IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEW YORK METROPOLITAN TRANSPORTATION AUTHORITY,

and

NEW YORK CITY TRANSIT AUTHORITY,

Defendants.

Civil Action No. CV 04 4237

TOWNES, J.

CHERKIN, M.J.

COMPLAINT

Plaintiff, United States of America ("United States"), alleges:

1. This action is brought on behalf of the United States to enforce the provisions of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e, *et seq.* ("Title VII").

2. This Court has jurisdiction of this action under 42 U.S.C. § 2000e-6(b), 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1345.

3. Defendants, New York Metropolitan Transportation Authority ("MTA") and New York City Transit Authority ("NYCTA"), are public benefit corporations created pursuant to the laws of the State of New York.

4. Defendants are "persons" within the meaning of 42 U.S.C. § 2000e(a) and "employers" within the meaning of 42 U.S.C. § 2000e(b).

5. Defendants employ, among other individuals, bus and subway train operators, responsible for transporting individuals throughout the New York City metropolitan area.

6. Defendants are responsible for establishing the terms, conditions, policies and practices that bear upon the employment of their employees.

7. Prior to 2002, Defendants failed or refused to consistently enforce uniform policies for bus and subway train operators, which provided, *inter alia*, either that MTA hats were optional or that non-MTA hats were prohibited. Upon information and belief, Defendants condoned the wearing of non-MTA hats in some instances.

8. Since March 2002, Defendants have selectively enforced uniform policies to target Muslim and Sikh employees whose sincerely held religious beliefs and practices require that they wear religious head coverings. These religious practices conflict with Defendants' uniform policies. As a result of Defendants' discriminatory application and enforcement of these uniform policies, Muslim, Sikh and similarly situated employees have suffered adverse employment actions.

9. Defendants also have failed or refused to reasonably accommodate the sincerely held religious beliefs and practices of Muslim, Sikh and similarly situated employees.

10. Defendants discriminated against Malikah Alkebulan, a bus operator and member of the Muslim faith, because of religion when she refused to comply with uniform policies based on her sincerely held religious beliefs and was, among other things, involuntarily transferred to a position shifting buses with no passenger interaction and diminished benefits.

11. Defendants discriminated against Deirdre Small, a bus operator and member of the Muslim faith, because of religion when she refused to comply with uniform policies based on

her sincerely held religious beliefs and was, among other things, involuntarily transferred to a position shifting buses with no passenger interaction and diminished benefits.

12. Defendants discriminated against Gladys Muhammad, a bus operator and member of the Muslim faith, because of religion when she refused to comply with uniform policies based on her sincerely held religious beliefs and was, among other things, involuntarily transferred to a position shifting buses with no passenger interaction and diminished benefits.

13. Defendants discriminated against Stephanie Lewis, a bus operator and member of the Muslim faith, because of religion when she refused to comply with uniform policies based on her sincerely held religious beliefs and was, among other things, involuntarily transferred to a position shifting buses with no passenger interaction and diminished benefits.

14. Defendants discriminated against Kevin Harrington, a subway train operator and member of the Sikh faith, because of religion when he refused to comply with uniform policies based on his sincerely held religious beliefs and was, among other things, involuntarily transferred to a job shifting subway trains with no passenger interaction and diminished benefits.

15. Defendants have pursued and continue to pursue policies and practices that discriminate against employees on the basis of religion, in violation of Section 707 of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e-6, among other ways, by:

A. Selectively enforcing uniform policies and taking adverse employment actions against Muslim, Sikh and similarly situated employees who are unable to comply with uniform policies for religious reasons;

B. Failing or refusing to reasonably accommodate Muslim, Sikh and similarly situated employees who, in accordance with their religious beliefs and practices, are unable to comply with uniform policies; and

C. Failing or refusing to take appropriate action to eliminate the discriminatory policies and practices and to remedy the effects of those policies and practices.

16. The policies and practices of Defendants described in paragraphs 7 through 15 above constitute a pattern or practice of resistance to the full enjoyment by Muslim, Sikh and similarly situated employees of their rights to equal employment opportunities without discrimination based on religion, in violation of Section 707 of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e-6. This pattern or practice is of such a nature and is intended to deny the full exercise of the rights secured by Title VII. Unless enjoined by Order of this Court, Defendants will continue to pursue policies and practices that are the same as or similar to those alleged in this Complaint.

17. In accordance with Section 707 of Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. § 2000e-6, the United States, through the Department of Justice, has investigated the employment practices of Defendants, has notified them of the investigation and the policies and practices described in paragraphs 7 through 15 above, and has unsuccessfully attempted to resolve this matter through negotiation.

18. All conditions precedent to the filing of this suit have been satisfied.

WHEREFORE, plaintiff United States prays for an Order enjoining Defendants, their officers, agents, employees, successors and all persons in active concert or participation with them, from engaging in discriminatory employment policies and practices against Muslim, Sikh and similarly situated employees based on religion, and specifically from failing or refusing to:

A. Enforce uniform policies in a way that provides equal employment opportunities and reasonable accommodations to all Muslim, Sikh and similarly situated

employees who are unable to comply with uniform policies due to their religious beliefs and practices;

B. Adopt a policy designed to provide reasonable accommodations to Muslim, Sikh and similarly situated employees who are unable to comply with uniform policies due to their religious beliefs and practices;

C. Provide reasonable accommodations to Muslim, Sikh and similarly situated employees who are unable to comply with uniform policies due to their religious beliefs and practices;

D. Provide make whole relief, including but not limited to back pay with interest and other employment benefits, to Muslim, Sikh and similarly situated current and former employees who have suffered loss or will suffer loss as a result of the discriminatory policies and practices alleged in this Complaint; and

E. Take such other steps as may be necessary to prevent and to remedy employment discrimination and the pattern or practice of discrimination in employment identified above.

Plaintiff United States prays for such further relief as the Court may deem just, together with its costs and disbursements in this action.

JURY DEMAND

Plaintiff United States hereby demands a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

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