

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

JOHNATHAN DUNN,

Plaintiff,

CASE NO.: 1:14-cv-1273

v.

HON. JANET T. NEFF

EQUITY TRANSPORTATION CO., INC.

Defendant.

CONSENT DECREE

This matter came before this Court for entry of judgment by consent of the Plaintiff, Johnathan Dunn ("Dunn"), and the Defendant, Equity Transportation Co., Inc. ("ETC") (collectively the "Parties"), to effectuate a compromise and settlement of all claims in the above-captioned case.

Dunn commenced this action in the United States District Court for the Western District of Michigan, alleging that ETC violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. § 4301 *et seq.* (hereinafter "USERRA") by failing to reemploy Dunn following his military deployment with the United States Army National Guard.

ETC denies that it has violated USERRA, and its agreement to the terms of this Consent Decree is not an admission of liability under that statute. Nevertheless, as a result of settlement discussions, the Parties have resolved their dispute and have agreed that this action should be resolved by entry of this Consent Decree, the practical result of which is to effectuate a settlement agreement which addresses the interests of the Parties in this matter. It is the intent of

the Parties that this Consent Decree be a final and binding settlement, in full disposition of any and all claims alleged in the Complaint filed in this action.

STIPULATIONS

1. The Parties acknowledge the jurisdiction of the United States District Court for the Western District of Michigan over the subject matter of this action and the Parties to this action, for the purpose of entering and, if necessary, enforcing this Consent Decree.
2. Venue is proper in this judicial district for purposes of entering this Consent Decree and any proceedings related to this Consent Decree. The Parties agree that all conditions precedent to the institution of this action and its settlement have been fulfilled.

FINDINGS

3. Having considered the provisions of this Consent Decree as suggested by the Parties, the Court finds as follows:
 - a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
 - b. The terms and provisions of the settlement reflected in this Consent Decree are lawful, fair, reasonable and just. The rights of the Parties are adequately protected by this settlement.
 - c. This Consent Decree and the settlement it effectuates conform with and to the Federal Rules of Civil Procedure and USERRA, and are not in derogation of the rights and privileges of any person. The entry of the Consent Decree will further the objectives of USERRA and will be in the best interest of the Parties.

NOW, THEREFORE, IT IS HEREBY ADJUGED, ORDERED AND DECREED that

NON-ADMISSION

4. This Consent Decree is being entered with the consent of the Parties, and shall not constitute an adjudication or finding on the merits of the action or be construed as an admission by ETC of any violations of USERRA.

NON-RETALIATION

5. ETC shall not take any action against any person, including but not limited to Dunn, that constitutes retaliation or interference with the exercise of such persons rights under USERRA because such person gave testimony, provided assistance or participated in any manner in any investigation or proceeding in connection with this action.

REMEDIAL RELIEF

6. Within ten (10) business days from the date of entry of this Consent Decree, ETC shall pay Dunn a total sum of ELEVEN THOUSAND DOLLARS AND NO/100(\$11,000.00) less applicable withholdings and deductions in the form of a check made out as follows:

- a. The check will be made payable to Johnathan Dunn
- b. Of the settlement amount, \$5,500.00 (five thousand five hundred dollars) shall be attributable to back pay (less the required employee withholdings and contributions on the back pay award as required by law), with the balance being attributable to other damages. ETC also shall separately pay the appropriate employer's FICA contribution due on the back pay award and the employer's contribution shall not be deducted from the overall settlement amount.
- c. ETC shall mail the payment to Dunn by overnight delivery service, to the following address:

Johnathan Dunn
426 Sherwood Drive
Tullahoma, Tn 37388

RELEASE OF CLAIMS

7. Dunn hereby discharges and releases ETC and its officials, representatives, agents, employees, attorneys, liability coverage providers, predecessors, successors, affiliates, and assigns from all USERRA claims arising out of the facts included in the Complaint including any claims which were or could have been asserted in the Complaint under USERRA or which relate to Dunn's employment with ETC.

RETENTION OF JURISDICTION, DISPUTE RESOLUTION AND COMPLIANCE

8. The Court shall retain jurisdiction over this action and shall have all available equitable powers, including injunctive relief, to enforce the terms of this Consent Decree.

9. The Parties shall engage in good faith efforts to resolve any dispute concerning compliance with this Consent Decree prior to seeking resolution from the Court. In the event of a dispute, the Parties shall give notice to each other fifteen (15) days before seeking resolution of the dispute by the Court.

10. In the event either of the Parties seek Court resolution to enforce the terms of this Consent Decree, the Parties agree that expedited discovery under the Federal Rules of Civil Procedure may be conducted to determine compliance with this Consent Decree.

MISCELLANEOUS

11. The Parties shall bear their own costs and expenses in this action, including attorney fees.

12. The terms of this Consent Decree are and shall be binding upon the heirs, successors, and assigns of Dunn and upon the present and future owners, officers, directors, employees, agents, representatives, successors, and assigns of ETC.

13. This Consent Decree and its Release of Claims constitute the entire agreement and all commitments of the Parties. Any modifications to this Consent Decree must be mutually agreed upon and memorialized in writing signed by Dunn and ETC and entered by this Court.

14. The effective date of this Consent Decree shall be the date upon which it is entered by the Court. The Consent Decree shall expire, and this action shall be dismissed without further Decree of the Court, either one year after the date of entry of this Consent Decree, or when all of the remedial provisions of this Consent Decree have been effectuated, whichever is later. At that time, this Consent Decree will constitute the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all USERRA claims which Dunn has asserted or that could have been asserted by Dunn in this action.

APPROVED and ORDERED this 15th day of December, 2014.

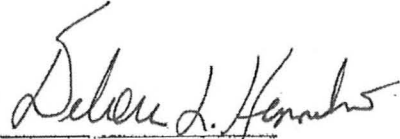
/s/ Janet T. Neff
UNITED STATES DISTRICT JUDGE

Agreed and consented to by and on behalf of Plaintiff:



JOHNATHAN DUNN
Plaintiff
Signed with www.xyzmo.com

DELORA L. KENNEBREW
Chief

PATRICK A. MILES, JR.
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By: 

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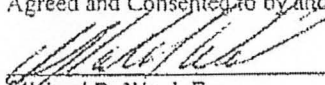
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ATTORNEYS FOR PLAINTIFF JOHNATHAN DUNN


Agreed and Consented to by and on behalf of Defendant:



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ATTORNEYS FOR DEFENDANT EQUITY TRANSPORTATION CO., INC.

Agreed and consented to by and on behalf of Defendant Equity Transportation Co., Inc.


(Title) *Vice President*