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IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
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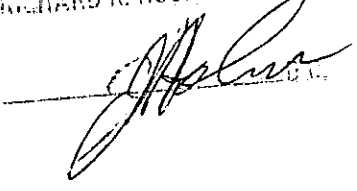
KENNETH D. HARDY

Plaintiff,

v.

**TENNESSEE STATE UNIVERSITY,
TENNESSEE BOARD OF REGENTS,
and CHIEF SYLVIA RUSSELL**

Defendants.

EDWARD R. ROOKER, CLERK


No. 09CA164
JURY DEMAND (6)

COMPLAINT

Comes the Plaintiff, Kenneth D. Hardy, and would state unto this Honorable Court as follows:

1. Plaintiff, Kenneth D. Hardy, brings this action under the Tennessee Whistleblower Act § 50-1-304, the Tennessee Human Rights Act, Tenn. Code Ann. § 4-21-101, *et. seq.* and § 4-21-301 *et. seq.*, and Tenn. Code Ann. § 4-21-401 *et. seq.* and Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. §2000e, *et seq.* for discrimination, retaliation, hostile work environment, and constructive discharge.

PARTIES

2. Plaintiff, Kenneth D. Hardy, is a citizen and resident of Whites Creek, Davidson County, Tennessee. Plaintiff is a black male.

3. The Defendant, Tennessee State University, is a public school located in Nashville, Davidson County, Tennessee. The agent for service of process is the Tennessee Attorney, Robert E. Cooper, Jr., 425 Fifth Avenue, North, 2nd Floor, Cordell Hull Building, Nashville, Tennessee, 37202.

4. The Defendant, Tennessee Board of Regents, is the governing body of the public schools of higher education in the State of Tennessee. The agent for service of process is the Tennessee Attorney, Robert E. Cooper, Jr., 425 Fifth Avenue, North, 2nd Floor, Cordell Hull Building, Nashville, Tennessee, 37202.

5. The Defendant Sylvia Russell is the Chief of the Tennessee State University Police Department.

FACTS

6. Starting August 6, 2006, Plaintiff, Kenneth D. Hardy, obtained a position working as a Physical Education Teacher and After Care Director at St. Vincent DePaul Catholic School from 7:30 a.m. to 5:30 p.m., Monday through Friday. In August, 2006, Plaintiff also had been accepted into the Masters of Education Program at Trevecca Nazarene College in Nashville, Davidson County, Tennessee. Plaintiff's classes were every Saturday from 8:00 a.m. to 5:00 p.m.

7. Plaintiff applied for a position as a Police Officer I with Tennessee State University and received a Notice of Appointment and Agreement of Employment with Tennessee State University dated October 11, 2006. The President of Tennessee State University signed the agreement on October 25, 2006 and the Plaintiff signed the agreement on October 30, 2006. The beginning date of employment was November 6, 2006.

8. Before signing this agreement, Plaintiff met with Deputy Chief Sylvia Russell and was told he was being hired for the night shift with hours from 6:00 p.m. to 2:00 a.m. (third shift). Plaintiff told Deputy Chief Russell of his prior commitments to both St. Vincent DePaul and Trevecca Nazarene and Deputy Chief Russell responded that this would not be a problem because his shift would not start until 6:00 p.m. and she could accommodate him if he was late, in that all he would have to do would be to notify his supervisor if he were to be late.

9. Plaintiff accepted a Police Officer I position with Tennessee State University with the understanding that he would still be able to work full time at St Vincent DePaul and attend classes at Trevecca Nazarene.

10. Plaintiff began working as a Police Officer I and was assigned to third shift at the main campus. Plaintiff was able to work full time at St. Vincent DePaul and work the 6:00 p.m. to 2:00 a.m. shift at Tennessee State University and attend his classes at Trevecca Nazarene.

11. On January 1, 2007, Deputy Chief Sylvia Russell was promoted to the Interim Chief and then named Chief of the Tennessee State University Police Department. Chief Russell is an African American female.

12. Both before Chief Russell became Chief of Police and after she became Chief of Police, Plaintiff began to observe that Chief Russell treated the white officers very harshly in front of their peers and subordinates. Chief Russell would apply severe discipline to the white officers while non-white officers were not subjected to the same treatment. One white male corporal was discriminated against by Chief Russell in that Chief Russell reversed the decision of the prior Chief that the officer had acted appropriately and disciplined him for an event which occurred before she became Chief. Chief Russell then singled out this white male corporal to exclude him from supervisor meetings and belittled him in front of the other officers.

13. In a meeting in January 2007, Chief Russell requested ideas from the officers to improve the department. Based on the problems he observed due to the discrimination against the white officers, Plaintiff volunteered to re-write the entire department Policy and Procedure Manual. Chief Russell agreed to allow Plaintiff to do this.

14. Plaintiff spent numerous hours during research and drafted a policy that he felt was equitable for all officers. Plaintiff provided the revised policy to Chief Russell and told her

the policy set forth the rights of the officers under the Tennessee Code. Chief Russell delayed getting back with the Plaintiff about this policy and when she did contact him about the policy, she told him it gave the officers too many rights.

15. On February 5, 2007, Plaintiff left St. Vincent's and took a position with the Metropolitan Public School System. On September 5, 2007, Plaintiff obtained a job with the State of Tennessee Department of Children Services working initially variable hours and then from 7:00 a.m. to 3:30 p.m. Both this Defendant and the Department of Children Services knew Plaintiff was working both jobs and agreed with this arrangement.

16. On May 6, 2007, Plaintiff successfully completed his probationary period and thereafter received successful evaluations.

17. The white male corporal, who Chief Russell had discriminated against, filed a grievance and then took legal action against Tennessee State University. Plaintiff and two other black officers agreed to testify truthfully that this white male supervisor was singled out by Chief Russell due to discrimination. All three employees were then singled out and retaliated against by Chief Russell, in terms of shift changes and location changes.

18. On October 9, 2007, Plaintiff was informed by his supervisor that he needed to go to training for one day only for the next weekend, October 13-14. Plaintiff was given an option of Saturday or Sunday for his training and he picked Sunday, October 14, 2007 because he had visitation rights with his minor daughter that weekend.

19. Plaintiff became ill that Friday, October 12, 2007, and properly called in sick and was granted that day off. On Saturday, October 13, 2007, Plaintiff was still ill and when he called in he was told the training was for two days and he had to immediately appear that morning. Plaintiff had no choice but to take his minor daughter and immediately appeared for the

training. Plaintiff's minor daughter waited in the car while Plaintiff entered for the training. Plaintiff was immediately approached by the training supervisor and was told he was late and was sent home.

20. On his following work day, Plaintiff confronted his supervisor about telling him the training was one day when it was in fact two days, and his supervisor told him that the supervisor had misread the memo and that he corrected his error with the other officers but did not with Plaintiff because Plaintiff was out sick.

21. Despite the acknowledgement of Plaintiff's supervisor that the supervisor's error caused Plaintiff to miss the training, Chief Russell chose to issue a letter of warning to Plaintiff concerning missing the training session. Other employees with less valid reasons than Plaintiff's were exempted from the training.

22. Plaintiff was likewise disciplined for bringing his daughter to the premises while another female employee routinely brought her daughter to work with no disciplinary action being taken.

23. Plaintiff responded to the grievance and pointed out to Chief Russell that she was engaging in sex discrimination because the female employee was allowed to bring her child to work while he was disciplined for doing the same.

24. On October 29, 2007, Plaintiff filed a formal grievance with Tennessee State University Equity, Diversity and Compliance Office claiming discrimination.

25. On the same day, October 29, 2007, Plaintiff was told he had done a late report. His report was turned in as he had always turned in his reports.

26. On January 14, 2008, Plaintiff met with Dr. Michael A. Freeman, TSU Vice President for Student Affairs and on February 19, 2008, Plaintiff was informed the letter of

reprimand was being removed from his file and it was just a coincidental mishap that he had missed his training and that his supervisor would apologize.

27. Plaintiff did not feel his supervisor should apologize because he had been written up by Chief Russell not his supervisor. Plaintiff informed his employer he would be filing a charge of discrimination with the Equal Employment Opportunity Commission.

28. On March 4, 2008, Plaintiff informed his employer through the Equity, Diversity and Compliance Office that Chief Russell was retaliating against him for filing the formal complaint with Tennessee State University.

29. On March 14, 2008, Plaintiff met with Chief Russell and the representative from the Equity, Diversity and Compliance Office and in this meeting Chief Russell began to yell at the Plaintiff. Plaintiff then informed both Chief Russell and the representative that the meeting was over and he would be filing with the Equal Employment Opportunity Commission. It is believed that after the meeting ended Chief Russell made derogatory statements against the Plaintiff for which she was later disciplined.

30. On March 17, 2008, Plaintiff filed a charge of sex discrimination with the Equal Employment Opportunity Commission.

31. On March 24, 2008, Plaintiff was the cover officer on the scene of a panty raid. Plaintiff returned underwear lawfully given to the apprehended male student back to the male student at the end of the investigation. Plaintiff was confronted about this by his supervisor who ordered him to write a statement, which he did.

32. On March 28, 2008, Plaintiff was confronted by a supervisor, that this supervisor overheard Plaintiff state he was not going to give a statement. This was not true and Plaintiff provided his statement.

33. On May 15, 2008, Plaintiff was contacted by his employer that he had been named as a witness in the white male supervisor's discrimination claim filed in Chancery Court for Davidson County.

34. On May 20, 2008, Plaintiff was informed that the departmental warning letter was being removed from his file and his supervisor had apologized for giving Plaintiff information which was confusing or inaccurate.

35. On May 22, 2008, Plaintiff gave a deposition and testified that the white officers had been discriminated against by Tennessee State University.

36. On June 11, 2008 Plaintiff filed a second complaint of discrimination with TSU.

37. One of Plaintiff's supervisors was showing up for work and then disappearing from Tennessee State University. It was believed that this supervisor was having an affair during work hours. In June 2008 two supervisors questioned Plaintiff as to whether this supervisor, who was having the affair, was on the TSU campus at night. Plaintiff then confronted this supervisor and told him two supervisors were questioning his whereabouts and Plaintiff told this supervisor that he was not going to lie for him. On June 18, 2009, Plaintiff was called into a meeting and questioned by numerous supervisors about what he had said to the officer having the affair and Plaintiff was called dishonest and the officer having the affair stated he could no longer work with the Plaintiff.

38. Plaintiff immediately had his leave he had applied for two months previously, denied.

39. On June 21, 2008, Plaintiff sent a memo to Chief Russell claiming he was being retaliated against because of his complaints of discrimination and requesting that the retaliation cease.

40. On June 22, 2008, Plaintiff received a memo from Chief Russell stating that he made a false statement about a supervisor and “[t]he only intention of committing such an act is to cause dissension and discord....Your behavior is incorrigible and will not be tolerated at this department”. Plaintiff did not make any false statements about his supervisor.

41. On June 24, 2008, Plaintiff filed a charge of discrimination and retaliation with the Equal Employment Opportunity Commission claiming retaliation for filing his first claim because the defendant retaliated against him after filing the first claim. By letter dated the same date, Defendant was notified of this claim.

42. On June 25, 2008, Chief Russell requested from Dr. Freeman that Plaintiff be fired and Dr. Freeman suggested a meeting to determine if there were any legal or procedural aspects that would prohibit the termination of Plaintiff due to his EEOC charge.

43. On June 28, 2008, Plaintiff was disciplined for using text messaging to communicate with his employer that he could not make it to work because he was sick. His supervisor would not answer her telephone so Plaintiff thought it best to send a text message. Plaintiff also contacted the dispatcher by telephone. Plaintiff followed the policy of his department in doing such and neither the policy nor his employer ever stated that he could not communicate by use of text messaging.

44. On July 1, 2008, Chief Russell moved Plaintiff to the downtown campus to report to a different supervisor. Chief Russell stated this was being done because he had caused dissension on his shift and had lied to his supervisor. No action was taken at this time against the officer having the affair during work hours.

45. Tennessee State University was then made aware that the supervisor was indeed having an affair during work hours. Rather than apologize to the Plaintiff, Chief Russell then

changed his hours to a shift she knew he would have trouble due to the time. Plaintiff was changed to work the 3:00 p.m. – 11:00 p.m. shift. Plaintiff could not make it to work by 3:00 p.m. due to his other job. Plaintiff explained to his supervisor that he could not be there at that time because of his daytime job. Plaintiff's supervisor told him not to worry about this, the department would work with him.

46. Defendant refuses to change Plaintiff's hours of work and began to write Plaintiff up when he would get to work late.

47. In August 2009, Defendant sent a uniformed officer to Plaintiff's new place of employment to serve a letter upon Plaintiff to notify him of a meeting with Chief Russell to discuss Plaintiff's grievance over being written up for arriving at work late.

48. All of these actions created a hostile work environment for the Plaintiff.

49. Plaintiff was constructively discharge on September 27, 2009 as a result of these actions.

50. Plaintiff filed two charges of discrimination with the Equal Employment Opportunity Commission and received two right to sue letters dated August 27, 2009. (copies attached hereto).

51. Plaintiff has filed a retaliation and constructive discharge claim with the Equal Employment Opportunity Commission against Tennessee State University but no right to sue letter has been received.

CAUSES OF ACTION

52. Plaintiff would state that he was constructively discharged solely for refusing to remain silent about illegal activities being engaged in by the Defendants in violation of Tenn. Code Ann. §50-1-304.

53. Plaintiff would state that these Defendants created a hostile work environment for the Plaintiff resulting in his constructive discharge.

54. Plaintiff would further state that the Defendants' actions in constructively discharging the Plaintiff are in violation of Title VII and the Tennessee Human Rights Act.

55. Plaintiff would state the Defendants engaged in sex discrimination in violation of both the Tennessee Human Rights Act, Tenn. Code Ann. §4-21-101 *et. seq.*, § 4-21-301 *et. seq.*, and Tenn. Code Ann. § 4-21-401 *et. seq* and Title VII.

56. Plaintiff would state the Defendants engaged in retaliation in violation of both the Tennessee Human Rights Act, Tenn. Code Ann. §4-21-101 *et. seq.* and § 4-21-301 and Title VII.

WHEREFORE, PLAINTIFF PRAYS:

1. That Plaintiff, Kenneth D. Hardy, be granted judgments against the Defendants for \$500,000.00 for compensatory and other damages suffered by him including but not limited to, damages for pain and suffering, humiliation and embarrassment, back pay, interest on back pay, lost benefits, injury to character and personal injury.

2. That the Plaintiff be ordered reinstated or front pay in lieu thereof, with all accumulated salary rights and benefits as if continuously employed.

3. Plaintiff further prays for both liquidated and punitive damages and for pre-judgment interest, attorney's fees, litigation costs, and the cost of this cause.

4. Plaintiff lost tuition coverage for his college age son and tuition coverage for himself and his wife.

5. Plaintiff prays for a jury of six to try this cause.

6. Plaintiff prays for such other further relief as may be necessary or appropriate.

Respectfully submitted,



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Attorney for Plaintiff, Kenneth D. Hardy