

ORIGINAL

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

NOV 30 2009

JAMES W. HATTEN, Clerk
By: *[Signature]* Deputy Clerk

KATIE BARKLEY and SHIRLEY HARRIS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE HERTZ CORPORATION and HERTZ TRANSPORTING, INC.

Defendants.

CIVIL ACTION NO.

~~1 09-CV-3359~~

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ORIGINAL COMPLAINT - CLASS ACTION

JURISDICTION

1. PLAINTIFF KATIE BARKELY and PLAINTIFF SHIRLEY HARRIS (collectively, the "PLAINTIFFS"), on behalf of themselves and all others similarly situated, bring this action pursuant both to Title VII of The Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000e, *et seq.* ("Title VII"), and to 42 U.S.C. § 1981 for final declaratory and equitable relief, including equitable back pay and front pay.

2. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States. This Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1343 because this action was commenced to secure equitable and declaratory relief

under an Act of Congress providing for the protection of civil rights, specifically, 42 U.S.C. § 1981.

PARTIES

3. PLAINTIFF KATIE BARKLEY is a non-Muslim African-American natural-born citizen of the United States and a citizen of the state of Georgia.

4. PLAINTIFF SHIRLEY HARRIS is a non-Muslim African-American natural-born citizen of the United States and a citizen of the state of Georgia.

5. DEFENDANT HERTZ TRANSPORTING, INC. is a wholly-owned subsidiary of DEFENDANT THE HERTZ CORPORATION (collectively, "HERTZ").

GROUND SUPPORTING PLAINTIFFS' CLAIMS

6. DEFENDANT HERTZ hired PLAINTIFF BARKLEY on or on or about 2006. DEFENDANT HERTZ hired PLAINTIFF HARRIS on or on or about 2004.

7. At all relevant times, DEFENDANT HERTZ employed PLAINTIFFS as transporters at its Atlanta Airport facility with the responsibility for shuttling or slotting cars (hereinafter, "Transporter" or "Transporters").

8. At all relevant times, Transporters would drive Hertz vehicles between various Hertz and other locations, including locations on the Atlanta Airport. DEFENDANT HERTZ considered the position of Transporter to be a part-time position.

9. On or about April 2002, DEFENDANT HERTZ admitted to the EEOC that “[t]he position of Transporter is a casual, part-time position primarily driving Hertz vehicles between various Hertz and other locations, including locations on the Atlanta Airport.” DEFENDANT HERTZ made the foregoing admission quoted in this paragraph during the EEOC’s investigative phase into a charge of discrimination prohibited by Title VII.

10. At all relevant times, DEFENDANT HERTZ employed approximately 120 Transporters at its Atlanta Airport facility. None of the Transporters, on information and belief, were Hispanic or had an Hispanic surname.

11. At all relevant times, the percentage of the Transporters whom DEFENDANT HERTZ employed at its Atlanta Airport facility and whom DEFENDANT HERTZ believed were of the Muslim religion approximated at least 35 to 40 percent or more.

12. As of on or about April 12, 2002, approximately 40 percent of the total number of Transporters whom DEFENDANT HERTZ employed at its Atlanta Airport facility were of the Muslim religion.

13. On or about April 2002, DEFENDANT HERTZ admitted to the EEOC that “[a]t the current time, approximately 40 percent of the total number of Transporters are of the Muslim religion.” DEFENDANT HERTZ made the foregoing admission quoted in this paragraph during the EEOC’s investigative phase into a charge of discrimination prohibited by Title VII.

14. At all relevant times, DEFENDANT HERTZ compensated PLAINTIFFS exclusively by an hourly wage without any health, disability, life, retirement, or other benefits.

15. At all relevant times, DEFENDANT HERTZ compensated all non-Muslim Transporters employed at its Atlanta Airport facility (the “Class”) the same way as PLAINTIFFS, *i.e.*, by an hourly wage without any health, disability, life, retirement, or other benefits.

16. At all relevant times, DEFENDANT HERTZ compensated its Muslim Transporters employed at its Atlanta Airport facility the same way as PLAINTIFFS, *i.e.*, by an hourly wage without any health, disability, life, retirement, or other benefits.

17. At all relevant times, hourly employees were expected by DEFENDANT HERTZ to work their scheduled shifts.

18. PLAINTIFFS were hourly workers of DEFENDANT HERTZ and were expected by DEFENDANT HERTZ to work their scheduled shifts.

19. Other hourly employees of DEFENDANT HERTZ who worked as Transporters on scheduled shifts with PLAINTIFFS were Muslim hourly employees.

20. At all relevant times, DEFENDANT HERTZ's policy or practice was to grant only its Muslim hourly employees at least 1 to 3 paid non-worktime breaks per shift.

21. On or about April 2002, DEFENDANT HERTZ admitted to the EEOC that the DEFENDANT HERTZ granted only its Muslim Transporters the "additional breaks" described in ¶ 20. DEFENDANT HERTZ made the foregoing admission quoted in this paragraph during the EEOC's investigative phase into a charge of discrimination prohibited by Title VII.

22. On or about November 2006, DEFENDANT HERTZ again admitted to the EEOC that the DEFENDANT HERTZ granted only its Muslim Transporters the "additional breaks" described above in ¶ 20. DEFENDANT HERTZ made the foregoing admission quoted in this

paragraph during the EEOC's investigative phase into a charge of discrimination prohibited by Title VII.

23. At all relevant times, each of the additional paid breaks DEFENDANT HERTZ granted only to its Muslim hourly employees lasted at least approximately 15 minutes.

24. On or about November 2006, DEFENDANT HERTZ admitted to the EEOC that with respect to the additional paid breaks taken only by Muslim hourly employees, “[t]hese breaks are for approximately 15 minutes[.]” DEFENDANT HERTZ made the foregoing admission quoted in this paragraph during the EEOC’s investigative phase into a charge of discrimination prohibited by Title VII.

25. DEFENDANT HERTZ refused to grant PLAINTIFFS and the Class additional paid breaks comparable to those that DEFENDANT HERTZ granted only to Muslim hourly employees.

26. On or about April 2002, DEFENDANT HERTZ admitted to the EEOC that, with respect to non-Muslim Transporters at its Atlanta Airport facility, the “request for additional breaks for other Transporters was denied.” DEFENDANT HERTZ made the foregoing admission quoted in this paragraph during the EEOC’s investigative phase into a charge of discrimination prohibited by Title VII.

27. On or about November 2006, DEFENDANT HERTZ again admitted to the EEOC that, with respect to non-Muslim Transporters at its Atlanta Airport facility, the “request for additional breaks for other Transporters was denied.” DEFENDANT HERTZ made the foregoing admission quoted in this paragraph during the EEOC’s investigative phase into a charge of discrimination prohibited by Title VII.

28. At all relevant times, DEFENDANT HERTZ has compensated its Muslim hourly employees for the time they spent taking the additional breaks that only they received.

29. At all relevant times, DEFENDANT HERTZ has included the time its Muslim hourly employees took for their additional breaks in the calculation of the Muslim hourly employee’s total hourly-based compensation.

30. At all relevant times, by including the time taken by its Muslim hourly employees, DEFENDANT HERTZ has paid PLAINTIFFS and the Class a lower effective hourly wage compared to DEFENDANT HERTZ’s Muslim hourly employees.

31. At various relevant times, DEFENDANT HERTZ implemented its policy of granting the additional paid breaks described above in ¶¶ 20-30 only to Muslim hourly employees at DEFENDANT HERTZ’s Minneapolis

Airport facility, its Des Moines Airport facility, and at least at a few of its Top 20 airport facilities in the United States.

32. On or about 2002, at its corporate headquarters in New Jersey, DEFENDANT HERTZ determined that its policy of granting the additional paid breaks only to Muslim employees constituted unlawful discrimination did not constitute unlawful discrimination against non-Muslim hourly Transporters.

33. On or about 2006, at its corporate headquarters in New Jersey, DEFENDANT HERTZ again determined that its policy of granting the additional paid breaks only to Muslim employees did not constitute unlawful discrimination against non-Muslim hourly Transporters or non-Muslim hourly Instant Return Representatives.

34. At all relevant times, DEFENDANT HERTZ took no steps at its corporate headquarters to eliminate its policy or practice described in ¶ 20. At all relevant times, DEFENDANT HERTZ took no steps at its regional level to eliminate its policy or practice described in ¶ 20. At all relevant times, DEFENDANT HERTZ took no steps at any other management level to eliminate its policy or practice described in ¶ 20.

35. At all relevant times during their employment and for many months leading up to their firing, PLAINTIFFS—as well as other putative

Class members—repeatedly and regularly complained to DEFENDANT HERTZ that Muslim hourly Transporters were engaged abusing their breaks, other than their 30-minute lunch breaks, by, for example, hiding among parked cars rather than returning to work. At all relevant times, DEFENDANT HERTZ did not eliminate the African-born or Arab-born Muslim Transporters' abuse of their non-lunch breaks.

36. On or about February 2009, DEFENDANT HERTZ fired PLAINTIFFS, all members of the Class, and all the other Transporters—who were African-born or Arab-born—as part of its mass firing of 100 percent of its Transporters at its Atlanta Airport facility. The number of Transporters whom DEFENDANT HERTZ fired totaled approximately 120.

37. DEFENDANT HERTZ then immediately replaced PLAINTIFFS and 100 percent of the other Transporters with Hispanic individuals (the "Replacements").

38. Prior to firing PLAINTIFFS and the Class, and all African-born or Arab-born Transporters, DEFENDANT HERTZ was already training the Replacements for its Atlanta Airport facility on how to perform the job of Transporter.

39. At all relevant times, DEFENDANT HERTZ has controlled the manner and means by which the Replacements' work is accomplished.

40. DEFENDANT HERTZ did not fire 100 percent of the employees in any other department at its Atlanta Airport facility at or about the time DEFENDANT HERTZ fired PLAINTIFFS and the Class.

41. DEFENDANT HERTZ did not fire employees in any other department at its Airport facility and then replace them immediately—as DEFENDANT HERTZ did with PLAINTIFFS and the Class.

42. Prior to firing PLAINTIFFS and the Class, DEFENDANT HERTZ did not reduce its costs by cutting PLAINTIFFS' hourly wage or the hourly wage of any member of the Class or of any African-born or Arab-born Transporter at its Atlanta Airport facility. Prior to firing PLAINTIFFS and the Class, DEFENDANT HERTZ did not reduce its costs by lowering the total number of Transporters.

43. DEFENDANT HERTZ did not fire 100 percent of the Transporters at its Orlando Airport facility and then replace them with individuals employed by an outside company—as DEFENDANT HERTZ did at its Atlanta Airport facility.

44. As of the date DEFENDANT HERTZ fired 100 percent of all Transporters at its Atlanta Airport facility, PLAINTIFFS were paid approximately \$8.00 per hour with no health, disability, life, or retirement benefits. On or about February 2009, the minimum wage prescribed by

federal law was \$6.55. By on or about July 24, 2009, the minimum wage prescribed by federal law had increased to \$7.25.

CLASS ALLEGATIONS

45. PLAINTIFFS re-allege paragraphs 1-44 above and incorporate them by reference as if fully set forth herein.

46. PLAINTIFFS bring their discrimination claims on their own behalf and on behalf the Class, which is composed of similarly situated employees who have been similarly affected by DEFENDANT HERTZ's pattern or practice of unlawful discriminatory conduct and unlawful firing.

47. PLAINTIFFS seek to represent the Class, which includes:

(a) All hourly non-Muslim Transporters at DEFENDANT HERTZ's Atlanta Airport facility, who, during the applicable limitations period, were not given or allowed to take additional breaks comparable to the additional paid non-worktime breaks DEFENDANT HERTZ granted only to its Muslim hourly employees;

(b) All hourly non-Muslim Transporters at DEFENDANT HERTZ's Atlanta Airport facility, who, during the applicable limitations period, had their effective hourly rate of pay adversely lowered relative to the Muslim hourly employees as a result of the pattern or practice described above in ¶ 47(a); and

(c) All hourly non-Muslim Transporters at DEFENDANT HERTZ's Atlanta Airport facility, who, during the applicable limitations period, were fired *en masse* on or about February 2009, after which DEFENDANT HERTZ began using the Replacements as Transporters.

48. PLAINTIFFS seek class certification pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3).

49. PLAINTIFFS are appropriate representatives for the former non-Muslim Transporters of DEFENDANT HERTZ at the Atlanta Airport facility with claims of discrimination based on religion, race, national origin, and ethnicity.

50. PLAINTIFFS and the Class, which they seek to represent, have been similarly affected by DEFENDANT HERTZ's (a) policy, pattern, or practice of granting only its Muslim Transporters the "additional breaks" described above in ¶ 20, and (b) mass firing and replacement of all Transporters on or about February 2009.

51. The Class, composed of former Transporters of DEFENDANT HERTZ as described above in ¶ 47, is so numerous that joinder of all members is impracticable. During the applicable periods of limitations prior to the commencement of this action, DEFENDANT HERTZ has employed more than, at least, approximately 75 hourly Transporters similarly situated

to PLAINTIFFS against whom DEFENDANT HERTZ unlawfully discriminated on the basis of religion, race, national origin, and ethnicity.

52. There are questions of law and fact common to the class, including but not limited to:

(a) Whether DEFENDANT HERTZ had a policy or practice of granting Muslim hourly employees additional paid non-worktime breaks, as described above in ¶¶ 20-30;

(b) Whether DEFENDANT HERTZ had a policy or practice of not permitting non-Muslim hourly employees to take additional paid non-worktime breaks comparable to those described above in ¶¶ 20-30;

(c) Whether DEFENDANT HERTZ gave Muslim hourly employees additional paid non-worktime breaks that were discriminatory;

(d) Whether non-Muslim hourly employees who were not permitted to take additional paid non-work breaks comparable to those described above in ¶¶ 20-30 were disadvantaged with respect to the compensation, benefits, privileges, terms, and conditions of their employment by DEFENDANT HERTZ.

(e) Whether DEFENDANT HERTZ discriminated against non-Muslim employees because of their religion, race, national origin, or ethnicity;

(f) Whether DEFENDANT HERTZ fired 100 percent of its Transporters at its Atlanta Airport facility on or about February 2009;

(g) Whether DEFENDANT HERTZ fired 100 percent of the employees in any other department at its Atlanta Airport facility during late 2008 or 2009;

(h) Whether DEFENDANT HERTZ reduced the hourly wage of employees in any other department at its Atlanta Airport facility during late 2008 or 2009;

(i) Whether DEFENDANT HERTZ reduced the number of employees in any other department at its Atlanta Airport facility during late 2008 or 2009;

(j) Whether DEFENDANT HERTZ solicited or received bids from any third parties to provide 100 percent of the services rendered by hourly employees—besides for Transporters—at its Atlanta Airport facility during late 2008 or 2009;

(k) Whether the Transporters at DEFENDANT HERTZ'S Atlanta Airport facility were replaced by Hispanic individuals during late 2008 or 2009;

(l) Whether DEFENDANT HERTZ replaced 100 percent of its Transporters at any of its other facilities in the United States with individuals employed by a third-party contractor during late 2008 or 2009;

(m) Whether all the non-Muslim Transporters at DEFENDANT HERTZ'S Atlanta Airport facility fired on or about February 2009 have been disadvantaged with respect to the compensation, benefits, privileges, terms, and conditions of their employment by DEFENDANT HERTZ.

53. The claims of PLAINTIFFS as named representatives are typical to the claims of the Class because the same unlawful conduct was directed at or affected both the Class representatives and the Class itself.

54. PLAINTIFFS' claims encompass the challenged policies, practices, and decisions of DEFENDANT HERTZ.

55. The legal issues raised in this action apply equally to PLAINTIFFS and all putative Class members.

56. PLAINTIFFS as named representatives will fairly and adequately protect the interests of the Class.

57. The prosecution of separate actions by individual members of the putative Class would create a risk of inconsistencies or varying adjudication with respect to individual members of the putative Class which would establish incompatible standards of conduct for DEFENDANT HERTZ.

58. The prosecution of separate actions by individual members of the putative class would create a risk of adjudication with respect to individual members of the putative Class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair their ability to protect their interests.

59. DEFENDANT HERTZ has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final equitable relief and corresponding declaratory relief with respect to the Class as a whole, including back pay and front pay, pursuant to Fed. R. Civ. P. 23(b)(2).

60. Questions of law and fact common to the members of the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this controversy, pursuant to Fed. R. Civ. P. 23(b)(3).

CLAIMS FOR RELIEF

COUNT I

(Title VII – Discrimination based on Religion)

61. PLAINTIFFS re-allege and incorporate by reference paragraphs 1-60 with the same force and effect as if fully set out in specific detail herein below.

62. DEFENDANT HERTZ granted only its Muslim hourly employees at least 1 to 3 additional paid non-worktime breaks during each shift, with each such break lasting at least approximately 15 minutes. DEFENDANT HERTZ did not grant comparable breaks to PLAINTIFFS and the Class because of their religion.

63. DEFENDANT HERTZ has engaged in unlawful discrimination, including pattern or practice discrimination, against PLAINTIFFS because of their religion in violation of Title VII with respect to compensation and other benefits, privileges, terms, and conditions of employment, and for which PLAINTIFFS seek final declaratory and equitable relief, including equitable back pay and front pay.

64. DEFENDANT HERTZ has engaged in discrimination, including pattern or practice discrimination, against the Class that PLAINTIFFS seek to represent because of their religion in violation of Title VII with respect to compensation and other benefits, privileges, terms, and conditions of employment, and for which PLAINTIFFS seek final declaratory and equitable relief, including equitable back pay and front pay.

65. As a result of DEFENDANT HERTZ's unlawful discriminatory conduct, PLAINTIFFS have suffered and are continuing to suffer injury including, but not limited to, substantial loss of wages and loss of benefits.

PLAINTIFFS therefore seek final declaratory and equitable relief, including equitable back pay and front pay.

66. Similarly, the Class that PLAINTIFFS seek to represent also has suffered and is continuing to suffer injury including, but not limited to, substantial loss of wages and loss of benefits as a result of DEFENDANT HERTZ's unlawful discriminatory conduct. PLAINTIFFS therefore seek on behalf of the Class final declaratory and equitable relief, including equitable back pay and front pay.

COUNT II
***(42 U.S.C. § 1981 – Discrimination based
on Race, National Origin, and Ethnicity)***

67. PLAINTIFFS re-allege and incorporate by reference paragraphs 1-60 with the same force and effect as if fully set out in specific detail herein below.

68. On or about February 2009, DEFENDANT HERTZ fired PLAINTIFFS and all members of the Class as part of its mass firing of 100 percent of its Transporters at its Atlanta Airport facility, totaling approximately 120 employees. This was the only category of employees that DEFENDANT HERTZ eliminated completely at its Atlanta Airport facility.

69. DEFENDANT HERTZ then immediately replaced PLAINTIFFS with Hispanic individuals.

70. DEFENDANT HERTZ replaced 100 percent of the putative Class members with Hispanic individuals.

71. DEFENDANT HERTZ replaced 100 percent of its African-born or Arab-born Transporters with Hispanic individuals.

72. DEFENDANT HERTZ has engaged in discrimination, including pattern or practice discrimination, against PLAINTIFFS because of their race, national origin, and ethnicity in violation of 42 U.S.C. § 1981 with respect to compensation and other benefits, privileges, terms, and conditions of employment, and for which PLAINTIFFS seek final declaratory and equitable relief, including equitable back pay and front pay.

73. DEFENDANT HERTZ has engaged in discrimination, including pattern or practice discrimination, against the Class that PLAINTIFFS seek to represent because of their race, national origin, and ethnicity in violation of 42 U.S.C. § 1981 with respect to compensation and other benefits, privileges, terms, and conditions of employment, and for which PLAINTIFFS seek final declaratory and equitable relief, including equitable back pay and front pay.

74. As a result of DEFENDANT HERTZ's unlawful discriminatory conduct, PLAINTIFFS have suffered and are continuing to suffer injury including, but not limited to, substantial loss of wages and loss of benefits.

PLAINTIFFS therefore seek final declaratory and equitable relief, including equitable back pay and front pay.

75. Similarly, the Class that PLAINTIFFS seek to represent also has suffered and is continuing to suffer injury including, but not limited to, substantial loss of wages and loss of benefits as a result of DEFENDANT HERTZ's unlawful discriminatory conduct. PLAINTIFFS therefore seek on behalf of the Class final declaratory and equitable relief, including equitable back pay and front pay.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS respectfully pray that this Court do the following:

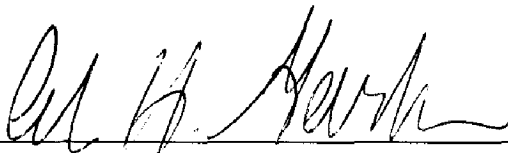
1. Certify PLAINTIFFS' claims under Title VII and 42 U.S.C. § 1981 as a class action under Fed. R. Civ. P. 23(b)(2) or 23(b)(3), or both, and if certified under Rule 23(b)(3), direct notice to all eligible class members who can be identified by reasonable effort on part of the DEFENDANT HERTZ;
2. Issue a declaratory judgment that DEFENDANT HERTZ has engaged in unlawful employment practices in violation of Title VII and 42 U.S.C. § 1981 with respect to PLAINTIFFS and all similarly situated members of the Class they seek to represent;

3. Order DEFENDANT HERTZ to pay PLAINTIFFS and all similarly situated members of the Class they seek to represent equitable back pay and equitable front pay as a result of DEFENDANT'S unlawful discriminatory conduct covering the applicable limitations period;
4. Award PLAINTIFFS and all similarly situated members of the Class they seek to represent pre-judgment and post-judgment interest and their reasonable attorneys' fees and costs and expenses of litigation;
5. Permit a trial by jury on all issues so triable; and
6. Provide such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY.

Respectfully submitted



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