

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JULIE SU, ACTING SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

v. :

Red Lion Controls, Incorporated :

and :

Katie Miller, an individual, :

Defendants. :

Civil Action No. _____

DEMAND FOR JURY

COMPLAINT

Plaintiff, Julie Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), brings this action to enjoin Defendant Red Lion Controls, Incorporated (“Red Lion”), and Defendant Katie Miller (“Miller”) (referred to collectively as “Defendants”) from violating the provisions of Section 11(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 (“Act”), for a judgment against Defendants for: back wage losses suffered by Complainant Frank Jaslow (“Jaslow”) together with pre- and post- judgment interest thereon; all other compensatory damages suffered by Jaslow; punitive damages; and for all other appropriate relief including reinstatement of Jaslow into his former position.

Parties

1. The Secretary is authorized to bring this action against Defendants pursuant to Section 11(c)(2) of the Act. 29 U.S.C. § 660(c)(2).

2. At all relevant times, Defendant Red Lion has been a global company engaged in manufacturing and support. Its worldwide headquarters are located at 1750 5th Avenue, York, Pennsylvania.

3. At all relevant times, Defendant Miller was the Receiving Supervisor for Red Lion at its facility located at 20 Willow Springs Circle, York, Pennsylvania.

Jurisdiction and Venue

4. Venue with respect to this action lies in the United States District Court for the Middle District of Pennsylvania because: Defendant Red Lion is located in York, Pennsylvania, 28 U.S.C. §§ 1391(b)(1) and 1391(c)(2); and all events or omissions giving rise to the claim occurred in York, Pennsylvania, 28 U.S.C. §§ 1391(b)(2).

5. At all relevant times, Defendant Red Lion was a “person” within the meaning of Sections 3(4) and 11(c)(1) of the Act, 29 U.S.C. §§ 652(4) and 660(c)(1), because it is a corporation.

6. At all relevant times, Defendant Red Lion was an “employer” within the meaning of Section 3(5) of the Act, 29 U.S.C. § 652(5), because it is a “person” engaged in a business affecting trade, traffic, commerce, transportation, or communication between the Commonwealth of Pennsylvania and states outside of the Commonwealth who has employees.

7. At all relevant times, Defendant Miller was a “person” within the meaning of Sections 3(4) and 11(c)(1) of the Act, 29 U.S.C. §§ 652(4) and 660(c)(1), because she is an individual.

8. At all relevant times, Jaslow was an “employee” within the meaning of Sections 3(6) and 11(c)(1) of the Act, 29 U.S.C. §§ 652(6) and 660(c)(1), because he was employed by Defendant Red Lion.

General Allegations

9. At all times relevant hereto, Defendants operated a facility in York, Pennsylvania that served as a warehouse.

10. Complainant Frank Jaslow was hired by Defendant Red Lion on April 30, 2018. His duties included unloading delivered items and organizing the aisles in which the items were stored. Jaslow was required to access skids sitting on racks above the ground and would use a ladder to access the raised rack if the task involved quick placement or removal of easily accessible items on the skid.

11. On occasion, Jaslow would be assigned to place heavier items on the skid. Because these assignments posed safety risks, Jaslow would enlist the help of colleagues who were certified to operate forklifts to place the items.

12. On January 18, 2019, Jaslow was preparing to stock items but reported to his supervisor, Kim Klahold (“Klahold”), that in order to complete the task he would be unable to maintain three points of contact. Applicable safety laws require employees to maintain three points of contact to manage a ladder safely (29 C.F.R. §§ 1910.23(b)(11), (12), and (13)).

13. Klahold then informed her supervisor, Kayla Singleton, of Jaslow’s report. Defendant Katie Miller was present during this discussion.

14. Defendant Miller confronted Jaslow about not stocking the items, and Jaslow reported the same safety concerns to Miller regarding his inability to maintain

three points of contact while managing the ladder with this load. Jaslow stated that a forklift would be needed.

15. Defendant Miller responded that the task could “easily” be done while on a ladder and suggested that other employees were able to complete the task using a ladder.

16. Jaslow reiterated his concerns and Miller responded that she was reporting Jaslow to “HR”.

17. On January 22, 2019, Jaslow had a meeting with Human Resources Representative Korri Colon and was presented with a termination letter alleging that Jaslow refused to complete the task and that he had told Miller “[t]hat’s not my job”. Further, the letter stated that Jaslow had a short temper, had a “disinterest in being a team player,” and was involved in a “heated exchange with Miller on January 18, 2019.”

18. Defendants claim that Jaslow was offered the opportunity to perform the task in a safe manner with a forklift.

19. Jaslow denies all of the statements in the termination letter and states that he was trying to explain the unsafe manner of the task. Jaslow further denies that he was offered a safe way to complete the task.

20. Jaslow filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on January 25, 2019, alleging retaliation under the Act.

21. Jaslow engaged in protected activities when he reported to his supervisor that his duties required him to lose three points of contact with the ladder on January 18, 2019.

22. On February 3, 2019, Defendants received notice that Jaslow had filed a Section 11(c) complaint.

23. The Secretary investigated said complaint in accordance with Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2), and determined that Defendants had violated Section 11(c) of the Act.

24. Among other things, the Secretary found evidence that Defendants treated Jaslow more harshly than comparable employees who did not engage in protected activities.

Violations of the Act

25. The Secretary incorporates by reference paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. Jaslow 's activities described in paragraphs 12, 14, and 16 represent the exercise of rights afforded by the Act and constitute activities that are protected by the Act.

27. Defendants terminated Jaslow 's employment because he exercised rights and engaged in activities protected by the Act, in violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

Relief Sought

WHEREFORE, cause having been shown, the Secretary requests a trial by jury, and further prays for judgment:

a. Permanently enjoining and restraining Defendants, their officers, agents, servants, employees and those persons in active concert or participation with them, from violating the provisions of Section 11(c) of the Act;

b. For all appropriate relief, including reinstatement, payment to Jaslow for lost wages and benefits, that resulted from his termination, and prejudgment and post-judgment interest thereon, as authorized by Section 11(c) of the Act;

c. Ordering Defendants to pay Jaslow damages for emotional distress, pain and suffering, and all other expenses he incurred as a result of Defendants' unlawful actions;

d. Ordering Defendants to pay Jaslow an appropriate amount of punitive damages;

e. Directing Defendants to expunge any records with respect to Jaslow's termination;

f. Ordering Defendants to post in a conspicuous place in the facility for a period of not less than 60 days a copy of the decree entered in this case and a notice that Defendants will not discriminate against any employee for engaging in activities protected by Section 11(c) of the Act;

g. Directing Defendant Red Lion to provide training for all of its employees, management and non-management, about workers' rights under the Act including, but not limited to, the Act's anti-retaliation provision;

h. Ordering Defendants to compensate the Secretary for all costs incurred in this litigation; and

- i. Ordering all other relief the Court deems appropriate.

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