

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

(1) Michael J. McCullough,)
)
)
Plaintiff,)
)
)
v.) Civil Action No. CIV-24-544-R
)
)
)
(1) Independent School District No. 89 of) **JURY TRIAL DEMANDED**
Oklahoma City, Oklahoma, a.k.a. Oklahoma City)
Public Schools)
)
Defendant.)

)

COMPLAINT

Plaintiff Michael J. McCullough, by the undersigned attorneys, alleges as follows:

1. This civil action is brought under the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, 38 U.S.C. § 4301, *et seq.* (“USERRA”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 38 U.S.C. § 4323(b).

3. Venue is proper in this judicial district under 38 U.S.C. § 4323(c)(2) because Defendant Independent School District No. 89 of Oklahoma City, Oklahoma, also known as Oklahoma City Public Schools (“OKCPS”) maintains a place of business in this judicial district and is considered a “private employer” within the meaning of 38 U.S.C. § 4323(i). Additionally, venue is proper under 28 U.S.C. § 1391(b) because a

substantial part of the events or omissions giving rise to this action occurred in this judicial district.

PARTIES

4. Plaintiff Michael J. McCullough (“McCullough”) resides in Oklahoma City, Oklahoma, which is located in Oklahoma County, Oklahoma. Oklahoma County is within the jurisdiction of this Court.

5. Plaintiff McCullough is an “employee” within the meaning of 38 U.S.C. § 4303(3).

6. Defendant OKCPS is a public school district serving most of the urban area of Oklahoma City. OKCPS maintains a place of business at 615 North Classen Boulevard, Oklahoma City, within the jurisdiction of this Court.

7. Defendant OKCPS is an “employer” within the meaning of 38 U.S.C. § 4303(4)(A) and is subject to suit under USERRA under 38 U.S.C. § 4323(a).

STATEMENT OF VETS CHARGE

8. On December 13, 2022, McCullough filed a charge with the Veterans’ Employment and Training Service (“VETS”) of the United States Department of Labor concerning the allegations contained in this complaint (Charge No. OK-2023-00004-60-R). The matter was investigated by VETS acting for the Secretary of Labor under 38 U.S.C. § 4322.

9. On June 12, 2023, VETS completed its investigation and advised OKCPS that it was in violation of USERRA. On June 13, 2023, after VETS unsuccessfully attempted to achieve a voluntary resolution of McCullough’s charge through conciliation

with OKCPS, McCullough requested that his case be forwarded to the United States Attorney General for further review and the matter was referred to the Department of Justice.

FACTUAL ALLEGATIONS

10. McCullough has been a member of the United States Air Force Reserve since June 2020. He currently holds the rank of Senior Airman (E4). During his time with the Air Force Reserve, McCullough has undergone periods of training and performed other military services.

11. McCullough began working for OKCPS on July 16, 2019, as a band teacher at Capitol Hill Middle School. He was employed in that position for both the 2019-2020 and the 2020-2021 school years.

12. On January 3, 2022, McCullough became a music teacher at OKCPS's Fillmore Elementary School, where he was under contract for the remainder of the 2021-2022 school year.

13. On or about February 10, 2022, while working as a teacher at Fillmore Elementary School, McCullough received notice of non-continuance of his employment contract with OKCPS. Upon his inquiry to Cindy Lang ("Lang"), principal of Fillmore Elementary School, Lang replied via email, "I didn't know they were sending out the non continuing [sic] letters today. That's just protocol. All teachers under two years get that. I'd like you to stay if you are happy." Upon receiving such assurance, McCullough reasonably believed that his employment at Fillmore Elementary School would continue through the 2022-2023 school year.

14. On Friday, February 11, 2022, McCullough unexpectedly received written orders for military service beginning Monday, February 14, 2022. Upon learning the orders had been confirmed, McCullough informed Lang of his immediate need to be absent for military service on February 14. Shortly thereafter, Lang responded via email, “I’m trying to wrap my mind around this and I’m very concerned. So I’m paying you all year and have to have a sub? It would make it so much easier to fill this with a music teacher if you resign. But this is your choice.”

15. Also on February 14, 2022, McCullough notified Jason Webster (“Webster”), OKCPS Employee Relations Manager, of his military orders. Webster directed McCullough to inform Janie Pierce (“Pierce”), Human Relations Benefits Generalist, and McCullough did so. On February 15, 2022, Pierce confirmed receipt of McCullough’s orders and indicated that she would process his military leave paperwork.

16. On March 10, 2022, McCullough received a letter from OKCPS informing him that his contract would not be renewed. Nonetheless, on April 25, 2022, McCullough emailed Pierce (among others) expressing his intent to return to OKCPS for the 2022-2023 school year, requesting information about where he would be teaching and expressing an interest in returning to one of the schools where he had previously taught.

17. On July 29, 2022, McCullough emailed Pierce to inform her that his military orders had been extended through December 30, 2022, but that he would be available to return to OKCPS after the Christmas break. McCullough also emailed this information to Dana Leach (“Leach”), Director of Human Resources, who responded, “Thank you for sending this information, however, your employment with OKCPS ended

on July 15, 2022, at the end of your 2021-2022 contract.” Leach’s email also referenced the March 10 non-renewal letter.

18. On December 6, 2022, McCullough again emailed Leach, noting that OKCPS was advertising a band teacher position at Mary Golda Ross Middle School and asking to be placed in the position for the next semester. McCullough also contacted Mary Golda Ross Middle School Principal, Alicia Stevens Blair (“Blair”), who interviewed him for the position but warned him that she would be interviewing other candidates, too. Although McCullough believed the interview went well, on December 12, 2022, Blair informed McCullough that OKCPS had offered the position to another candidate. On December 13, 2022, McCullough filed a complaint with VETS, which is the basis of this lawsuit.

19. McCullough sent Leach a follow-up email on December 14, 2022, confirming that his military orders would come to an end on December 30, 2022, and requesting reinstatement to his former music teacher position at Fillmore Elementary School or to a middle school band teacher position. In response, Leach wrote, “Since you are not currently employed with OKCPS, you must apply for open positions and follow the normal recruitment process. Please visit our job postings on our website at www.okcps.org. Thank you for your interest in OKCPS.” McCullough has had no subsequent contact with OKCPS.

20. Upon information and belief, OKCPS had one or more open elementary music teacher or middle school band teacher positions during the 2022-2023 school year

in which it could have reemployed McCullough upon his return from active military service after December 30, 2022.

21. OKCPS was aware of USERRA's reemployment and anti-discriminatory provisions. This is the second time that McCullough has filed a USERRA complaint with VETS to enforce his reemployment rights after a return to his employment with OKCPS after military service.

22. In April 2021, while employed with OKCPS at Capitol Hill Middle School, McCullough left to perform military training. He submitted an employment application for the upcoming 2021-2022 school year prior to his departure. Upon his return from military training, he requested reemployment but OKCPS did not give him an employment contract for the 2021-2022 school year.

23. McCullough filed a charge with VETS in November 2021, alleging that OKCPS violated USERRA by failing to properly reemploy him. On April 25, 2022, during the pendency of the events detailed herein, McCullough and OKCPS entered into a settlement agreement resolving that matter.

CAUSE OF ACTION

24. McCullough re-alleges and incorporates by reference all of the foregoing allegations.

25. McCullough meets the requirements for coverage under USERRA. *See* 38 U.S.C. §§ 4303 & 4304.

COUNT 1

USERRA, 38 U.S.C. §§ 4312 & 4313
Failure to Properly Reemploy in Violation of USERRA

26. USERRA provides that “any person whose absence from a position of employment is necessitated by reason of service in the uniformed services shall be entitled to the reemployment rights and benefits and other employment benefits of this chapter if” that person satisfies USERRA’s notice, service length, and application requirements. 38 U.S.C. § 4312(a).

27. McCullough satisfied the notice, service length, and application requirements in USERRA, 38 U.S.C. § 4312(a).

28. USERRA requires employers to promptly reemploy any person returning from a period of military service longer than 90 days, “in the position of employment in which the person would have been employed if the continuous employment of such person with the employer had not been interrupted by such service, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform[.]” 38 U.S.C. § 4313(a)(2)(A).

29. OKCPS violated USERRA Section 4313 by failing to promptly and properly reemploy McCullough when he returned from active duty. A proper reemployment position would have been an elementary school music teacher position or, based on McCullough’s prior experience, a middle school band teacher position.

30. OKCPS's violation of USERRA Section 4313 was willful under 38 U.S.C. § 4323(d)(1)(c) in that OKCPS showed a reckless disregard for whether its conduct was prohibited by the provisions of USERRA.

31. McCullough has suffered a substantial loss of earnings and other benefits, including retirement benefits, in an amount to be proven at trial as a result of OKCPS's violation of USERRA.

COUNT II

USERRA, 38 U.S.C. § 4311 Discriminatory Contract Non-Renewal in Violation of USERRA

32. USERRA provides that “[a] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied....reemployment, retention in employment, . . . or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.” 38 U.S.C. § 4311(a). An employer violates this prohibition when “the person’s membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer’s action.” 38 U.S.C. 4311(c)(1).

33. OKCPS violated Section 4311 of USERRA by failing to renew McCullough's contract on the basis of his military service obligations and his absence from his civilian job in order to perform military service.

34. McCullough's military service was a motivating factor in OKCPS's decision not to renew McCullough's contract.

35. OKCPS's violation of USERRA Section 4311 was willful under 38 U.S.C. § 4323(d)(1)(c) in that OKCPS showed a reckless disregard for whether its conduct was prohibited by the provisions of USERRA.

36. McCullough has suffered a substantial loss of earnings and other benefits, including retirement benefits, in an amount to be proven at trial as a result of OKCPS's violations of USERRA.

PRAAYER FOR RELIEF

WHEREFORE, McCullough prays that this Court enter judgment against OKCPS and grant the following relief:

- a. Declare that the OKCPS's failure or refusal to renew McCullough's contract and properly reemploy him was unlawful and in violation of USERRA Sections 4311, 4312, and 4313;
- b. Order OKCPS to comply fully with the provisions of USERRA by compensating McCullough for his lost wages and other benefits, including retirement benefits, suffered by reason of OKCPS's violations of USERRA;
- c. Award prejudgment interest to McCullough on the amount of lost wages and benefits due;
- d. Direct OKCPS to reemploy McCullough in the music teacher position he had before he left for military service, or an equivalent position;

- e. Enjoin OKCPS from taking any action with respect to McCullough that fails to comply with USERRA;
- f. Declare that OKCPS's USERRA violation was willful, and award McCullough liquidated damages in an amount equal to his lost wages and interest; and
- g. Grant such other and further relief as may be just and proper together with the costs and disbursements of this lawsuit.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, McCullough hereby demands a trial by jury.

Dated: May 29, 2024

Respectfully submitted:

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