

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED-ED4
02 JAN 11 PM 3:21
U.S. DISTRICT COURT

JOHN MCGEE and
THOMAS MALONE,

Plaintiffs,

v.

ILLINOIS DEPARTMENT OF
TRANSPORTATION,
KENNETH CHLEBICKI,
DENNIS MAHONEY,
JOHN KOS, and

Defendants,

DOCKETED

JAN 14 2002

02C 0277

No.

JUDGE PLUNKETT

JURY TRIAL DEMANDED

MAGISTRATE JUDGE BOBRICK

COMPLAINT

Plaintiffs John McGee and Thomas Malone, by their attorneys, bring this action for violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e *et seq.*, as amended; 42 U.S.C. §1981; and 42 U.S.C. §1983 against the above-named defendants and allege as follows:

BACKGROUND

1. In 1996, defendant Illinois Department of Transportation (“IDOT”) was sued by a group of African-American workers (including both plaintiffs in this action) for race discrimination in violation of Title VII and Sections 1981 and 1983 on behalf of a class of similarly-situated individuals. This lawsuit, *Massie, et al. v. IDOT, et al.*, No. 96 C 4830 (N.D.Ill.), was settled in 2000, and a consent decree was entered by Magistrate Judge Schenkier on June 12, 2000.

2. After the entry of the consent decree, the two plaintiffs in this action, both of whom were class representatives in the *Massie* case, were promoted to higher positions under the decree and took part in implementing other aspects of the decree. They immediately began to experience

race discrimination, harassment, and retaliation as a result of their promotions, their participation in the consent decree, and their opposition to the discrimination, harassment and retaliation that commenced by IDOT officials who were not parties to the *Massie* lawsuit.

3. The plaintiffs bring this action seeking injunctive, compensatory, punitive and other relief.

PARTIES

4. Plaintiff John McGee is an African-American male who resides in Chicago, Illinois. He is employed by the Illinois Department of Transportation as a Lead Worker in the Stevenson yard. He filed an EEOC charge on April 20, 2001 and received his right to sue letter on October 17, 2001. Mr. McGee is an “employee” for the purposes of 42 U.S.C. §2000e(f).

5. Plaintiff Thomas Malone is an African-American male who resides in Chicago, Illinois. He is employed by the Illinois Department of Transportation as a Heavy Construction Equipment Operator (“HCEO”) in the Kennedy yard. He filed an EEOC charge on December 13, 2001. Mr. Malone is an “employee” for the purposes of 42 U.S.C. §2000e(f).

6. Defendant Illinois Department of Transportation (“IDOT”) is a department of the State of Illinois that was created in 1972 to administer the State of Illinois’ transportation systems and activities. IDOT is an umbrella organization containing several divisions, including the Division of Highways, which oversees nine highway districts throughout the state of Illinois. District 1 contains Cook County and several other counties. The administrative office for District 1 is located at 201 West Center Court, Schaumburg, IL 60196. Both plaintiffs work in yards located in District 1. IDOT is an “employer” for the purposes of 42 U.S.C. §2000e(b).

7. District 1 is divided into several maintenance yards, including the Stevenson yard, where Mr. McGee is employed, and the Kennedy yard, where Mr. Malone is employed. Each yard

is supervised by a Yard Technician. The Yard Technician oversees all operations and personnel in the yard. The hierarchy of positions reporting to the Yard Technician each yard is as follows:

Lead Lead Worker
Lead Worker
Heavy Construction Equipment Operator
Highway Maintainer

8. Defendant Kenneth Chlebicki is a white male who resides in Illinois and is employed by IDOT as a Yard Technician in the Stevenson yard. He occupies a salaried management position.

9. Defendant Dennis Mahoney is a white male who resides in Illinois and is employed by IDOT as a Yard Technician in the Kennedy yard. He occupies a salaried management position.

10. Defendant John Kos is the District Engineer for District 1. He oversees all the activities of District 1, including the Department of EEO and Labor Compliance, Development, Implementation, Operations (which includes the Bureau of Maintenance), and Administrative Services. He supervises the Yard Technicians in each District 1 maintenance yard, including defendants Chlebicki and Mahoney.

11. Each of the defendants had actual notice of the *Massie* Consent Decree (including its anti-retaliation provisions).

JURISDICTION AND VENUE

12. This court has jurisdiction pursuant to 42 U.S.C. §2000e-5(f)(3); 28 U.S.C. §1343(4); and 42 U.S.C. §§1981 and 1983.

13. Venue properly lies in the Northern District of Illinois, Eastern Division, pursuant to 42 U.S.C. §2000e-5(f)(3), because IDOT does business in this judicial district; the plaintiffs work in this district; the unlawful acts alleged in this complaint took place in this district; and the

employment records of the plaintiffs are maintained in this district. Venue also lies pursuant to 28 U.S.C. §1391(b), in that plaintiffs' claims arose in this district.

FACTS

A. John McGee

14. John McGee was promoted to the Lead Worker position on October 5, 2000 pursuant to the *Massie* consent decree. He is one of only two African-American permanent employees in the yard, and he is the only African-American in a supervisory position in the yard. From the first day of his new position as Lead Worker, Mr. McGee experienced hostility, harassment, and retaliation from defendants IDOT and Kenneth Chlebicki (the Yard Technician). The discrimination, harassment and retaliation continue to this date.

15. Mr. McGee has been treated differently than other Lead Workers and has been prevented from performing the duties of his position because of his race and his participation in the *Massie* decree. This differential treatment is severe and pervasive and has materially altered the terms and conditions of his employment.

16. In its 2001 Affirmative Action Plan, IDOT's Equal Employment Office documented the fact that African-American males employed in the Service Maintenance category (which includes the two plaintiffs) "are suspended at a rate much greater than their representation in the workforce." Mr. McGee is a casualty of this practice of disparate disciplinary treatment.

17. Mr. McGee has suffered both physically and emotionally from the effects of the retaliation and harassment. The daily stress is exacerbating his diabetes. Furthermore, he suffers from depression and anxiety and is currently seeking psychiatric treatment for the stress caused by his experiences at IDOT. His daily experience at IDOT since the promotion has been one of humiliation, belittlement, intimidation and threats.

18. Mr. McGee reported the above-described harassment, discrimination and retaliation to the defendants. His first written complaint was in March 2000, and he has reported several other incidents since that date. After he complained, the level of hostility in the yard escalated. Mr. McGee has experienced further incidents of retaliation as a result of opposing the defendants' discriminatory and retaliatory practices.

19. The defendants have thus been on notice that there is an atmosphere of racism and hostility in the Stevenson yard since at least March 2000, yet no steps have been taken to mitigate the problem, and, on information and belief, the defendants have never disciplined anyone in the yard for the incidents detailed in this complaint.

20. The harassment and retaliation have caused Mr. McGee to seek a lateral transfer to another yard. To date, IDOT has not granted his transfer request.

B. Thomas Malone

21. Mr. Malone was promoted to the position of HCEO on September 16, 2000 pursuant to the *Massie* consent decree. From the first day of his new position as HCEO, Mr. Malone experienced hostility, harassment, and retaliation from defendants IDOT and Dennis Mahoney (the Yard Technician). The discrimination, harassment and retaliation continue to this date.

22. Mr. Malone has been treated differently than other HCEOs and has been prevented from performing the duties of his position because of his race and his participation in the *Massie* decree. This differential treatment is severe and pervasive and has materially altered the terms and conditions of his employment.

23. Mr. Mahoney personally makes most of the crew assignments in the yard; he is therefore personally responsible for the discrepancy between the duties of Mr. Malone and Mr. Gabor.

24. Mr. Mahoney treats Mr. Malone with disdain and disrespect on a daily basis and has stated openly that he does not like members of minority groups.

25. Mr. Mahoney frequently uses racial slurs toward African-American and Hispanic workers in the yard. Witnesses in the yard have reported hearing Mr. Mahoney call Mr. Malone "that black motherfucker." Other workers in the yard have reported hearing Mr. Mahoney use the phrases like "that dumb Mexican," "one Puerto Rican is as good as another," and "with blacks you have to work them and work them until they can't think, because they hate Whitey at the helm."

26. Mr. Malone has suffered from the effects of the retaliation and harassment. His daily experience at IDOT since the promotion has been one of humiliation, belittlement, intimidation and threats.

27. Mr. Malone reported the above-described harassment, discrimination and retaliation to the defendants. His first written complaint was in May 2000, and he has reported several other incidents since that date. After he complained, the level of hostility in the yard escalated. Mr. Malone experienced further incidents of retaliation, as detailed above, as a result of opposing the defendants' discriminatory and retaliatory practices.

28. The defendants have thus been on notice that there is an atmosphere of racism and hostility in the Kennedy yard since at least May 2000, yet no steps have been taken to mitigate the problem, and, on information and belief, the defendants have never disciplined anyone in the yard for the incidents detailed in this complaint.

29. In November 2001, IDOT's Civil Rights Committee met and heard live testimony concerning Mr. Malone's complaint. The very next day, he was retaliated against when Mr. Mahoney accused him of causing equipment damage and told him he would face disciplinary action.

30. Other workers in the Kennedy yard who befriended Mr. Malone or cooperated with the investigation of Mr. Malone's complaints have reported retaliation and harassment. At least one other worker experienced harassment so severe that he sought, and obtained, a transfer to another yard.

31. The harassment and retaliation have caused Mr. Malone to seek a lateral transfer to another yard. To date, IDOT has not granted his transfer request.

COUNT I against all defendants
Violation of Section 1981

32. Count I incorporates by reference all the allegations in this complaint.

33. Plaintiffs demand a jury trial.

34. Section 1981 mandates that "[a]ll persons within the jurisdiction of the United States shall have the same right ... to the full and equal benefit of all laws ... as is enjoyed by white citizens." 42 U.S.C. §1981(a).

35. The defendants have willfully and intentionally violated Section 1981 by discriminating against, harassing, and retaliating against the plaintiffs for participating in the *Massie* consent decree and for opposing the acts alleged above. This behavior is part of a pattern and practice of discriminatory, harassing and retaliatory treatment and constitutes a continuing violation.

36. The defendants knew or should have known of this conduct, yet they participated in or tolerated the behavior and failed to take remedial action. The defendants have been on notice since the implementation of the Consent Decree in June 2000 that they were under an obligation to make sure that no retaliation occurred. Furthermore, they have been on notice since at least March 2001 with respect to Mr. McGee's specific allegations and at least May 2001 with respect to Mr.

Malone's specific allegations, yet they took no meaningful action to prevent or eliminate the retaliation, discrimination and harassment, which continues to this date.

37. As a result of the discrimination, harassment and retaliation alleged above, the plaintiffs suffered financial, emotional, and other damages. The willful nature of the practices alleged above, committed with malice or reckless indifference to the federally protected rights of the plaintiffs, warrants punitive damages against the defendants.

WHEREFORE, the plaintiffs respectfully request the following relief:

- a. An order finding and declaring that the defendants retaliated against the plaintiffs in violation of Section 1981;
- b. An order enjoining the defendants from their pattern and practice of retaliation and enjoining continuing violations;
- c. All appropriate damages in an amount to be determined by jury, including:
 - i. Pre- and post-judgment interest;
 - ii. Compensatory damages for past, current and future pecuniary losses;
 - iii. Compensatory damages for nonpecuniary losses, including emotional and physical pain and suffering, inconvenience, humiliation, mental distress, and loss of enjoyment of life; and
 - iii. Punitive damages.
- d. Costs and attorneys' fees, including expert witness fees; and
- e. All other relief that the Court deems just and proper.

COUNT II against all defendants
Violation of Section 1983

38. Count II incorporates by reference all the allegations in this complaint.

39. Plaintiffs demand a jury trial.

40. Section 1983 mandates that “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured” 42 U.S.C. §1983.

41. The defendants have wilfully and intentionally violated Section 1983 by the discrimination and retaliation alleged above, which deprived the plaintiffs of their rights under state and federal civil rights laws and the U.S. Constitution. The individual defendants, as supervisory employees of the State of Illinois, acted under color of state law. The defendants, who are the plaintiffs’ direct supervisors or the supervisor of other defendants, either participated in directly or knew of the discriminatory and retaliatory conduct alleged above. The defendants knew of this conduct for several months, yet they failed to act to prevent future harm, and, indeed, continued to engage in or tolerate the discriminatory and retaliatory behavior after the plaintiffs began to pursue their complaints and failed to take remedial action.

42. The defendants have been on notice since the implementation of the Consent Decree in June 2000 that they were under an obligation to make sure that no retaliation occurred. Furthermore, they have been on notice since least March 2001 with respect to Mr. McGee’s specific allegations and at least May 2001 with respect to Mr. Malone’s specific allegations, yet they took

no meaningful action to prevent or eliminate the retaliation, discrimination and harassment, which continues to this date.

43. As a result of the discrimination and retaliation alleged above, the plaintiffs suffered financial, emotional, and other damages. The willful nature of the practices alleged above, committed with malice or reckless indifference to the federally protected rights of the plaintiffs, warrants punitive damages against the defendants.

WHEREFORE, the plaintiffs respectfully request the following relief:

- a. An order finding and declaring that the defendants retaliated against the plaintiffs in violation of Section 1983;
- b. An order enjoining the defendants from their pattern and practice of retaliation and enjoining continuing violations;
- c. All appropriate damages in an amount to be determined by jury, including:
 - i. Pre- and post-judgment interest;
 - ii. Compensatory damages for past, current and future pecuniary losses;
 - iii. Compensatory damages for nonpecuniary losses, including emotional and physical pain and suffering, inconvenience, humiliation, mental distress, and loss of enjoyment of life; and
 - iii. Punitive damages.
- d. Costs and attorneys' fees, including expert witness fees; and
- e. All other relief that the Court deems just and proper.

COUNT III against IDOT
Violation of Title VII for race discrimination

44. Count III incorporates by reference all the allegations in this complaint.

45. Plaintiffs demand a jury trial.

46. Title VII proscribes “discriminat[ion] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex or national origin.” 42 U.S.C. §2000e-2(a).

47. IDOT willfully violated Title VII through the discriminatory practices described above, to the detriment of the plaintiffs. These discriminatory practices are part of a pattern and practice of discrimination and constitute a continuing violation.

48. Furthermore, IDOT created and/or allowed to exist a continuing hostile work environment for the plaintiffs. Racial slurs and other discriminatory behavior as alleged above had the purpose and effect of creating an intimidating, hostile and offensive work environment and had an adverse effect on the plaintiffs’ ability to do their jobs.

49. IDOT knew or should have known of this conduct, yet it tolerated the behavior and failed to take remedial action. IDOT has been on notice since the implementation of the Consent Decree in June 2000 that it was under an obligation to make sure that no retaliation occurred. Furthermore, IDOT has been on notice since least March 2001 with respect to Mr. McGee’s specific allegations and at least May 2001 with respect to Mr. Malone’s specific allegations, yet it took no meaningful action to prevent or eliminate the retaliation, discrimination and harassment, which continues to this date.

50. As a result of the discrimination and harassment alleged above, the plaintiffs suffered financial, emotional, and other damages. The willful nature of the practices alleged above,

committed with malice or reckless indifference to the federally protected rights of the plaintiffs, warrants punitive damages.

WHEREFORE, the plaintiffs respectfully request the following relief:

- a. An order finding and declaring that IDOT discriminated against the plaintiffs in violation of Title VII;
- b. An order enjoining IDOT from its pattern and practice of discrimination and enjoining continuing violations;
- c. All appropriate damages in an amount to be determined by jury, including:
 - i. Pre- and post-judgment interest;
 - ii. Compensatory damages for past, current and future pecuniary losses;
 - iii. Compensatory damages for nonpecuniary losses, including emotional and physical pain and suffering, inconvenience, humiliation, mental distress, and loss of enjoyment of life; and
 - iii. Punitive damages.
- d. Costs and attorneys' fees, including expert witness fees; and
- e. All other relief that the Court deems just and *proper*.

COUNT IV against IDOT
Violation of Title VII for retaliation

51. Count IV incorporates by reference all the allegations in this complaint.
52. Plaintiffs demand a jury trial.

53. Title VII proscribes “discriminat[ion] against any individual ... because he has opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under [Title VII]. 42 U.S.C. §2000e-3(a).

54. IDOT has willfully violated Title VII by retaliating against the plaintiffs for participating in the *Massie* consent decree and for opposing the discriminatory and retaliatory acts alleged above. This retaliation is part of a pattern and practice of retaliatory treatment and constitutes a continuing violation.

55. IDOT knew or should have known of this conduct, yet it tolerated the behavior and failed to take remedial action. IDOT has been on notice since the implementation of the Consent Decree in June 2000 that it was under an obligation to make sure that no retaliation occurred. Furthermore, it has been on notice since least March 2001 with respect to Mr. McGee’s specific allegations and at least May 2001 with respect to Mr. Malone’s specific allegations, yet it took no meaningful action to prevent or eliminate the retaliation, discrimination and harassment.

56. As a result of the retaliation alleged above, the plaintiffs suffered financial, emotional, and other damages. The willful nature of the practices alleged above, committed with malice or reckless indifference to the federally protected rights of the plaintiffs, warrants punitive damages.

WHEREFORE, the plaintiffs respectfully request the following relief:

- a. An order finding and declaring that IDOT retaliated against the plaintiffs in violation of Title VII;
- b. An order enjoining IDOT from their pattern and practice of retaliation and enjoining continuing violations;
- c. All appropriate damages in an amount to be determined by jury, including:

- i. Pre- and post-judgment interest;
 - ii. Compensatory damages for past, current and future pecuniary losses;
 - iii. Compensatory damages for nonpecuniary losses, including emotional and physical pain and suffering, inconvenience, humiliation, mental distress, and loss of enjoyment of life; and
 - iii. Punitive damages.
- d. Costs and attorneys' fees, including expert witness fees; and
 - e. All other relief that the Court deems just and proper.

Respectfully submitted,



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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOCKETED
JAN 14 2002

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Northern District of Illinois.

Plaintiff(s): John McGee and Thomas Malone

Defendant(s): Illinois Department of Transportation,
Kenneth S. Chlebicki, Dennis A. Mahoney, John Kos

County of Residence: Cook

County of Residence: Cook

Plaintiff's Atty: Jamie S. Franklin and Michael M. Mulder
Meites Mulder Burger & Mollica
208 S. LaSalle St., Ste. 1410, Chicago,
IL 60604
(312) 263-0272

Defendant's Atty:

02C 0277

II. Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

JUDGE PLUNKETT

III. Citizenship of Principle Parties
(Diversity Cases Only)

MAGISTRATE JUDGE BOBRICK

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : 1. Original Proceeding

V. Nature of Suit: 442 Employment

VI. Cause of Action: Title VII of the Civil Rights Act of 1964, 42 U.S.C Section 1981 and 1983;
Plaintiffs seek relief against Defendants for race discrimination, retaliation and harassment.

VII. Requested in Complaint

Class Action: No
Dollar Demand:
Jury Demand: Yes

VIII. This case **IS NOT** a refiling of a previously dismissed case.

Signature:

Date: 1/11/02

U.S. DISTRICT COURT
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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

Eastern Division

DOCKETED
JAN 14 2002

In the Matter of

John McGee and Thomas Malone

v.

Illinois Department of Transportation, Kenneth S. Chlebicki, Dennis A. Mahoney, and John Kos

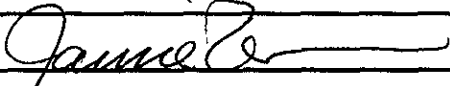
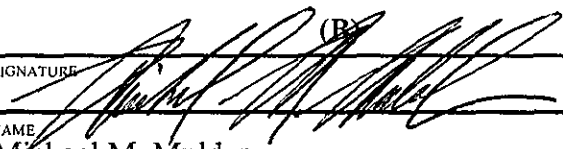
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APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

JUDGE PLUNK

John McGee and Thomas Malone, Plaintiffs

MAGISTRATE JUDGE BOBR

(A)			(B)		
SIGNATURE 			SIGNATURE 		
NAME Jamie S. Franklin			NAME Michael M. Mulder		
FIRM Meites Mulder Burger & Mollica			FIRM Same as Attorney (A)		
STREET ADDRESS 208 South LaSalle Street, Suite 1410			STREET ADDRESS		
CITY/STATE/ZIP Chicago, IL 60604			CITY/STATE/ZIP		
TELEPHONE NUMBER (312) 263-0272			TELEPHONE NUMBER		
IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 6242916			IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 01984268		
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			DESIGNATED AS LOCAL COUNSEL? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>		
(C)			(D)		
SIGNATURE			SIGNATURE		
NAME			NAME		
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STREET ADDRESS			STREET ADDRESS		
CITY/STATE/ZIP			CITY/STATE/ZIP		
TELEPHONE NUMBER			TELEPHONE NUMBER		
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U.S. DISTRICT COURT