



Cornell University
ILR School

Cornell University ILR School
DigitalCommons@ILR

Consent Decrees

Labor and Employment Law Program

Spring 4-4-2007

EEOC and David Marcotte and Robert Kerouac v. Federal Express Corp.

Judge Harold Baker

Follow this and additional works at: <https://digitalcommons.ilr.cornell.edu/condec>

Thank you for downloading this resource, provided by the ILR School's Labor and Employment Law Program. [Please help support our student research fellowship program with a gift to the Legal Repositories!](#)

This Article is brought to you for free and open access by the Labor and Employment Law Program at DigitalCommons@ILR. It has been accepted for inclusion in Consent Decrees by an authorized administrator of DigitalCommons@ILR. For more information, please contact catherwood-dig@cornell.edu.

If you have a disability and are having trouble accessing information on this website or need materials in an alternate format, contact web-accessibility@cornell.edu for assistance.

EEOC and David Marcotte and Robert Kerouac v. Federal Express Corp.

Keywords

EEOC and David Marcotte and Robert Kerouac v. Federal Express Corp., 04-2209, Sex, Male, Sexual Harassment, Retaliation, Consent Decree, Title VII, Class Action

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
and)
)
DAVID MARCOTTE and ROBERT KEROUAC)
)
Plaintiff-Intervenors,)
)
v.)
)
FEDERAL EXPRESS CORP.)
)
Defendant.)

Case No. 04-2209

Judge Harold Baker

CONSENT DECREE

THE LITIGATION

1. On September 29, 2004, Plaintiff United States Equal Employment Opportunity Commission (the "EEOC") filed a complaint in this action alleging that Defendant Federal Express Corporation ("FedEx Express" or "Defendant") violated Title VII of the Civil Rights Act of 1964 ("Title VII") and the Civil Rights Act of 1991 by subjecting Charging Party David Marcotte and a class of male employees to harassment because of their sex and by retaliating against Marcotte for complaining about the harassment. On October 20, 2005, EEOC filed its First Amended Complaint ("Complaint") against FedEx Express, which added allegations that FedEx Express retaliated against David Marcotte by terminating him and constructively discharging him. FedEx Express filed an answer denying these allegations.

2. This Decree is entered into in compromise of disputed claims to avoid the expense, uncertainty, and inconvenience of continued litigation. This Decree fully and finally resolves any and all issues and claims arising out of the Complaint and the First Amended

Complaint filed by EEOC in this action.

FINDINGS

3. Having examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

A. This Court has jurisdiction of the subject matter of this action and of the parties to this case;

B. The terms of this Decree are adequate, reasonable, equitable and just and the rights of the Charging Party, the class members, the EEOC, FedEx Express, and the public interest are adequately protected by this Decree; and

C. This Decree conforms with the Federal Rules of Civil Procedure and Title VII, and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the Charging Party, the class members, EEOC, FedEx Express, and the public.

D. FedEx Express disputes the underlying claims, and FedEx Express' agreement to this Decree is not an admission of liability and cannot be used as an admission of liability.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-DISCRIMINATION POLICIES

4. FedEx Express shall maintain and observe its Anti-Harassment Policy prohibiting the approval of, participation in, or acquiescence in a work environment that is sexually hostile to male employees at its Kankakee, IL facility and prohibiting retaliation in any way against any Kankakee, IL employee who reports a claim or incident of sexual harassment, files a Charge of Discrimination alleging sexual harassment, participates as a witness in a harassment investigation, or otherwise assists with the filing of a sexual harassment claim or the pursuit of benefits conferred by this Decree.

MONETARY RELIEF FOR CLAIMANTS

5. FedEx Express shall pay monetary damages totaling \$ 275,000.00 to be distributed to David Marcotte and Robert Kerouac, (“the Claimants”) in the amounts indicated in their release agreements (attached hereto as Exhibit A) within ten (10) business days after FedEx Express’ receipt of the fully-executed release agreements.

6. FedEx Express shall also mail copies of the checks to EEOC.

7. Four thousand, nine hundred ninety-nine dollars and ninety-one cents 4,999.91 of Marcotte’s monetary payment shall be considered wages and FedEx Express shall deduct the employee’s share of payroll taxes and withholdings from this amount. FedEx Express shall also pay jointly to Marcotte and the Bank of Herscher twelve thousand, seven hundred fifty-five dollars and eighty-three cents (\$12,755.83). FedEx Express shall not make any withholdings from the remainder of Marcotte’s monetary payment or Kerouac’s entire monetary payment and shall issue the Claimants IRS Form 1099 for these amounts.

POSTING OF NOTICE

8. Within five (5) business days following entry of this Decree, FedEx Express shall post a same-sized copy of the Notice signed by the Court (attached as Exhibit B to this Decree) in a conspicuous location easily accessible to and commonly frequented by employees at FedEx Express’ Kankakee facility for the duration of this Decree. FedEx Express shall ensure that the posting is not altered, defaced or covered by any other material. FedEx Express shall certify to EEOC in writing within ten (10) business days after entry of this Decree that the copy of the Notice has been properly posted and the location of such posting. The Notice shall remain posted for a period of two (2) years from the date of entry of this Decree. FedEx shall permit a representative of EEOC to enter FedEx’s Kankakee facility for purposes of verifying compliance with this paragraph at any time during normal business hours with five (5) business days prior notice.

TRAINING

9. FedEx Express shall provide training on the requirements of Title VII as follows:

A. Defendant shall provide training for all employees at the Kankakee facility (including all non-managerial employees and all operations managers, senior managers, and human resources representatives responsible for the Kankakee facility) during each of the two (2) years covered by this Decree with respect to the prevention and eradication of sexual harassment from the workplace.

B. FedEx Express shall provide the first required training within one hundred and twenty (120) calendar days of the entry of this Consent Decree.

C. A registry of attendance for each training session shall be retained by FedEx Express for the duration of the Consent Decree.

10. The training described in this Decree will be conducted by a Human Resources Manager or Human Resources Senior Manager. At least fifteen (15) days prior to the training, FedEx Express will provide the EEOC with the training materials to be used and the name, address, telephone number, and resume of the Human Resources Manager or Senior Manager who will conduct the training.

11. FedEx Express shall certify to EEOC in writing within five (5) business days after each required training session has occurred that the training has taken place and that the required personnel have attended. Such certification shall include: a) the dates, location and duration of the training sessions; b) a copy of the registry of attendance, which shall include the name and position of each person in attendance; c) a listing of all current employees as of the date of the training session; and d) copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

RECORD KEEPING AND REPORTING

12. FedEx Express agrees that, from the date of entry of this Decree, every six months for the duration of this Decree, FedEx Express will provide a written report to the EEOC

listing employee complaints made subsequent to the entry of this Decree regarding alleged sexual harassment of men at the Kankakee facility. Such listings shall include the name of the complainant, the date of the complaint, what was alleged, the names of any witnesses, what actions FedEx Express took to resolve the complaint, if any, and the resolution of the complaint.

13. FedEx shall make all non-privileged documents or records which refer or relate to employee complaints made subsequent to the entry of this Decree regarding alleged sexual harassment of men at the Kankakee facility available for inspection and copying within ten (10) business days after the EEOC so requests. In addition, FedEx shall provide contact information for all persons within its employ whom the EEOC reasonably requests for the purpose of verifying compliance with this Decree.

14. For the duration of this Decree, FedEx Express shall also furnish to the EEOC a semi-annual certification that the Notice required to be posted in Paragraph 8, above, remained posted during the entire six (6) month period preceding the report.

15. Nothing contained in this Decree shall be construed to limit any obligation Defendant may otherwise have to maintain records under Title VII or any other law or regulation.

DISPUTE RESOLUTION

16. In the event that either party believes that the other party has failed to comply with any provisions of the Decree, the complaining party shall notify the alleged non-complying party in writing of such non-compliance and afford the alleged non-complying party fifteen (15) calendar days to remedy the non-compliance or satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within fifteen (15) calendar days, the complaining party may apply to the Court for appropriate relief.

DURATION OF DECREE AND RETENTION OF JURISDICTION

17. All provisions of this Decree shall be in effect (and the Court will retain

jurisdiction of this matter to enforce this Decree) for a period of two (2) years immediately following entry of the Decree, provided, however, that if, at the end of this period, any disputes under Paragraph 16, above, remain unresolved, the EEOC shall seek leave to extend its duration for good cause shown and the Court may retain jurisdiction of this matter to enforce the Decree until such time as all such disputes have been resolved.

MISCELLANEOUS PROVISIONS

18. The terms of this Decree are and shall be binding upon FedEx Express, its successors and assigns.

19. Each party to this Decree shall bear its own expenses, attorney's fees, and costs.

20. If any provision(s) of the Decree are found to be unlawful, only such provision(s) shall be severed, and the remainder of the Decree shall remain in full force and effect.

21. When the Decree requires the submission by FedEx Express of documents to the EEOC, they shall be delivered to: Jeanne Szromba, FedEx Express Consent Decree, Equal Employment Opportunity Commission, Chicago District Office, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661. When the Decree requires the submission by the EEOC of documents, they shall be delivered to: Jay L. Grytdahl, Federal Express Legal Department, 3620 Hacks Cross Road, Building B, Third Floor, Memphis, TN 38125.

For the EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
1801 L Street, N.W.
Washington, D.C. 20507

RONALD COOPER
General Counsel

JAMES LEE
Deputy General Counsel

For the EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
500 W. Madison St., Ste. 2800
Chicago, IL 60661
(312) 353-8558

/s John C. Hendrickson
John Hendrickson
ARDC # 1187589
Attorney for Plaintiff
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
Telephone: (312) 353-8551
Fax: (312) 353-8555
E-Mail: john.hendrickson@eeoc.gov

/s Jeanne B. Szromba
Jeanne B. Szromba
ARDC # 6207846
Attorney for Plaintiff
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
Telephone: (312) 353-7546
Fax: (312) 353-8555
E-Mail: jeanne.szromba@eeoc.gov

/s Diane I. Smason
Diane I. Smason
ARDC # 6626130
Attorney for Plaintiff
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
Telephone: (312) 353-7526
Fax: (312) 353-8555
E-Mail: diane.smason@eeoc.gov

/s Ann M. Henry
Ann Henry
ARDC # 6272394
Attorney for Plaintiff
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
Chicago District Office
500 West Madison Street, Suite 2800
Chicago, Illinois 60661
Telephone: (312) 353-8558
Fax: (312) 353-8555
E-Mail: ann.henry@eeoc.gov

For DAVID MARCOTTE

/s David Marcotte
David Marcotte
186 1/2 W. River Street
Bourbonnais, IL 60914

For ROBERT KEROUAC

/s Robert E. Kerouac
Robert E. Kerouac
1167 Holly Court
Bradley Illinois 60915

For FEDERAL EXPRESS CORP.

/s Jay L. Grytdahl
Jay L. Grytdahl, Esq.
ARDC# 6271036
Senior Counsel, Litigation
Federal Express Corporation
3620 Hacks Cross Road
3rd Floor – Building B
Memphis, TN 38125
Telephone: (901) 434-8590
Fax: (901) 434-9278
E-Mail: jlgrytdahl@fedex.com

ENTER:

DATE:

s/Harold A. Baker
The Honorable Judge Harold Baker
United States District Judge

April 4, 2007

EXHIBIT A

RELEASE

In consideration for \$ 250,000.00 paid to me by Federal Express Corporation (“FedEx Express”), in connection with the resolution of EEOC v. Federal Express Corp., 04-2209 (C.D. Ill.), I waive my right to recover for any claims of sexual harassment, retaliation, and constructive discharge arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and the Civil Rights Act of 1991, 42 U.S.C. §1981a, that I had against FedEx Express prior to the date of this release and that were included in the claims alleged in EEOC’s complaint in EEOC v. Federal Express Corp., 04-2209.

Date

David Marcotte

RELEASE

In consideration for \$25,000.00 paid to me by Federal Express Corporation (“FedEx Express”), in connection with the resolution of EEOC v. Federal Express Corp., 04-2209 (C.D. Ill.), I waive my right to recover for any claims of sexual harassment arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. and the Civil Rights Act of 1991, 42 U.S.C. §1981a, that I had against FedEx Express prior to the date of this release and that were included in the claims alleged in EEOC’s complaint in EEOC v. Federal Express Corp., 04-2209.

Date

Robert Kerouac

EXHIBIT B

NOTICE TO ALL KANKAKEE FEDEX EXPRESS EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court by the agreement of the parties in EEOC v. Federal Express Corp., 04-2209, resolving a lawsuit filed by the Equal Employment Opportunity Commission (“EEOC”) against FedEx Express.

In its suit, the EEOC alleged that FedEx Express discriminated against male employees by subjecting them to a sexually hostile work environment. EEOC also claimed that FedEx retaliated against an employee who complained about the harassment. FedEx Express denies these allegations.

To resolve the claims against FedEx Express, FedEx Express and the EEOC have entered into a Consent Decree which provides, among other things, that:

- 1) FedEx will provide certain relief as provided in the Consent Decree;
- 2) FedEx shall maintain and observe its anti-harassment policy, which prohibits, among other things, sexual harassment and retaliation; and
- 3) FedEx will continue to provide mandatory training to all of its employees regarding sexual harassment.

EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. If you believe you have been discriminated against, you may contact EEOC at (312) 353-2713. EEOC charges no fees and has employees who speak languages other than English.

FedEx Express maintains policies prohibiting discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. These policies are reproduced in your employee handbook and the online and printed versions of the FedEx People Manual. If you believe you have been discriminated against, you may also contact your manager or anyone in the Human Resources department, including your FedEx Express Human Resources representative, Michael Rodriguez, at 847-215-4114.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for two (2) years from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: FedEx Express Consent Decree, EEOC, 500 West Madison Street, Suite 2800, Chicago, IL 60661.

April 4, 2007
Date

s/Harold A. Baker
The Honorable Judge Harold Baker