

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

THOMAS BURLINGTON
Malvern, PA

Plaintiff,

v.

NEWS CORPORATION
1121 Avenue of the Americas
New York, NY 10036

and

FOX TELEVISION STATIONS, INC.
1121 Avenue of the Americas
New York, NY 10036

and

FOX TELEVISION STATIONS OF
PHILADELPHIA, INC.
330 Market Street
Philadelphia, PA 19106

Defendants.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

I. INTRODUCTION

Plaintiff, Thomas Burlington, brings this action against his former employers, News Corporation ("Defendant News Corporation"), Fox Television Stations, Inc. ("Defendant Fox Television") and Fox Television Stations of Philadelphia, Inc. ("Defendant Fox Philadelphia") (together "Defendants"). While working for Defendants, Plaintiff was discriminated against, retaliated against and

subjected to a hostile work environment based on his race in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.* (“Title VII”), the Civil Rights Act of 1866, as amended, 42 U.S.C. §1981 (“Section 1981”) and the Pennsylvania Human Relations Act, as amended, 43 P.S. §951 *et seq.* (“PHRA”). Plaintiff seeks damages, including compensatory and punitive damages and all other relief this Court deems appropriate.

II. PARTIES

1. Plaintiff, Thomas Burlington, is an individual and a citizen of the Commonwealth of Pennsylvania.
2. Plaintiff’s race is white.
3. Defendant News Corporation is a Delaware corporation with a principal place of business at 1121 Avenue of the Americas, New York, New York 10036.
4. Defendant Fox Television is a Delaware corporation with a principal place of business at 1121 Avenue of the Americas, New York, New York 10036.
5. Defendant Fox Philadelphia is a Delaware corporation with a principal place of business at 330 Market Street, Philadelphia, Pennsylvania 19106.
6. At all times material hereto, Plaintiff worked at Defendants’ branch office at 330 Market Street, Philadelphia, Pennsylvania 19106.
7. Defendant News Corporation controls and directs certain of Defendant Fox Television’s and Defendant Fox Philadelphia’s business

operations and policies.

8. Defendant Fox Television controls and directs certain of Defendant Fox Philadelphia's business operations and policies.

9. Defendants are engaged in an industry affecting interstate commerce and regularly do business in the Commonwealth of Pennsylvania.

10. At all times material hereto, Defendants employed more than fifteen (15) employees.

11. At all times material hereto, Defendants acted by and through their authorized agents, servants, workmen, and/or employees acting within the course and scope of their employment with Defendants and in furtherance of Defendants' business.

12. At all times material hereto, Defendants acted as employers within the meanings of the statutes which form the basis of this matter.

13. At all times material hereto, Plaintiff was an employee of Defendants within the meanings of the statutes which form the basis of this matter.

III. JURISDICTION AND VENUE

14. The causes of action which form the basis of this matter arise under Title VII, Section 1981 and the PHRA.

15. The District Court has jurisdiction over Count I (Title VII) pursuant to 42 U.S.C. §2000e-5 and 28 U.S.C. §1331.

16. The District Court has jurisdiction over Count II (Section 1981) pursuant to 28 U.S.C. §1331.

17. The District Court has supplemental jurisdiction over Count III (PHRA) pursuant to 28 U.S.C. §1367.

18. Venue is proper in the District Court under 28 U.S.C. §1391(b) and 42 U.S.C. §2000(e)-5(f).

19. On or about November 14, 2007, Plaintiff filed a Charge with the Equal Employment Opportunity Commission (“EEOC”), complaining of acts of discrimination and retaliation alleged herein. This Complaint was cross-filed with the Pennsylvania Human Relations Commission (“PHRC”). Attached hereto, incorporated herein and marked as Exhibit “1” is a true and correct copy of the EEOC Charge.

20. On or about February 5, 2009, the EEOC issued to Plaintiff a Dismissal and Notice of Rights. Attached hereto, incorporated herein and marked as Exhibit “2” is a true and correct copy of that notice.

21. Plaintiff has fully complied with all administrative prerequisites for the commencement of this action.

IV. FACTUAL ALLEGATIONS

22. On or about December 8, 2004, Plaintiff was hired by Defendants as a General Assignment Reporter for Defendant Fox Philadelphia.

23. In or about February 2006, Plaintiff was promoted to Weekend Anchor/Reporter.

24. Plaintiff reported to Phil Metlin (white), News Director, Defendant Fox Philadelphia. Mr. Metlin reported directly to Mike Renda (white), General Manager, Defendant Fox Philadelphia, who, in turn, reported to Jack Abernathy,

Corporate News Director, Defendant News Corporation.

25. At all times material hereto, Plaintiff performed his duties in a highly competent manner.

26. On or about June 23, 2007, Plaintiff attended a regularly scheduled newsroom editorial meeting with approximately eight (8) other employees, including reporters, producers and writers, to discuss that evening's broadcast. During the meeting, Robin Taylor (white), Reporter, discussed a story that she was planning to present during that evening's broadcast concerning a ceremony conducted by a local youth council of the National Association of the Advancement of Colored People ("NAACP") to symbolically bury the word "nigger" and its negative connotations. During her presentation, Ms. Taylor used the euphemistic phrase "the n-word" rather than the actual word "nigger."

27. Plaintiff expressed his opinion that using the phrase "the n-word" rather than the actual word "nigger" ultimately gives the word itself more power. Ms. Taylor responded that she personally did not feel that it was appropriate to use the word "nigger" and that she would not do so during her broadcast presentation.

28. While Plaintiff was speaking, he noticed that Nicole Wolfe (black), Newscast Producer, seemed uncomfortable with his comments. Immediately after the meeting ended, Plaintiff approached Ms. Wolfe and apologized if he had offended her with his comments.

29. Approximately one hour after the meeting ended, Joyce Evans (black), Weekend Anchor/Reporter, told Plaintiff that he had offended some

people with the word that he used. Ms. Evans was not present at the editorial meeting and was not privy to the discussion that Plaintiff had with Ms. Wolfe.

30. Plaintiff immediately spoke to each employee individually who was at the meeting to determine whether they were offended by his comments and to apologize. Ms. Wolfe was the only attendee who stated that she was offended because she did not believe that there was ever a time or place or context for the word “nigger” to be stated. Plaintiff again apologized to Ms. Wolfe and stated that he had no idea she had this feeling about using the word “nigger” in an editorial setting. While none of the other attendees expressed concern or offense, Plaintiff did apologize to each of them individually.

31. When he spoke with each meeting attendee, Plaintiff also explained the thought process behind his comments and his opinion. Plaintiff expressed his opinion that using the euphemism “the n-word” was not appropriate because it conveyed a shying away from the main point of the story and ultimately gave the word more power, which directly contradicted the point of the story. Plaintiff said that if they were going to reference the word “nigger,” they should call it a racial slur or racial epithet rather than using the phrase “the n-word.” He stated that he did not in any way intend his use of the word to be offensive, but intended to use it in such a way that he felt to be constructive and relevant to the discussion of how this word should be presented in the news broadcast.

32. Following his conversations with the employees, Plaintiff informed Ms. Evans that he had spoken with each attendee (with the exception of one Assignment Desk Manager who had left the office before Plaintiff could speak

with her) and thanked her for bringing the issue to his attention.

33. Ms. Evans told Plaintiff that he did not “get it” regarding the use of the word “nigger.” She informed him that since he was not black, he could never know what it was like to be called a “nigger.” Ms. Evans also stated that the word “nigger” was offensive in any context and that because Plaintiff was white, he was never permitted to use that word. Ms. Evans used the word “nigger” twice during that conversation.

34. At that point, Ms. Taylor joined the conversation and agreed that white people should not use that word. As one of three experienced journalists engaging in what Plaintiff thought was open, professional dialogue regarding an important journalistic as well as societal issue, Plaintiff stated that he did not use the word intending to offend his colleagues. Plaintiff shared that he had been the target of offensive words and understood, to some extent, the pain that could result.

35. Ms. Evans repeated that Plaintiff did not “get it” and that he hurt a lot of people. Ms. Taylor said that she understood that Plaintiff did not intend to offend anyone, but she felt that his use of the word was inappropriate.

36. On or about June 29, 2007, Plaintiff was called into a meeting with Mr. Metlin, Ameena Ail (black), Human Resources Director, and Leslie Tyler (black), Assistant News Director. Per Mr. Metlin’s request, Plaintiff relayed what had occurred during the editorial meeting. Mr. Metlin said that he found the use of the word “nigger” as offensive as using the word “kike.” He informed Plaintiff that he was suspended effectively immediately until he could speak with the

meeting attendees.

37. After the June 29, 2007 meeting, Plaintiff e-mailed Mr. Metlin and requested to meet with him so that he could explain in more depth what had occurred and his thoughts about what had occurred. Mr. Metlin responded that he did not have time to meet with Plaintiff but told him that he could e-mail his thoughts. Plaintiff then e-mailed Mr. Metlin that he was devastated by the perception that he would use the word “nigger” in an intentionally hurtful manner and that he wanted to discuss the issue in person with Mr. Metlin. Mr. Metlin failed to respond to Plaintiff’s e-mail.

38. On or about July 3, 2007, Plaintiff met with Ms. Ali and Mr. Renda. At that time, he was given a document that outlined an investigation of the incident and included a conclusion that he was “unfit for duty.” Defendants failed to communicate with Plaintiff throughout the investigative process. Mr. Renda told Plaintiff that Defendants were going to “ride this one out” and that if he underwent sensitivity training through Defendants’ Employee Assistance Program (“EAP”), he could return to his position once he was deemed “fit for duty.” Plaintiff immediately scheduled his training sessions.

39. On or about July 5, 2007, a false and defamatory article in *The Philadelphia Daily News* was published which stated that Plaintiff used the word “nigger” more than twelve (12) times in a “bizarre” and “shocking” sermon. The article implied that Plaintiff’s belief was that using the word “nigger” in any context was “not a big deal.” Upon information and belief, the article was based on false and defamatory statements made by employees of Defendants.

40. On or about July 7, 2007, Plaintiff met with Defendants-sanctioned EAP counselor Anne Malone, who spoke with Plaintiff regarding issues of race. By the end of the session, Ms. Malone told Plaintiff that she did not believe that he had any racial bias or related issues and that she planned to report that he was “fit for duty.”

41. On or about July 11, 2007, Plaintiff e-mailed Mr. Metlin and Mr. Renda to inform them that the company’s EAP Counselor had found him “fit to return to work.”

42. On or about July 12, 2007, Plaintiff was called to meet with Ms. Ali, Mr. Renda and Mr. Metlin. Mr. Renda informed Plaintiff that, due to the negative publicity from the article in *The Daily News* and concerns that Defendants had for his safety and the safety of the photographers with whom he worked, Defendants did not want him to return to work. Mr. Renda told Plaintiff that Defendant Fox 29 had “cause” to terminate his employment because of the incident and what had appeared in *The Daily News* but that he was offering Plaintiff the opportunity to resign. Plaintiff told Mr. Renda that he wanted to remain employed.

43. Plaintiff’s agent contacted Mr. Renda the following day to ask for a detailed account of the threats that would warrant Defendants’ concern regarding Plaintiff’s safety and the safety of those who worked with him. Despite his representation only one day earlier, Mr. Renda admitted that there had been no threats made against Plaintiff or Defendants.

44. Defendants failed to take action regarding what they knew to be false and defamatory allegations in *The Daily News* article, including issuing a

press release, releasing an official response and/or rebuttal, and disciplining any employees for conveying false and defamatory information about the editorial meeting, giving credence to the article and resulting in widespread publication of the article and other defamatory statements on the Internet.

45. Plaintiff was subjected to a hostile work environment based on his race.

46. Plaintiff's suspension was never lifted and his employment was terminated on or about February 19, 2008, at the end of his contract term.

47. Defendants' reason for terminating Plaintiff's employment is pretextual.

48. Plaintiff's race was a motivating and/or determinative factor in connection with Defendants' discriminatory and retaliatory treatment of Plaintiff, which included, but is not limited to, Plaintiff's suspension, the creation of a hostile work environment and Plaintiff's termination.

49. Plaintiff's opposing Defendants' discriminatory conduct was a motivating and/or determinative factor in connection with Defendants' retaliatory treatment of Plaintiff, which included, but is not limited to, the creation of a hostile work environment and Plaintiff's termination.

50. Defendants failed to prevent or address the discriminatory and retaliatory conduct referred to herein and further failed to take appropriate corrective and/or remedial measures to make the workplace free of discriminatory and retaliatory conduct.

51. The discriminatory and retaliatory conduct of Defendants, as alleged herein, was severe and/or pervasive enough to make a reasonable employee believe that the conditions of employment had been altered and that a hostile work environment existed, and made Plaintiff believe that the conditions of employment had been altered and that a hostile work environment existed.

52. The retaliatory actions taken against Plaintiff after he opposed Defendants' discriminatory conduct would have discouraged a reasonable employee from opposing discriminatory conduct.

53. Defendants acted with malice and/or reckless indifference to Plaintiff's protected rights.

54. The conduct of Defendants, as set forth above, was outrageous under the circumstances and warrants the imposition of punitive damages against Defendants.

55. As a direct and proximate result of the discriminatory and retaliatory conduct of Defendants, Plaintiff has in the past incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, pain and suffering, embarrassment, humiliation, loss of self-esteem, mental anguish, and loss of life's pleasures, the full extent of which is not known at this time.

COUNT I

56. Plaintiff incorporates herein by reference paragraphs 1 through 55 above, as if set forth herein in their entirety.

57. By committing the foregoing acts of discrimination and retaliation against Plaintiff, Defendants have violated Title VII.

58. Said violations were malicious and/or committed with reckless indifference against Plaintiff and warrant the imposition of punitive damages.

59. As a direct and proximate result of Defendants' violation of Title VII, Plaintiff has suffered the damages and losses set forth herein.

60. Plaintiff is now suffering and will continue to suffer irreparable injury and monetary damages as a result of Defendants' discriminatory and retaliatory acts unless and until this Court grants the relief requested herein.

61. No previous application has been made for the relief requested herein.

COUNT II

62. Plaintiff incorporates herein by reference paragraphs 1 through 61 above, as if set forth herein in their entirety.

63. By committing the foregoing acts of discrimination and retaliation against Plaintiff, Defendants have violated Section 1981.

64. Said violations were malicious and/or committed with reckless indifference against Plaintiff and warrant the imposition of punitive damages.

65. As a direct and proximate result of Defendants' violation of Section 1981, Plaintiff has sustained the injuries, damages and losses as set forth herein and has incurred attorney's fees and costs.

66. Plaintiff is now suffering, and will continue to suffer, irreparable harm and monetary damages as a result of Defendants' discriminatory and retaliatory acts unless and until this Court grants the relief requested herein.

COUNT III

67. Plaintiff incorporates herein by reference paragraphs 1 through 66 above, as if set forth herein in their entirety.

68. Defendants, by the above improper, discriminatory and retaliatory acts, have violated the PHRA.

69. Said violations were intentional and willful.

70. As a direct and proximate result of Defendants' violation of the PHRA, Plaintiff has sustained the injuries, damages, and losses set forth herein and has incurred attorney's fees.

71. Plaintiff is now suffering and will continue to suffer irreparable injuries and monetary damages as a result of Defendants' discriminatory and retaliatory acts unless and until the Court grants the relief requested herein.

72. No previous application has been made for the relief requested herein.

RELIEF

WHEREFORE, Plaintiff seeks damages and equitable relief to the extent that he has been harmed by Defendants' conduct, and specifically prays that the Court grant the following relief to the Plaintiff by:

(a) declaring the acts and practices complained of herein to be in violation of Title VII;

(b) declaring the acts and practices complained of herein to be in violation of the Section 1981;

(c) declaring the acts and practices complained of herein to be in violation of the PHRA;

(d) enjoining and permanently restraining the violations alleged herein;

(e) entering judgment against the Defendants and in favor of the Plaintiff in an amount to be determined;

(f) awarding compensatory damages to make the Plaintiff whole for all lost earnings, earning capacity and benefits, past and future, which Plaintiff has suffered or may suffer as a result of Defendants' improper conduct;

(g) awarding compensatory damages to Plaintiff for past and future pain and suffering, emotional upset, mental anguish, humiliation, and loss of life's pleasures, which Plaintiff has suffered or may suffer as a result of Defendants' improper conduct;

(h) awarding punitive damages to Plaintiff under Title VII and Section 1981;


(i) awarding Plaintiff such other damages as are appropriate under Title VII, Section 1981 and the PHRA;

(j) awarding Plaintiff the costs of suit, expert fees and other disbursements, and reasonable attorney's fees; and,

(k) granting such other and further relief as this Court may deem just, proper, or equitable including other equitable and injunctive relief providing restitution for past violations and preventing future violations.

CONSOLE LAW OFFICES LLC

Dated: 05/04/2009

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