

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EQUAL EMPLOYMENT)	Case No. 2:02-cv-591
OPPORTUNITY COMMISSION,)	
)	Judge Michael H. Watson
Plaintiff,)	Magistrate Judge Mark R. Abel
)	
v.)	
)	<u>CONSENT DECREE</u>
OVERNITE TRANSPORTATION)	
COMPANY,)	
)	
Defendant.)	

INTRODUCTION

The United States Equal Employment Opportunity Commission (the “Commission” or “EEOC”) filed this action against the Defendant, Overnite Transportation Company (“Overnite Transportation” or “Defendant”) to enforce Title I of the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* (“the ADA”) and Title I of the Civil Rights Act of 1991, 42 U.S.C. §1981a. The Commission’s Complaint alleges that Overnite Transportation engaged in unlawful employment practices in violation of the ADA by refusing to employ Charging Party Jeff Bowman (“Bowman”) as a dockworker because he has a disability as defined in Section 12102(2)(A)-(C) of the ADA. During discovery in this case Jeremy Smith (“Smith”) was identified as a similarly situated individual who allegedly was also denied employment as a dockworker in violation of the ADA on the basis of his disability. In response, Overnite Transportation denied any violation of the ADA and specifically denied any violation of the ADA with regard to the decisions not to employ Bowman or Smith.

As a result of the parties having engaged in settlement negotiations, the parties agreed that this action should be finally resolved by entry of this Consent Decree. This Consent Decree

was entered into by the parties as an amicable way of resolving all outstanding differences that may have existed in this case. This Consent Decree is intended to and does fully and finally resolve any and all claims arising out of the Complaint filed by the Commission.

The parties do not object to the jurisdiction of the Court over this action and waive the Entry of Findings of Fact and Conclusions of Law.

FINDINGS

It is **ORDERED, ADJUDGED AND DECREED:**

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

1. This Consent Decree resolves all claims arising out of the issues between the Commission and Overnite Transportation and its successor UPS Ground Freight, Inc. in this lawsuit, including, without limitation, backpay, front pay, compensatory and punitive damages, injunctive and other affirmative relief, costs, and attorneys' fees and including any claims asserted on behalf of Bowman or Smith.

2. The Court has jurisdiction of the subject matter of this action and of the parties.

3. The terms and provisions of this Consent Decree are adequate, fair, reasonable, equitable, and just. The rights of the parties are adequately protected by this Consent Decree.

4. This Consent Decree conforms with the Federal Rules of Civil Procedure and the ADA and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of the ADA and will be in the best interests of Overnite Transportation, the Commission, and the public.

NON-ADMISSIONS

5. This Decree, being entered into with the consent of the Commission and Overnite Transportation and its successor, UPS Ground Freight Inc., shall not constitute an adjudication or

finding on the merits of this case nor shall it be deemed an admission by Defendant of any violation of the ADA or the 1991 Civil Rights Act. Overnite Transportation and UPS Ground Freight Inc. deny any liability for any and all claims contained in the Complaint and deny that they have violated the ADA in any manner. Overnite Transportation and UPS Ground Freight Inc. are entering into this Consent Decree solely for purposes of avoiding further litigation costs and expenses.

NON-DISCRIMINATION

6. In all matters arising from or relating to employment, Overnite Transportation and its officers, agents, employees, successors, and assigns, and all of those in active concert or participation with them, or any of them, are enjoined from engaging in any employment practices at the Columbus and Memphis facilities which discriminate against a qualified individual with a disability because of the disability of such individual in regard to application procedures, the hiring, and other terms, conditions, and privileges of employment.

Nothing herein shall prevent or prohibit Overnite Transportation or its successor, UPS Ground Freight Inc., from using the Department of Transportation ("DOT") guidelines and/or requirements when making hiring, promotion or similar employment decisions for positions covered by the DOT guidelines and/or regulations.

DURATION OF CONSENT DECREE AND COMPLIANCE REVIEWS

7. This Court shall retain jurisdiction of this action for a period of two (2) years after entry of this Consent Decree. This Consent Decree shall expire by its own terms at the end of two (2) years without further action by the parties.

8. During the term of this Decree, the Commission may review compliance with this Decree. If the Commission has reasonable cause to believe that Defendant has violated any of the terms of this Consent Decree, it shall notify UPS Ground Freight Inc. in writing, and the

Company will then have ten (10) business days in which to satisfy the Commission that there has not been a violation or that the violation has been corrected. If, at the expiration of such time period, the Commission has not been so satisfied, then it may immediately apply to the Court for appropriate relief.

9. Nothing in this Decree shall preclude the Commission from bringing suit to enforce the terms of the Decree; nor shall this Decree preclude future action by the Commission or other persons to remedy any other alleged violations of the ADA by Overnite Transportation.

MONETARY RELIEF

10. In full settlement of all claims alleged in the Commission's Complaint, Defendant shall pay the following amounts: \$107,000.00 to Jeff Bowman and \$3,000.00 to Jeremy Smith. Half of each payment shall be for W-2 wages and legally required deductions shall be made and the other half of each payment shall be for non-wage compensatory damages, for which a 1099 statement will be issued. Payment of the foregoing amounts resolves any and all of the Commission's claims arising out of this Civil Action No. 2:02-cv-591 and EEOC Charge No. 220961449 and resolves all claims asserted on behalf of Bowman and Smith.

11. The Commission will secure from Mr. Bowman and Mr. Smith a release and waiver of claims against Defendant pertaining to this litigation and the charge of discrimination which gave rise to the Commission's lawsuit. A copy of the release and waiver of claims is attached as Attachment "A". After receiving confirmation from Mr. Bowman and Mr. Smith that they have each received the amounts specified in Paragraph 10 above, the Commission shall promptly transmit the executed Attachment A Release and Waiver forms to Defendant.

NOTICE POSTING

12. Defendant shall post and keep posted, during the term of this Decree, in conspicuous places at all of its facilities in Columbus and Memphis where notices to employees or applicants are customarily posted, Attachment B (Notice to All Employees).

STAFF TRAINING AND DEVELOPMENT

13. Within one hundred twenty (120) days of the entry of this Consent Decree, UPS Ground Freight Inc. agrees to provide ADA training for its Regional Human Resource employees covering the Columbus and Memphis facilities.

14. UPS Ground Freight Inc. agrees to include the following topics in the ADA training sessions for the Regional Human Resource employees covering the Columbus and Memphis facilities:

- a. an overview of the ADA, the Company's obligations under the ADA, and applicant and employee rights under the ADA;
- b. non-discrimination in hiring and recruitment;
- c. reasonable accommodation in the application and hiring process;
- d. the process for addressing reasonable accommodation requests in the application and hiring process;
- e. examples of accommodations in the application and hiring process for people with disabilities, including people who have epilepsy-related disabilities; and
- f. UPS Ground Freight Inc.'s commitment to meeting the requirements of the ADA.

15. Defendant will report in writing to the Associate Regional Attorney, Equal Employment Opportunity Commission Cleveland Field Office, when the undertaking outlined in paragraphs thirteen (13) and fourteen (14) of this Decree have been completed. The report will describe the manner in which the undertakings were carried out, including a listing of the dates, locations for the Staff Training and Development described above together with a copy of the

attendance roster. This report shall be submitted not later than one sixty (160) days from the date of this Decree.

16. This Court shall retain jurisdiction of this case for purposes of compliance with this Decree and entry of such further orders as may be necessary or proper to effectuate the purposes of this Decree.

17. Each party to this action shall bear its own costs and fees, including bearing its own attorneys fees.

IT IS SO ORDERED THIS 14th day of April, 2008.

Michael A. Watson
United States District Court Judge

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ATTACHMENT A

RELEASE AND WAIVER

I, _____, in consideration of the terms of the Consent Decree which has been entered in EEOC, et al. v. Overnite Transportation Company, Civil Action No. 2:02-cv-591, United States District Court for the Southern District of Ohio, Eastern Division, hereby release and waive any claim that I may have against Overnite Transportation Company and/or its successor UPS Ground Freight Inc., their parents, subsidiaries or affiliates and their officers, agents, employees, successors and assigns which is covered by the allegations in the above-cited Civil Action and/or EEOC Charge No. 220961499.

I further acknowledge that the contents of this release and waiver and its meaning have been explained to me and I understand its terms.

Date: _____

Signature

ATTACHMENT B

NOTICE TO ALL EMPLOYEES

This Notice is being posted pursuant to a Consent Decree voluntarily entered into by Overnite Transportation Company ("Overnite Transportation") and the Equal Employment Opportunity Commission ("EEOC") in connection with the settlement in the case entitled EEOC, et al. v. Overnite Transportation Company, Case No. 2:02-cv-591 (S.D. Ohio E.D.).

The EEOC lawsuit alleged that Overnite Transportation violated the Americans With Disabilities Act ("ADA") by failing and refusing to employ a qualified individual with a certain disability because of that person's disability. Overnite denied any violation of the ADA.

Under the terms of the Consent Decree, Overnite Transportation agreed:

Not to violate the ADA;

Provide a settlement to the individuals alleging the violation;

Provide training to Regional Human Resource Managers in Columbus and Memphis concerning the requirements of the ADA; and

Post this Notice.

Federal law prohibits covered employers from discriminating against any employee or applicant for employment on the basis of disability, sex, race, color, national origin, or age, and from retaliation. Should you have any complaints of discrimination or retaliation, you may contact the EEOC.

Dated: _____

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

This Notice must remain posted for two (2) years from the date shown above and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the U.S. Equal Employment Opportunity Commission, 1-800-669-4000 or TTY 1-800-669-6820.