

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARY PAT CAVANAUGH,	*	
CECIL WILSON,	*	
JASPER TYSON, and	*	
RICHARD G. BROTHERS	*	Civil Action File No.
	*	
Plaintiffs,	*	1:04-CV-3418-BBM
	*	
AND ALL THOSE SIMILARLY	*	
SITUATED,	*	
	*	
Putative Opt-in Plaintiffs	*	Jury Trial Demanded
	*	
v.	*	
	*	
SPRINT/UNITED MANAGEMENT	*	
COMPANY,	*	
	*	
Defendant.	*	
	*	

SECOND AMENDED COMPLAINT

Come now Plaintiffs Mary Pat Cavanaugh, Cecil Wilson, Jasper Tyson, and Richard G. Brothers and file their Second Amended Complaint against the above-styled Defendant, as follows:

INTRODUCTION

1.

This is an opt-in representative action brought pursuant to the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.* (hereinafter the "ADEA"). The defendant persistently discriminated against the named plaintiffs and

all similarly situated employees over the age of 40 terminated between April 1, 2003 and May 31, 2004, under the guise of reduction-in-work force plans that, in actuality, targeted older workers protected from such age-based job actions by the ADEA and employed criteria, practices, and policies that had a significantly disparate impact on older workers on the basis of age. Defendant willfully disregarded a known disparate impact, either because unlawful age discrimination met Defendant's intended purpose or it was indifferent to the federally protected rights of the affected employees or both.

JURISDICTION AND VENUE

2.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 for Plaintiffs' claims under 29 U.S.C. § 621, *et seq.*

3.

Venue is proper in this judicial district and division, as Defendant does business in this judicial district and division, is a corporation licensed to do business in the State of Georgia, and the cause of action for the named Plaintiff, Mary Pat Cavanaugh, arose here.

PARTIES

4.

Plaintiff Mary Pat Cavanaugh is a resident of this judicial district who is entitled to bring actions of this type and nature. She was employed by Defendant from May 1987 through November 2003.

5.

Plaintiff Cecil Wilson is a resident of North Carolina who is entitled to bring actions of this type and nature. He was employed with Sprint for 31 years. At the time of his layoff, November 14, 2003, he was 55 years old

6.

Plaintiff Jasper Tyson is a resident of North Carolina who is entitled to bring actions of this type and nature. He was employed with Sprint for over 28 years. At the time of his layoff, November 14, 2003, he was 52 years of age.

7.

Plaintiff Richard G. Brothers is a resident of Ohio who is entitled to bring actions of this type and nature. He was employed with Sprint for approximately ten years. His date of birth is May 29, 1942, such that, at the time of his layoff in November of 2003, such that he was 61 years of age at the time.

8.

Defendant Sprint/United Management Company [hereinafter “Sprint” or “Defendant” or “the company”] is a Kansas Corporation doing business in the State

of Georgia. Defendant may be served with process pursuant to Rule 4 of the Federal Rules of Civil Procedure through its registered agent for service of process, Prentice Hall Corporation System, Inc., 40 Technology Park South, Norcross, Georgia 30092.

FACTUAL ALLEGATIONS

Plaintiff Mary Pat Cavanaugh:

9.

Plaintiff Cavanaugh was hired by Defendant Sprint as a Residential Customer Service Representative in 1987. She was working as a Technical Applications Consultant at the time of her termination on November 18, 2003. Plaintiff Cavanaugh's date of birth is June 29, 1953, such that she was fifty (50) years of age at the time of her termination.

10.

On November 18, 2003, Plaintiff Cavanaugh was notified by Ms. Lisa Gregory, Acting Director of the Integrated Service Organization, that she had been selected for termination as a result of a reduction in force. As part of her separation benefits, Plaintiff Cavanaugh was afforded outplacement services through Right Management Consultants.

11.

The day before Plaintiff Cavanaugh's termination, November 17, 2003, Mr. Elston Kirk was introduced as a newly hired Technical Applications Consultant. Mr.

Kirk was, at the time, in his early 30's and is substantially younger than Plaintiff Cavanaugh.

12.

During the two-day seminar by Right Management Services which Plaintiff Cavanaugh attended, the seminar leader looked around the room at the individuals who had been selected for termination and stated that it appeared that the Sprint had discriminated against the terminated employees on the basis of age.

Plaintiff Cecil Wilson:

13.

At the time of his layoff, November 14, 2003, Plaintiff Wilson was a Level 77 Senior Engineer. Mr. Wilson was promoted to Level 77 in August of 2002.

14.

Four employees were let go in the group in which both Plaintiffs Wilson and Tyson worked; all four were over the age of 50. There were approximately 25 employees in the local group, National Network Engineering. At the time of his termination, Plaintiff Wilson was responsible for call center networking; following his layoff, his duties were divided among two employees who were under 40.

15.

Plaintiff Wilson filed a charge of age discrimination with the EEOC on March 1, 2004 and received notice of right to sue less than 90 days prior to the filing of this Second Amended Complaint.

16.

Approximately six months prior to Plaintiffs Wilson and Tyson being laid off, Mr. Bob Loundsberry was demoted from a manager level 78 to a level 77 Senior Engineer position, ensuring that he would not be laid off. This caused the engineering group to be supervised by only Mr. Jerry Odum. Approximately 30 to 60 days prior to the time Plaintiff Wilson was laid off, Mr. Mike Szafran, in his mid-40's, was Mr. Wilson's supervisor. Mr. Szafran was demoted to a "safe position" of level 77, and he assumed Plaintiff Tyson's position the day after Mr. Tyson was laid off.

17.

Mr. Wilson was earning \$73,376.50 per year plus full benefits at the time of his termination. He was unemployed for 14 months thereafter.

Plaintiff Jasper Tyson:

18.

Plaintiff Tyson was employed in the same work group as Mr. Wilson and reported to the same supervisor, Mr. Odom. At the time of his termination, Plaintiff Tyson was a Senior Network Engineer. He was 52 years old when he was laid off on November 14, 2003. He worked for Sprint for over 28 years. He was earning \$79,780.00 per year at the time of his layoff.

19.

In 2002, Mr. Tyson was told by his superior, Mr. Luther Ipock, that he (Tyson) had received the highest performance evaluation score of the entire local network

engineering group. He also received the Sprint Most Valued Employee award that same year.

20.

Plaintiff Tyson filed a charge of age discrimination with the EEOC within 180 days of his notice of termination and received notice of right to sue less than 90 days prior to the filing of this Second Amended Complaint.

21.

While both Plaintiffs Wilson and Tyson were laid off by Defendant, a similarly-situated employee, Mr. Steve Divins, had taken photographs of a cubicle in the office that had been bombed by an employee, which ultimately ended up on the local TV news, and for which he was ultimately paid. Defendants' central human resources department determined that he be dismissed, and he was for one week. Mr. Ipock, then manager of NNE, "went to bat" for Mr. Divins, and he was reinstated. Mr. Divins is in his early 40's and was on probation at the time Plaintiffs Wilson and Tyson were laid off.

Plaintiff Richard G. Brothers:

22.

Plaintiff Richard G. Brothers was employed as a Sales Executive as of the time of his termination. He was 61 years old when he was laid off on in November of 2003. Mr. Brothers was a top producing sales employee and was terminated while younger, less productive sales employees performing the same duties were retained.

23.

Mr. Brothers filed a charge of discrimination with the EEOC on June 25, 2004. Plaintiff Brothers' charge of age discrimination was timely with the EEOC in the relevant Ohio EEOC office within 300 days of his notice of termination and received notice of right to sue less than 90 days prior to the filing of this Second Amended Complaint.

Allegations Generally Applicable to the Class

24.

In a "Town Hall" meeting broadcast nationally to Defendant's employees prior to the 2003 layoffs and in the context of a discussion of the impending layoffs, Mr. Jim Hanson, Senior Vice President of LTD Network said, that he was concerned about the fact that the company's work force was aging and the impact on Sprint if these employees were to retire en masse.

25.

On information and belief, 2339 employees over the age of forty were terminated during the reductions in force at issue in this case.

26.

Defendant Sprint used the reduction in force as a scheme for terminating older employees on the basis of age and therefore employed criteria in selecting employees for reduction in force either for the purpose of unlawfully discriminating against

employees on the basis of age or, in the alternative, which had the effect of unlawfully discriminating against employees on the basis of age.

27.

Plaintiffs have filed timely EEOC charges of discrimination on the basis of age, and Plaintiffs have received notices of right to sue, which charges are sufficient to encompass the claims set forth herein.

28.

This case should be certified as an opt in representative class action because all plaintiffs and members of the putative class were victims of the same age motivated purge of employees that occurred between April 1, 2003 and June 1, 2004 or, in the alternative, were subjected to the same . Defendant pursued policies and practices which discriminated against employees over the age of 40, including, but not limited to: (1) transferring younger employees to “safe” positions, i.e., positions which would not be subject to a reduction in force; (2) identifying younger employees as “key” talent in order to protect them from evaluation for reduction in force; (3) transferring older employees to positions and departments which were going to be eliminated, for the purpose of ensuring that they were terminated as a result of the reduction in force; (4) filling open positions immediately prior to the reduction in force and then terminating older employees, such as Plaintiffs Cavanaugh and Tyson, who were performing the same duties; (5) selectively imposing reductions in force on business units and/or sub-units which had a higher percentage of older employees;

and (6) terminating older employees based on the stereotypical assumption that such employees were either likely to leave Sprint's employment sooner and/or have higher medical expenses. Plaintiffs anticipate, during discovery in this case, that additional aspects of Defendant Sprint's reduction in force process which also were intended to eliminate older employees will come to light and this is not intended to constitute a complete list of all facts supporting this "disparate treatment" claim. Defendant's actions were taken for the purpose of reducing the number older employees who would otherwise have remained in its work force.

29.

Even if Defendant Sprint's termination of older employees was not "because of [each] such individual's age," Defendant Sprint employed criteria in selecting employees for reduction in force which had a disparate impact on older employees on the basis of age and which were not based on "reasonable factor[s] other than age." Defendant had actual knowledge of the disparate impact on older employees and failed to undertake to validate the criteria employed in selecting employees for termination as being job related or consistent with business necessity or constituting "reasonable factors other than age."

30.

As illustrative examples of several of the mechanisms by which Defendant Sprint's reduction in force process had and/or contributed to a "disparate impact" on older employees in the terminations at issue are the following:

- a. Sprint terminated numerous older employees who were over the age of forty and, in making that decision, may have relied on the fact that such individuals had utilized leave protected under the FMLA and/or utilized temporary disability and/or other medical benefits. Reliance on such factors would tend to have a disparate impact on older employees because of the increase health problems associated with the aging process and would not be “reasonable” as, inter alia, it is independently unlawful under the FMLA, ERISA, and/or the ADA.
- b. Sprint terminated numerous older employees who were over the age of forty and, in making that decision, relied on the fact that these older employees were more likely use of medical insurance benefits. Reliance on such factors would tend to have a disparate impact on older employees because of the increase health problems associated with the aging process and would not be “reasonable” as, inter alia, it is independently unlawful under the FMLA, ERISA, and/or the ADA. While such conduct may constitute disparate treatment on the basis of “such individual’s age,” in the alternative, such conduct would not be a “reasonable factor other than age” and, therefore, would state a claim for “disparate impact” age discrimination.
- c. Sprint selected for reductions in force those business units and sub-units which had a higher percentage of older employees, which selection

would tend to have a disparate impact on older employees by increasing the likelihood that older employees would be fired. While such conduct may constitute disparate treatment on the basis of “such individual’s age,” in the alternative, such conduct would not be a “reasonable factor other than age” and, therefore, would state a claim for “disparate impact” age discrimination.

- d. Sprint hired and/or promoted employees into business units in such a way as to overstaff those business units and then immediately thereafter relied on the purported overstaffing of such business units as a basis for conducting a reduction in force. While such conduct may constitute evidence of disparate treatment on the basis of age, in the alternative, such deliberate overstaffing with younger employees with a period of a day to three weeks of terminating longer term older employees on the basis of such overstaffing is neither “reasonable” nor a “factor other than age” and, therefore, would state a claim for “disparate impact” age discrimination.
- e. Sprint relied on entirely subjective, selectively applied, unwritten, and poorly defined criteria for the selection of employees during the reductions in force at issue in this case during and immediately after informing its managerial employees that various work units were overstaffed with older employees and that, if all of those employees

retired upon reaching retirement eligibility, Sprint would lose skills associated with those older employees. As a result, Sprint's managers were encourage to come up with ways to spread the loss of these employees over a longer period of time, which could only be accomplished by the termination of older employees and their replacement, on Sprint's schedule, with younger employees. While such conduct may constitute evidence of disparate treatment on the basis of age akin to the establishment of a mandatory retirement age, in the alternative, Sprint's use entirely subjective, selectively applied, unwritten, and poorly defined criteria for the selection of employees during the reductions in force at issue in this case while, at the same time, giving its managerial employees an incentive to eliminate older employees would tend to have a disparate impact on older employees and is neither "reasonable" nor a "factor other than age" and, therefore, would state a claim for "disparate impact" age discrimination.

Plaintiffs anticipate, during discovery in this case, that additional aspects of Defendant Sprint's reduction in force process which also had or contributed to the disparate impact on older employees will come to light and this is not intended to constitute a complete list of all facts supporting this "disparate impact" claim.

31.

The claims of the named plaintiffs are representative of the class as a whole because each of them is over the age of 40 and was included in the unlawful discriminatory purge of employees carried out through the reductions force in question. The relief sought by the plaintiffs is also typical of the relief which is sought on behalf of the putative class(es). In short, the defendant's age motivated purge of older employees was a scheme directed at and/or which similarly effected all Plaintiffs and members of the putative class(es) on the basis of age and amounts to class-wide discrimination.

32.

The plaintiffs and all putative class members have been and are similarly adversely affected by the discriminatory practices complained of herein. Specifically, the plaintiffs' claims, like those of the putative class members, arise out of the defendant's discriminatory termination practices which were instituted and carried out on a class-wide basis.

33.

Those members of the putative class(es) who did not file timely EEOC Charges of Discrimination are allowed to "piggyback" on the Charge of Discrimination filed by one or more of the named plaintiffs.

34.

Defendant acted, refused to act, and continue to act on grounds generally applicable to the class by adopting and following policies, practices, and procedures which discriminate on the basis of age. Defendant acted in a manner generally applicable to the class as set forth above.

35.

The relief necessary to remedy the claims of the plaintiffs is the same as that necessary to remedy the claims of the class. The plaintiffs seek, *inter alia*, the following equitable relief for her individual claims and those of the class:

- (a) a declaratory judgment that Defendant engaged in wilful age discrimination;
- (b) a permanent injunction against such continuing discrimination;
- (c) reinstatement for Plaintiffs and members of the putative class to former positions with all seniority, pension and other benefit rights or front pay;
- (d) back pay, and other incidental monetary remedies necessary to make the plaintiffs and the class members whole from Defendant's discrimination;
- (e) Liquidated damages; and
- (f) costs of this litigation and attorneys' fees.

COUNT I
(Age Discrimination)

36.

The foregoing paragraphs one (1) through thirty-four (34) are incorporated by this reference.

37.

Plaintiffs have complied with all administrative prerequisites for this suit.

38.

The named plaintiffs and members of the putative class are over the age of 40 and were terminated pursuant to Defendant's reduction-in-force plan.

39.

During the reduction-in-force, Defendant hired and/or retained employees under the age of 40 who were less qualified than Plaintiffs.

40.

The defendant's termination of Plaintiffs and each member of the putative class was a part of a scheme to eliminate older workers from the defendant's work force. The discrimination against older employees, such as the plaintiffs, constitutes a pervasive and continuing pattern of discrimination in employment on the basis of age.

41.

Even if Defendant Sprint's termination of older employees was not "because of [each] such individual's age," Defendant Sprint employed criteria in selecting

employees for reduction in force which had a disparate impact on older employees on the basis of age and which were not based on “reasonable factor[s] other than age.” Defendant had actual knowledge of the disparate impact on older employees and failed to undertake to validate the criteria employed in selecting employees for termination as being job related or consistent with business necessity or constituting “reasonable factors other than age.”

42.

The above-described conduct of Defendant constitutes a willful violation of the ADEA.

43.

As a direct and proximate result of Defendant's conduct, Plaintiffs and the putative class members were denied equal employment opportunities with Sprint based upon their age. They are entitled to their full make-whole relief, including, without limitation, back pay, reinstatement or front pay, prejudgment interest, promotions, retroactive seniority, enhanced retirement benefits, actual damages, and liquidated damages.

44.

Plaintiffs and the putative class members are entitled to an award of the reasonable attorneys' fees, out of pocket expenses, and costs incurred in bringing and maintaining this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court:

- (A) Take jurisdiction of this matter;
- (B) Pursuant to the authority of the ADEA permanently enjoin Defendant and its agents from future discriminatory acts relative to the named plaintiffs and the plaintiff class;
- (C) Award back pay to the plaintiffs and members of the class from the date of termination to the date of trial;
- (D) Order reinstatement of Plaintiffs and class members to their former positions, or comparable positions, with full seniority, pension contributions, benefits and pay; or, in the alternative, an award of front pay;
- (E) Award the plaintiffs and the class members liquidated damages against Defendant in an amount equal to their back pay and other lost wages award;
- (F) Award pre-judgment interest on all back pay;
- (G) Award Plaintiff and the class members costs and expenses of this action, including reasonable attorneys' fees as authorized by law;
- (H) Grant trial by jury; and
- (I) Such other and further relief as the court deems just, equitable and proper.

Respectfully submitted,

/s Matthew C. Billips
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