

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

ANDREW LANIER,

Plaintiff,

Case No. _____

v.

TARGET CORPORATION,

JURY TRIAL DEMANDED

Defendant.

CIVIL COMPLAINT

Introduction

Plaintiff Andrew Lanier, a former employee of Target Corporation (“Target”), institutes this action for damages and other relief for violations of his rights under federal and state law as a member of the Pennsylvania Army National Guard stemming from the unlawful termination of his employment on account of National Guard training that Lanier was required to attend. This lawsuit contends that Target by applying its corporate “no call-no-show” policy to Lanier while he was on military duty, intentionally, knowingly, or with reckless disregard violated Lanier’s rights under the Uniformed Services Employment and Reemployment Rights Act, (USERRA) and under the common law of the Commonwealth of Pennsylvania.

Jurisdiction and Venue

1. This Court has subject matter jurisdiction under 28 U.S.C. §1332, as the matter in controversy exceeds \$75,000.00 and the parties are of diverse citizenship.
2. Defendant Target is a Minnesota corporation with its headquarters located at 1000 Nicollet Mall, Minneapolis, MN 55403.

3. Plaintiff Andrew Lanier is an adult individual residing in Ohio and is a former employee of a Target facility located in Pennsylvania.
4. Personal jurisdiction is present over the Defendant pursuant to 18 U.S.C. §1965(a) and (b) and 28 U.S.C. §1391(b) and (d) in that Defendant resides within and is organized and/or existing pursuant to the laws of the Commonwealth of Pennsylvania.
5. Venue is proper in the Western District of Pennsylvania pursuant to 18 U.S.C. §1965(a) in that the Defendant resides within or is organized and existing pursuant to the laws of the Commonwealth of Pennsylvania and nearly all of the events giving rise to this Complaint took place in the Western District.
6. At all times relevant hereto, Mr. Lanier was a member of a "uniformed service" (i.e. Pennsylvania Army National Guard) as defined under the Uniformed Services Employment and Reemployment Rights Act, as amended, 38 U.S.C. §4301 et seq. ("USERRA"), and a member of a "reserve component of the armed forces" under the Pennsylvania Military Affairs Act, as amended, 51 Pa. Cons. Statute §7301 et seq. (PMAA).
7. At all times relevant Target was an "employer," as that term is defined under USERRA, 38 U.S.C. §4303(4), and was likewise a covered entity under the PMAA, 51 Pa. Cons. Statute §7309.

Facts

8. Mr. Lanier was employed from April 2011 until late October 2011 at the Target store located at 600 Chauvet Drive, Pittsburgh, PA 15275.
9. From October 15, 2011, until October 30, 2011, Mr. Lanier was on mandatory active duty pre-deployment training at Fort Pickett, Virginia.

10. On or about October 31, 2011, Mr. Lanier received a phone call from team leader Jess (“TL Jess”) notifying Lanier that his employment had been terminated pursuant to Target’s “no call, no show” policy.
11. TL Jess informed Lanier that Target’s decision to terminate Lanier’s employment was due solely to Lanier’s absence from work resulting from Lanier’s mandatory active duty pre-deployment training at Fort Pickett.
12. TL Jess stated that, despite his military training obligations, Lanier had allegedly violated Target’s “no call-no show” policy by failing to notify Target on each day of his military leave that he would be absent from work on that day due to such leave.
13. Prior to his mandatory active duty pre-deployment training at Fort Pickett, Mr. Lanier informed his superiors on numerous occasions that he was required to report for duty.
14. Mr. Lanier notified Target through Target’s electronic time off request system of his required absence for military duty.
15. Mr. Lanier informed TL Jess before leaving for duty that he was required to report for active duty pre-deployment training at Fort Pickett.
16. Mr. Lanier told another store manager, Leah K, before leaving for duty that he was required to report for active duty pre-deployment training at Fort Pickett.
17. Mr. Lanier provided the store’s management a copy of the military orders confirming the dates of his military leave.
18. Mr. Lanier verbally informed another manager, Mike Hurt, of his requirement to report for training and the required temporary leave.
19. Mr. Lanier was terminated because of absences from work necessitated by his required military leave.

20. Target intentionally or recklessly terminated Mr. Lanier because of his required pre-deployment training at Fort Pickett.
21. As a direct result of Target's conduct as hereinbefore described, Mr. Lanier suffered lost wages, benefits, and other remuneration including, front pay, back pay, and loss of earning capacity.
22. As a direct result of Target's conduct, Mr. Lanier suffered severe and extreme emotional distress including physical manifestations of the distress.
23. As a direct result of Target's conduct, Mr. Lanier suffered embarrassment, humiliation, and damage to his reputation.

Count I USERRA Termination/Discrimination

24. The preceding paragraphs are incorporated herein as if set forth at length.
25. Target is an "employer" within the meaning of USERRA.
26. Mr. Lanier's military service was a motivating factor in Target's decision to terminate Mr. Lanier's employment.
27. Target's application of its "no call-no show" policy to service members who are absent from work due to authorized military service obligations, has a disparate impact on such service members employed by Target.
28. Defendant unlawfully terminated Mr. Lanier in violation of §4311(a) of USERRA.
29. In violating §4311(a), Target acted willfully or recklessly.
30. As a result of the violation of his rights under §4311(a), Mr. Lanier suffered loss of earning capacity, lost wages, lost benefits and other remuneration connected to his employment and/or employment opportunities with Target.

31. WHEREFORE, Plaintiff Lanier requests damages in a sum in excess of \$75,000.00 including lost wages, front pay benefits and other remuneration; liquidated damages; reinstatement; and any other equitable relief as may be necessary to vindicate fully the rights and benefits to which Plaintiff Lanier is entitled under USERRA including attorney's fees, litigation expenses, prejudgment interest, and post-judgment interest.

Count II USERRA Reemployment Violation

32. The preceding paragraphs are incorporated herein as if set forth at length.

33. Target failed to reemploy Mr. Lanier in his pre-deployment position and/or a position of like status, pay, etc. in violation of his rights under §4312(a) and §4313(a)(1)(A) of USERRA.

34. As a result of this violation, Mr. Lanier suffered loss of earning capacity, lost wages, lost benefits and loss of other remuneration connected to his employment and/or employment opportunities with Target.

35. WHEREFORE, Plaintiff Lanier requests damages in a sum in excess of \$75,000.00 including lost wages, front pay benefits and other remuneration; liquidated damages; reinstatement; and any other equitable relief as may be necessary to vindicate fully the rights and benefits to which Plaintiff Lanier is entitled under USERRA including attorney's fees, litigation expenses, prejudgment interest, and post-judgment interest.

Count III USERRA Violation of §4302(b)

36. The preceding paragraphs are incorporated herein as if set forth at length.

37. Target's application of its "no call-no show" policy to employees who are absent from work due to authorized military service obligations is in violation of §4302(b) of USERRA in that it improperly reduced, limited, and/or eliminated Lanier's rights afforded him under USERRA.

38. As a result of this violation, Mr. Lanier suffered loss of earning capacity, lost wages, lost benefits and loss of other remuneration connected to his employment and/or employment opportunities with Target.

39. WHEREFORE, Plaintiff Lanier requests damages in a sum in excess of \$75,000.00 including lost wages, front pay benefits and other remuneration, liquidated damages, reinstatement, and any other equitable relief as may be necessary to vindicate fully the rights and benefits to which Plaintiff Lanier is entitled under USERRA including attorney's fees, litigation expenses, prejudgment interest, and post-judgment interest.

Count IV. Pennsylvania Common Law Wrongful Discharge

40. The preceding paragraphs are incorporated herein as if set forth at length.

41. The public policy of the Commonwealth of Pennsylvania is established by the PMAA which prohibits employers from discriminating against employees or prospective employees on account of their military obligations and/or from terminating and/or discharging any employee on account of or as a result of any such obligations.

42. By terminating Mr. Lanier's employment on account, or as a result of his military service, Target violated the public policy of the Commonwealth of Pennsylvania.

43. The conduct of Target was outrageous and carried out in an intentional and/or with reckless disregard of Mr. Lanier's rights as established by the public policy of the Commonwealth of Pennsylvania to be free from discrimination and/or wrongful discharge on account of his military obligations.

44. As a result of the violation of his right to be free from wrongful termination, Mr. Lanier suffered loss of earning capacity, lost wages, lost benefits, and loss of other remuneration connected to his employment and/or employment opportunities with Target.

45. As a result of this violation, Mr. Lanier suffered embarrassment, humiliation, emotional distress, and damage to his reputation.

46. WHEREFORE, Plaintiff Lanier requests damages in a sum in excess of \$75,000.00 including compensatory damages for lost wages, benefits and other remuneration, and for embarrassment, humiliation, emotional distress, and damage to reputation as well as punitive damages. He also seeks such equitable relief as may be appropriate under the circumstances and as necessary to vindicate the public policy of the Commonwealth of Pennsylvania.

Respectfully submitted,

Dated: June 19, 2013

/s/ Timothy P. O'Brien
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