

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Case No. 98-N-1298

DONALD D. REED,

Plaintiff,

v.

RODNEY SLATER, Secretary of the Department of Transportation, on behalf of the
DEPARTMENT OF TRANSPORTATION,

Defendant.

AMENDED COMPLAINT

Plaintiff, Donald D. Reed, through his counsel, Isaacson, Rosenbaum, Woods & Levy, P.C., on behalf of the American Civil Liberties Union Foundation of Colorado, for his Complaint alleges:

I. INTRODUCTION

1. Plaintiff Donald D. Reed is a former long term employee of the Department of Transportation's ("DOT") Federal Aviation Administration ("FAA") and a devout Sabbath keeper, who was illegally terminated from his employment when Defendant forced him to choose between the free exercise of his religion and his job. Defendant treated Mr. Reed less favorably than similarly situated non-Sabbath keepers and refused to accommodate Mr. Reed's religious requirements. In addition, Defendant retaliated against Mr. Reed for challenging his termination.

II. JURISDICTION AND VENUE

2. Jurisdiction is proper in this Court pursuant to Article III, §2 of the U.S. Constitution and 28 U.S.C. §§1331, 1343, and 1346(b). Mr. Reed is alleging violation of his rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e) *et seq.* ("Title VII"), as amended by §717 of the Equal Employment Opportunity Act of 1972, 42 U.S.C. §2000(e)-16, and violation of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §2000(b)(b), *et seq.*

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b), because the unlawful employment practices alleged herein were committed within the State of Colorado.

4. Mr. Reed has complied with the administrative prerequisites of his claims.

III. PARTIES

5. Donald D. Reed is a resident of the State of Colorado.

6. Rodney Slater is the Secretary of the DOT, an agency of the federal government, which operates the FAA.

IV. ALLEGATIONS

7. Donald Reed was employed with the FAA from 1986 until his illegal termination in July of 1995. During his career, Mr. Reed worked in various capacities, including in positions as an air traffic controller ("controller") and a Quality Assurance and Training Specialist ("QATS"). During the entire course of his employment with the FAA, Mr. Reed's performance was evaluated from fully successful to exceptional.

8. In March of 1990, Mr. Reed was transferred to the Pueblo air traffic control tower under the auspices of the DOT and the FAA. Until August of 1991, Mr. Reed worked as an air traffic control development employee.

9. From November of 1991 until September of 1994, Mr. Reed worked as a Quality Assurance and Training Specialist ("QATS"). QATS is a staff position not covered by the National Air Traffic Controller Association ("NATCA") collective bargaining agreement, which among other things, governs selection of days off by bargaining unit employees.

10. Since March of 1990, Mr. Reed's sincerely held religious beliefs have required observance of the seventh-day Sabbath, from sundown on Friday until sundown on Saturday.

11. As a QATS, Mr. Reed worked from 9:00 a.m. to 5:00 p.m., Monday through Friday. He was not required to work Friday after sundown or on Saturday.

12. In December of 1993, George Hof became the new facility manager. At that time, Mr. Reed told Mr. Hof about his religious obligations to observe the Sabbath.

13. In August of 1994, Hof removed Reed from his QATS position and reassigned him to a position as a controller. Controllers are required to work in rotating shifts on a seven day per week schedule.

14. Upon learning that he would be returned to the controller work force, on August 15, 1994, Mr. Reed requested accommodation of his Sabbath.

15. From that date, until the date of his termination, Mr. Reed repeatedly requested various accommodations for his religion, including use of overtime and compensatory time, flexible scheduling, priority to bid for regular days off, a staff position with Friday and Saturday off, maintaining adequate staffing, rescinding prime time leave requests, a transfer to a larger facility, turning operations over to a centralized radar known as the "Denver Center," and shift coverage by supervisors.

16. Defendant refused to implement any of the suggested accommodations to Mr. Reed's religious beliefs.

17. During the period in which Mr. Reed was requesting accommodation, Mr. Hof and other supervisors at the Pueblo facility treated Mr. Reed less favorably and with hostility, because of his religion.

18. As a result of the Agency's failure to maintain adequate staffing in 1994 and 1995, the Agency and the local NATCA union agreed to a minimum staffing level of nine controllers at the Pueblo facility. The agreement provided that once a staffing level of nine controllers was reached, the release of any controller had to be approved by the union.

19. In March 1995, Mr. Hof requested that a controller be allowed to transfer to another facility, which would take the staffing level below the minimum. The Union agreed, but only on the express condition that staff and supervisors would provide coverage so that controllers including Reed would be able to take leave when requested. Hof personally agreed to provide coverage for controllers in order to facilitate the grant of controllers' leave requests.

20. Thereafter, non-Sabbath keepers' leave requests were granted because supervisor and staff covered their shifts. However, staff and supervisors, including Hof, refused to provide coverage for Mr. Reed's leave requests for the primary reason that Reed's leave was requested in order to allow him to observe the Sabbath.

21. On five Saturdays in the Summer of 1995, Mr. Reed's leave requests were denied and he was scheduled to work on his Sabbath. Mr. Reed refused to compromise his religious obligations and work on his Sabbath.

22. On July 28, 1995, Mr. Reed's employment was terminated for his absences.

23. Mr. Reed challenged his removal before the Merit Systems Protection Board, asserting that he had suffered religious discrimination.

24. On or about March 16, 1996, Administrative Judge James Kasic reversed the Agency's decision to terminate Mr. Reed and ordered the Agency to reinstate him. Mr. Reed was reinstated to his former position in April 1996.

25. The Agency filed a petition for review, and, on August 18, 1997, the MSPB reversed the initial decision and remanded the case to Judge Kasic for further findings. Mr. Reed continued to remain employed at the Agency pending the decision on remand.

26. During the two-year period of Mr. Reed's reinstatement, Mr. Reed's performance was satisfactory and his religious beliefs were fully and easily accommodated without undue hardship to the Agency.

27. On April 10, 1998, Judge Kasic issued a decision affirming the Agency's original decision to terminate Mr. Reed.

28. On April 24, 1998, Mr. Reed was placed on administrative leave, and on May 9, 1998, Mr. Reed's employment was terminated for the stated reason that the remand had been decided in the Agency's favor.

29. There was no legitimate non-retaliatory reason for the Agency's decision to terminate Mr. Reed in April 1998.

V. CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF
(Violation of Title VII, 42 U.S.C. §2000(e) *et seq.*)**

30. Plaintiff hereby incorporates paragraphs 1-29 of this Amended Complaint as though fully alleged herein.

31. Intentional Religious Discrimination:

- a. Mr. Reed is a member of a protected class by virtue of his religious beliefs.
- b. Mr. Reed was qualified to perform the duties of his position as an air traffic controller.
- c. An adverse employment action was taken against Mr. Reed when he was terminated.
- d. Mr. Reed was terminated because he was treated less favorably by virtue of his Sabbath obligations than were non-Sabbath keepers with respect to accommodation of leave requests.

32. Failure to Reasonably Accommodate Religious Obligations:

- a. Mr. Reed's bona fide religious beliefs conflicted with the FAA's employment requirements.
- b. Mr. Reed informed Defendant of his religious beliefs.
- c. Mr. Reed was terminated for failure to comply with Defendant's employment requirements.
- d. Defendant could have accommodated Mr. Reed's religious beliefs without undue hardship.

33. As a result of Defendant's illegal conduct, Mr. Reed has been damaged economically and emotionally.

**SECOND CLAIM FOR RELIEF
(Violation of RFRA, 42 U.S.C. §2000(b)(b), *et seq.*)**

34. Plaintiff hereby incorporates paragraphs 1-32 of this Amended Complaint as though fully alleged herein.

35. Defendant substantially burdened the exercise of Mr. Reed's religion.

36. Defendant's refusal to grant Mr. Reed leave to observe the Sabbath did not further a compelling governmental interest.

37. Terminating Mr. Reed's employment and denying him reasonable accommodation was not the least restrictive means of furthering any compelling governmental interest.

38. As a result of Defendant's illegal conduct, Mr. Reed has been damaged economically and emotionally.

THIRD CLAIM FOR RELIEF
(Violation of Title VII, 42 U.S.C. § 2000(e) *et. seq.* -- Retaliation)

39. Plaintiff hereby incorporates paragraphs 1-37 of this Amended Complaint as though fully alleged herein.

40. Mr. Reed objected to the Agency's discrimination against him on the basis of his religion and the Agency's failure to accommodate his religion and challenged the Agency's discriminatory and illegal practices.

41. The Agency terminated Mr. Reed's employment on May 9, 1998 in retaliation for Mr. Reed's challenging its discriminatory practices.

42. As a result of Defendant's illegal conduct, Mr. Reed has been damaged economically and emotionally.

WHEREFORE, Plaintiff Reed respectfully requests that this Court enter judgment in his favor and against Defendant, and award him:

- a. back pay and reinstatement, or alternatively, front pay;
- b. compensatory damages, including those for emotional suffering;
- c. attorney fees and costs;
- d. injunctive and declaratory relief;

- e. all equitable relief;
- f. pre-judgment and post-judgment interest at the highest lawful rate; and
- g. such further relief as justice requires.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.