UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

TARENCE MOSEY	:	
Plaintiff,	:	**DOCKET NO.:**
v.	:	
LOGAN TOWNSHIP UNITED FIRE DEPARTMENT, INC.	:	**JURY TRIAL DEMANDED**
Defendant.	:	

COMPLAINT

I. INTRODUCTION

This action is brought by Tarence Mosey (the "Plaintiff" or "Mr. Mosey") against Logan Township United Fire Department, Inc. (hereinafter, referred to as the "Defendant") for equitable, monetary, and other relief to redress the intentional discrimination, retaliation, and hostile work environment that Mr. Mosey endured over a period of several years while employed by Defendant, based on Mr. Mosey's race, in violation of rights secured by the laws of the United States and the statutory and common law of the Commonwealth of Pennsylvania.

II. JURISDICTION & VENUE

1. This action is brought pursuant to 42 U.S.C. § 1981.

2. "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction over the subject matter of the claims brought under state laws pursuant to 28 U.S.C. § 1367 because the claims are so related to the

claims within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

4. Venue is proper because "[a] civil action may be brought in a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred" 28 U.S.C. § 1391(b)(2).

5. All actions complained of herein took place within the jurisdiction of the Middle District of Pennsylvania, as it is the place in which the claims arose.

IV. PARTIES

6. Plaintiff is an African American, black adult male who currently resides in Altoona, Pennsylvania (Blair County).

7. Defendant is a Pennsylvania Non-Profit (Non-Stock) Corporation registered with the Pennsylvania Department of Corporations with an entity identification number of 2842847, having a registered office address at 611 Grandview Road, Altoona PA 16601 (Blair County).

V. FACTUAL BACKGROUND

8. Mr. Mosey was a member of Defendant's fire department from November 2007 through February 2014.

9. Mr. Mosey was hired as a Firefighter / Emergency Medical Technician ("EMT") and most recently held the rank of Captain prior to his termination.

10. Mr. Mosey's job description entailed going on emergency calls, operating fire and medical apparatuses, and supervising others in his capacity of Captain.

11. Upon information and belief, Mr. Mosey was the first and only African American to ever work for Defendant.

12. Upon information and belief, Mr. Mosey was the only African American who ever worked for Defendant during his period of employment.

13. Mr. Mosey's achievements on the job include the Act of Valor Award, issued to Mr. Mosey on December 22, 2011 by the Central District Fireman's Association and State Fire Commissioner as a result of Mr. Mosey's heroic efforts of resuscitating a woman from cardiac arrest who was involved in a horrific motor vehicle accident.

14. On a daily basis throughout Mr. Mosey's employment, several employees of Defendant, including Mr. Andrew Weimer ("Weimer"), Mr. Matthew Croft ("Croft"), Mr. Luke Baker ("Baker"), and Mr. Jack Wilkes ("Wilkes") called Plaintiff a "**nigger**".

15. On a daily basis throughout Mr. Mosey's employment, several employees of Defendant, including Mr. Andrew Weimer ("Weimer"), Mr. Matthew Croft ("Croft"), Mr. Luke Baker ("Baker"), and Mr. Jack Wilkes ("Wilkes") called Plaintiff a "**porch monkey**".

16. On a daily basis throughout Mr. Mosey's employment, several employees of Defendant, including Mr. Andrew Weimer ("Weimer"), Mr. Matthew Croft ("Croft"), Mr. Luke Baker ("Baker"), and Mr. Jack Wilkes ("Wilkes") called Plaintiff a "**koon**".

17. On a daily basis throughout Mr. Mosey's employment, several employees of Defendant, including Mr. Andrew Weimer ("Weimer"), Mr. Matthew Croft ("Croft"), Mr. Luke Baker ("Baker"), and Mr. Jack Wilkes ("Wilkes") called Plaintiff a "**spook**".

18. These racial slurs, referenced above, including **"nigger", "porch monkey", "koon" and "spook"**, were also voiced directly from Defendant's supervisory personnel, including Captain Mr. Ron Weisinger ("Weisinger"), Captain Mr. Chris DeStefano ("DeStefano"), District Chief Mr. Jason Baker ("Baker"), Deputy Chief Mr. Rusty Schoenfelt ("Schoenfelt"), and Fire Chief Mr. Fred Schwartz ("Schwartz").

19. On numerous occasions, these racial slurs were directed at Mr. Mosey in front of other individuals, causing him extreme anxiety, embarrassment, degradation and humiliation.

20. In 2008, Weimer told Mr. Mosey that he would never fight fire with Mr. Mosey *because he is black*.

21. Mr. Mosey complained to Defendant's supervisory personnel regarding Weimer not fighting fire with Mr. Mosey *because he is black*, but received no response.

22. In 2013, when Mr. Mosey was Captain, Weimer stated to Plaintiff, "**I will never take orders from a nigger**" which jeopardizes the safety of the community.

23. Mr. Mosey again voiced his serious concern to Defendant's supervisory personnel, including Schoenfelt and Fire Chief Mr. Travis Lunglhofer ("Lunglhofer"), and *again* Mr. Mosey received no response.

24. Mr. Mosey took the lack of response a second time to mean that the Defendant not only didn't care about the racial slurs and hostile work environment that was impacting Mr. Mosey on a daily basis, as well as the Logan Township Community's safety, but that the Defendant was supporting a racially charged environment through its abdication of its responsibility.

25. On a routine basis throughout Mr. Mosey's employment, Mr. Mosey was required to do more physically difficult tasks, menial, chore-based labor that other aforementioned, white, similarly situated members of Defendant were not required to do.

26. For example, in the Summer 2013, Schoenfelt shoved a bucket of paint in front of Mr. Mosey, instructing him to paint Defendant's upstairs lounge as well as Defendant's outside curb area by himself. None of Defendant's white, similarly situated members of the department were required to perform such tasks on a routine basis, as Mr. Mosey was required to do.

27. Schoenfelt then threatened Mr. Mosey that he would not be assigned to emergency calls, *nor even allowed upstairs* with the rest of the members if he did not perform the painting job to Schoenfelt's "liking".

28. Frequently, Mr. Mosey was instructed by DeStefano to clean up other members' messes in Defendant's gym.

29. Frequently, Mr. Mosey was instructed by DeStefano to clean up other members' messes in Defendant's shower area.

30. Regardless of the above, Mr. Mosey did such chores as was instructed, while being called **Defendant's** "**bitch**" in the process.

31. Mr. Mosey was regularly pushed aside, repeatedly, for training classes in favor of his white co-workers, because of his race.

32. In 2013, Mr. Mosey requested to take part in a "fire investigator/inspector" training class which if successfully completed, would result in a national certification.

33. Prior to this point, Mr. Mosey held a state certification for EMT that he obtained in April 2010, a national interior firefighter certification in August 2011, and completed course(s) in state/national hazmat operation.

34. Mr. Mosey properly requested further training opportunities given his qualifications, yet was told by Baker, "**You're not taking this fucking class. We have enough people.**"

35. Mr. Mosey was pushed aside for job advancement consistently in favor of his white co-workers, including DeStefano and Mr. Jon Kimberly ("Kimberly"), who maintained less experience, trainings and certifications than Mr. Mosey.

36. Baker, Schoenfelt, and Lunglhofer even refused to provide Mr. Mosey with clearance to undertake trainings, despite Mr. Mosey personally offering to pay for the trainings himself.

37. In 2008 and again in 2013, Defendant had issued new protective equipment for all white members in Mr. Mosey's position.

38. After both equipment acquisitions, Mr. Mosey was informed by Schwartz that Defendant could not afford to obtain any new equipment for Mr. Mosey to use, yet others similarly situated were provided with the protective equipment.

39. Defendant provided only its Caucasian and non-black employees with new protective equipment, for the purpose of saving lives in the community, yet Defendant intentionally chose not to issue that same protective gear to protect one of its own members, because of his race, which could have a detrimental effect on Mr. Mosey's ability to perform the essential functions of his job for Logan Township.

40. Mr. Mosey had no choice but to utilize outdated and unsafe equipment from the 1990's, while his white counterparts were given the updated equipment.

41. Mr. Mosey was told by Schwartz that he needed to "work his way up," however, Mr. Mosey was **more tenured and more experienced** than his similarly situated, white co-workers who received protective equipment such as Baker, Weimer, and Mr. David Galese ("Galese").

42. While working on the job, Mr. Mosey was physically assaulted on two occasions by co-workers.

43. In early 2012 (the first instance), Croft took his steel-toe boot and kicked Mr. Mosey in his testicles because Mr. Mosey asked Croft for assistance with taking the trash out.

44. Mr. Mosey wrote a formal complaint to Defendant's supervisory personnel as a result of such occurrence, yet received no response.

45. Mr. Mosey was also assaulted by Wilkes in late 2012 while Plaintiff was asleep on the second floor of Defendant's premises.

46. Mr. Mosey immediately contacted Lunglhofer to address the incident.

47. Lunglhofer responded by pleading with Mr. Mosey not to report such assault to the police out of fear that it would put a **"black eye**" on Defendant, which, in and of itself, is an interesting use of that phrase given the circumstances.

48. Lunglhofer merely suspended Wilkes, but refused to terminate him.

49. Upon Wilkes' return, Wilkes continued to harass Mr. Mosey, out of retaliation for Mr. Mosey's complaint, and Defendant permitted it to happen.

50. In November of 2013, Mr. Mosey was invited by his girlfriend, Ms. Sharon Snider ("Snider"), as well as Newburg Fire Department's Assistant Chief Mr. Mike Zeigler ("Zeigler"), to attend a Newburg Fire Department social dance event at a public dance hall in Logan Township.

51. After attending the event, Mr. Mosey received a certified letter from Newburg Fire Department chastising Plaintiff for attending such event because he was not a "member" of Newburg Fire Department.

52. The letter instructed Mr. Mosey that he was not allowed onto the property in the future.

53. Mr. Mosey took issue with such letter, as: 1) he was previously informed that members of Defendant were permitted to attend (and had attended); 2) Mr. Mosey was invited in

his capacity as a personal guest of Snider and Zeigler; and 3) such event was held on public property.

54. Mr. Mosey was under the impression that such letter was erroneously transmitted to him.

55. As such, Mr. Mosey accepted another invitation from Snider and Zeigler to attend a second Newburg Fire Department social dance event in 2013.

56. Upon information and belief, on numerous occasions, several of Defendant's members, including DeStefano, Schoenfelt, Weimer, and Baker had attended the Newburg Fire Department social gatherings.

57. Subsequent to the December 2013 Newburg Fire Department social dance event, Schwartz confronted Mr. Mosey about his attendance.

58. After Plaintiff confirmed his attendance and accompanying rationale with Schwartz, Schwartz threatened Mr. Mosey by stating that if Mr. Mosey did not step down as Captain, Schwartz would suggest to Defendant's Fire Chief that Mr. Mosey be terminated.

59. Mr. Mosey refused to submit to such threat.

60. Mr. Mosey was then called into a meeting in late February 2014 with Schoenfelt, Lunglhofer, and Baker.

61. At such meeting, Mr. Mosey was dismissed as a Captain and immediately terminated Mr. Mosey.

62. Defendant's sole explanation for Mr. Mosey's termination was that it was "unbecoming" of Mr. Mosey to have attended a Newburg Fire Department social gathering.

63. Upon information and belief, none of the Defendant's white employees were ever reprimanded in any manner, let alone terminated from their job, for attending a social gathering.

64. In Mr. Mosey's career with Defendant, he wrote nearly **twenty (20) formal complaints regarding the aforementioned discriminatory and retaliatory conduct based on his race to Defendant's supervisory personnel, in addition to Logan Township Supervisors** Mr. Edward Frontino and Mr. James Patterson.

65. Defendant's typical response, often voiced by Schoenfelt and Lunglhofer was, "We have a lot going on right now, and we'll deal with it later."

66. Such grave mistreatment of Mr. Mosey by Defendant has caused and led Mr. Mosey to be diagnosed and treated with post-traumatic stress disorder ("PTSD") in early 2014 following the past incidents that occurred with Defendant.

67. Plaintiff is still receiving treatment for PTSD.

COUNT I

DISCRIMINATION (42 U.S.C. § 1981)

68. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

69. 42 U.S.C. § 1981 prohibits racial discrimination. *See* McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 295 (1976).

70. Similar to the Pennsylvania Human Relations Act of 1955, P.L. 744, as amended ("PHRA") and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*., as amended ("Title VII"), the intent of 42 U.S.C. § 1981 is to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens.

71. Courts have construed 42 U.S.C. § 1981 to provide nearly identical levels of protection as the PHRA and Title VII.

72. In order to make a prima facie case of race discrimination, a plaintiff must demonstrate: (i) that he belongs to a racial minority; (ii) that he was performing satisfactorily, and; (iii) that he suffered an adverse employment action. McDonnell Douglas Corp. v. Green, 411 U.S. 792, (1973).

73. In cases of pretext, the plaintiff need not prove that the plaintiff's protected status was the only factor in the challenged employment decision, but the plaintiff must prove that the protected status was a determinative factor. See, e.g. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 804 (1973) ("Petitioner may justifiably refuse to rehire one who was engaged in unlawful, disruptive acts against it, but only if this criterion is applied alike to members of all races."). Id.

74. In order to show pretext, a plaintiff must submit evidence which (1) casts doubt upon the legitimate reason proffered by the employer such that a fact-finder could reasonably conclude that the reason was a fabrication; or (2) would allow the fact-finder to infer that discrimination was more likely than not a motivating or determinative cause of the employee's termination. See Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994); Chauhan v. M. Alfieri Co., Inc., 897 F.2d 123, 128 (3d Cir. 1990).

75. Defendant intentionally discriminated against Mr. Mosey.

76. Mr. Mosey's race was the sole factor in Defendant's decision to push Mr. Mosey aside several times for opportunities for advancement in favor of Caucasian co-workers.

77. Mr. Mosey's race was the sole factor in Defendant's decision to subject Mr. Mosey to on-going racial slurs, including comments from co-workers and supervisory personnel.

78. Mr. Mosey's race was the sole factor in Defendant's decision to exclude him from employment trainings, events, and possession of proper equipment.

79. Mr. Mosey's race was the sole factor in Defendant's decision to force Mr. Mosey, under threats of admonishment, to engage in menial tasks without assistance.

80. Mr. Mosey's race was the sole factor in Defendant's decision to terminate Mr. Mosey for attending an event that he was entitled to attend, and which the Defendant's Caucasian members attended previously without any reprimand.

81. Mr. Mosey's race was the sole factor in Defendant's decision to permit, by lack of reasonable response, the unlawful and the unprovoked assault of Mr. Mosey by two different employees, on two different occasions, after informing Defendant.

82. Intentional discrimination may be inferred from the existence of the aforementioned facts.

83. Defendant's stated reason, that it was "unbecoming" for Mr. Mosey to have attended a social gathering, is merely a pretext for the actual reason(s) that Mr. Mosey was terminated, and not worthy of belief.

84. Defendant discriminated against Mr. Mosey because of his race.

85. Defendant terminated Mr. Mosey as a result of his race.

86. Defendant failed to terminate or otherwise discipline Mr. Mosey's co-worker(s)/comparators, who assaulted Mr. Mosey (a criminal offense).

87. Once the plaintiff establishes that unlawful discrimination caused his loss, he is entitled to back pay. Johnson v. Ry Express Agency, Inc., 421 U.S. 454, 459 (1975).

88. Under Section 1981, a back-pay award is not subject to the two-year limitation applicable under Title VII but subject to the appropriate statute of limitations under state law. Johnson v. Ry. Express Agency, Inc., 421 U.S. 454, 460 (1975).

89. Front pay compensates the plaintiff for the future effects of discrimination when reinstatement would be an appropriate, but not feasible, remedy or for the estimated length of the interim period before the plaintiff could return to his former position. Pollard v. E.I. du Pont de Nemours & Co., 532 U.S. 843, 850 (2001); see, e.g., Donlin v. Philips Lighting N. Am. Corp., 581 F.3d 73, 87-88 (3d Cir. 2009).

90. Compensatory and punitive damages may also be recovered under Section 1981. Smith v. Wade, 461 U.S. 30, 56 (1983).

91. There are no statutory caps on the damages applicable to the amount of compensatory or punitive damages that may be recovered under Section 1981. 42 U.S.C. § 1981a(b)(4).

92. Compensatory damages may include emotional distress and humiliation as well as out-of-pocket costs. Gunby v. Pennsylvania Elec. Co., 840 F.2d 1108, 1121-22 (3d Cir.1988) ("General compensatory damages are available under §1981, and such damages may include compensation for emotional pain and suffering."). Id.

93. Attorneys' fees may be awarded to the prevailing party.

WHEREFORE, Mr. Mosey seeks all back pay, front pay, compensatory damages, punitive damages, attorneys' fees, costs, and other legal and equitable relief as provided by 42 U.S.C. § 1981 that the Court deems just and proper.

COUNT II

HARASSMENT - HOSTILE WORK ENVIRONMENT (42 U.S.C. § 1981)

94. Mr. Mosey incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

95. The standards for a hostile work environment claim are identical under Title VII and Section 1981. See, e.g., Verdin v. Weeks Marine Inc., 124 Fed. Appx. 92, 95 (3d Cir. 2005).

96. In order to fall within the purview of Title VII, the conduct in question must be severe and pervasive enough to create an "objectively hostile or abusive work environment--an environment that a reasonable person would find hostile--and an environment the victim-employee subjectively perceives as abusive or hostile." Harris v. Forklift Sys., Inc., 510 U.S. 17 (1993).

97. "In determining whether an environment is hostile or abusive, we must look at numerous factors, including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; whether it unreasonably interferes with an employee's work performance." Harris v. Forklift Sys., Inc., 510 U.S. 17 (1993).

98. A hostile environment must be "one that a reasonable person would find hostile and abusive, and one that the victim in fact did perceive to be so." Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993).

99. Where an employee suffers an adverse tangible employment action as a result of a supervisor's discriminatory harassment, the employer is strictly liable for the supervisor's conduct. Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 765 (1998) (an employer is strictly liable for supervisor harassment that "culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment"). Id.

100. "[A]n employee is a 'supervisor' for purposes of vicarious liability under Title VII if he or she is empowered by the employer to take tangible employment actions against the victim...." Vance v. Ball State Univ., 133 S. Ct. 2434, 2439 (2013).

101. "[E]mployer liability for co-worker harassment exists only if the employer failed to provide a reasonable avenue for complaint or, alternatively, if the employer knew or should

have known of the harassment and failed to take prompt and appropriate remedial action." Huston v. Procter & Gamble Paper Prods. Corp., 568 F.3d 100, 104 (3d Cir. 2009).

102. Defendant subjected Mr. Mosey to on-going harassment and this harassment was motivated by Mr. Mosey's race.

103. Mr. Mosey opposed all of the racial remarks and even reported such instances on *multiple occasions* to his superiors.

104. The discriminatory treatment of Mr. Mosey by his co-workers and supervisory personnel conduct was motivated on the basis of Mr. Mosey's race.

105. The Defendant's conduct was so severe and pervasive that a reasonable person in Mr. Mosey's situation would find that Mr. Mosey's work environment was hostile and abusive.

106. Mr. Mosey believed that his work environment was hostile and abusive as a result of his co-workers' conduct and his supervisors failing to protect him from such hostile work environment.

107. Mr. Mosey was subject to several tangible adverse employment actions, including but not limited to: 1) exclusion from job advancement; 2) exclusion from job related events; 3) changes in his duties to include tedious and boring tasks without assistance from co-workers; 4) two physical assaults which lacked any meaningful response by Defendant; and 5) ultimately Mr. Mosey's termination.

108. Management level employees themselves, at Defendant, directly engaged in severe, pervasive, discriminatory and retaliatory conduct, including the voicing of racial slurs directly towards Mr. Mosey.

109. Because Mr. Mosey complained on numerous occasions to management, Defendant had actual knowledge of the severe, pervasive, discriminatory and retaliatory conduct perpetrated against Mr. Mosey by his co-workers.

110. Defendant did not exercise reasonable care to prevent and promptly correct workplace harassment of Mr. Mosey on the basis of his race.

111. Mr. Mosey reported the instances of racial discrimination to the Defendant's management personnel, along with acting carefully to avoid fueling or otherwise instigating such co-workers to make remarks.

WHEREFORE, Mr. Mosey seeks all back pay, front pay, compensatory damages, punitive damages, attorneys' fees, costs, and other legal and equitable relief as provided by 42 U.S.C. § 1981 that the Court deems just and proper.

COUNT III

RETALIATION UNDER (42 U.S.C. § 1981)

112. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

113. The Supreme Court has held that retaliation claims are cognizable under Section 1981. CBOCS West, Inc. v. Humphries, 553 U.S. 442 (2008).

114. "[T]o establish a *prima facie* retaliation claim under Title VII [or] § 1981 … , [a plaintiff] must show: (1) that he engaged in a protected activity; (2) that he suffered an adverse employment action; and (3) that there was a causal connection between the protected activity and the adverse employment action." Cardenas v. Massey, 269 F.3d 251, 263 (3d Cir. 2001);

115. Mr. Mosey was retaliated against as a direct result of complaining to management about racially discriminatory treatment aimed at him.

116. Mr. Mosey complained to Defendant about the unlawful discriminatory conduct and hostility he was forced to continuously endure at the hands of co-workers.

117. Mr. Mosey was chastised by co-workers for reporting their misconduct and Mr. Mosey continued to be tormented by the co-worker(s) who later even physically assaulted him.

118. Mr. Mosey complained again when such conduct persisted.

119. Defendant failed to address Mr. Mosey's on-going complaints of racial discrimination.

WHEREFORE, Mr. Mosey seeks all back pay, front pay, compensatory damages, punitive damages, attorneys' fees, costs, and other legal and equitable relief as provided by 42 U.S.C. § 1981 that the Court deems just and proper.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

120. Plaintiff incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

121. An action for the intentional infliction of emotional distress has been recognized in Pennsylvania. See Papieves v. Lawrence, 263 A.2d 118 (Pa. 1970).

122. A plaintiff must establish (1) that extreme and outrageous conduct, (2) which is deliberate or reckless, (3) caused severe emotional distress. Cox v. Keystone Carbon Co., 861 F.2d 390 (3d Cir. 1988).

123. The Defendant's management personnel intentionally engaged in severe and pervasive racial discrimination against and harassment of Mr. Mosey.

124. The Defendant's employees intentionally engaged in severe and pervasive racial discrimination against Mr. Mosey, of which Defendant had actual knowledge.

125. The Defendant's severe and pervasive racial discrimination was extreme and outrageous.

126. The Defendant's severe and pervasive racial discrimination and retaliatory conduct caused Mr. Mosey to suffer severe emotional distress.

WHEREFORE, Plaintiff seeks compensatory damages, punitive damages, and other legal and equitable relief that the Court deems just and proper.

Date: June 27, 2016

By: JAJ2397

Jared A. Jacobson, Esq.
PA Attorney ID: 201382
Franklin J. Rooks Jr., Esq.
PA Attorney ID: 309562
JACOBSON & ROOKS, LLC
1500 JFK Blvd., Suite 520
Philadelphia, PA 19002
T: (215) 874-8808
F: (609) 543-2600
jjacobson@jacobsonrooks.com
fjrooks@jacobsonrooks.com

Attorneys for Plaintiff, Tarence Mosey