fort Dix on June 9, 2004, for mobilization processing pursuant to those orders.

12. Lincoln was released from active duty on June 22, 2004, for medical reasons.

13. On that same day, June 22, 2004, Lincoln contacted First Express, through Won, by telephone seeking reinstatement to his truck driver position with First Express. Won told Lincoln to call back in a couple of days.

14. On June 24, 2004, Lincoln contacted Won of First Express, as instructed, and was told by Won that First Express had permanently replaced him with another truck driver.

15. On July 12, 2004, Lincoln filed a complaint against First Express under USERRA with the Veterans' Employment and Training Services ("VETS") of the United States Department of Labor.

16. On July 19, 2004, a VETS investigator contacted First Express with regard to Lincoln's USERRA complaint.

17. First Express did not allow Lincoln to work with First Express until August 18, 2004.

18. First Express has refused to pay Lincoln the wages he would have earned had First Express promptly reemployed Lincoln upon his completion of active military service.

19. First Express violated USERRA, among other ways, by denying Lincoln prompt reemployment and the wages he would have earned from such prompt reemployment, after his completion of active military service in the uniformed services.

20. First Express' violations of USERRA were willful.

21. As a result of First Express' unlawful denial of Lincoln's request for prompt reemployment, and the wages he would have received from such prompt reemployment, Lincoln has suffered a loss of earnings.

PRAYER FOR RELIEF

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

22. Declare that First Express' denial of prompt reemployment to Lincoln was unlawful and in violation of USERRA;

23. Require that First Express fully comply with the provisions of USERRA by paying Lincoln for his loss of wages suffered by reason of First Express' failure or refusal to comply with the provisions of this law;

24. Declare that First Express' violations of USERRA were willful;

25. Order that First Express pay Lincoln as liquidated damages an amount equal to the amount of his lost wages suffered by reason of First Express' willful violations of USERRA;

26. Enjoin First Express from taking any action against Lincoln that fails to comply with the provisions of USERRA;
27. Award Lincoln prejudgment interest on the amount of lost wages found due; and
28. Grant such other and further relief as may be just and proper.

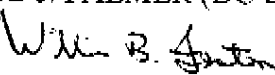
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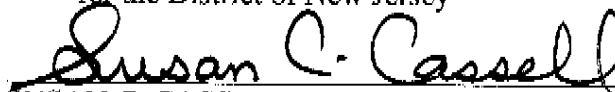
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