

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

MARCUS STAPLES,

Plaintiff,

v.

**B&K TECHNOLOGY SOLUTIONS INC.,
d/b/a ADVANCED TECHNOLOGY
RECYCLING, INC.,**

Defendant.

Civil Case No. 3:22-cv-31

JURY TRIAL DEMANDED

COMPLAINT

NOW COMES Marcus Staples, by counsel, and for his Complaint against the Defendant, B&K Technology Solutions, Inc., d/b/a Advanced Technology Recycling, Inc., states as follows:

NATURE OF THE CASE

1. This is an employment discrimination case alleging a racially-hostile work environment and retaliation pursuant to 42 U.S.C. § 1981, as amended by the Civil Rights Act of 1991.

PARTIES AND JURISDICTION

2. Marcus Staples is a resident of Richmond, Virginia. Mr. Staples is African-American.

3. B&K Technology Solutions Inc., d/b/a Advanced Technology Recycling (“ATR” or “Defendant”) is an electronics recycling company with multiple locations nationwide, providing services including media sanitation, shredding of electronic devices, wiping software, asset recovery, and secure destruction to government, military, and private customers. ATR is headquartered in Pontiac, Illinois.

4. Mr. Staples was employed by ATR, and at all relevant times he had a contractual relationship with ATR within the meaning of 42 USC § 1981, as amended by the Civil Rights Act of 1991.

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1343.

6. Venue is proper in the Eastern District of Virginia pursuant to the general venue statute, 28 U.S.C. § 1391, because the conduct complained of herein took place in Richmond, Virginia.

Harassment Against Mr. Staples

7. Mr. Staples began working for Defendant ATR as an electronics demanufacturer in October 2018 at its Richmond, Virginia warehouse.

8. During 2019 his supervisor was Site Manager Shaneka Butts.

9. Josh Bennington, a Project Manager for ATR, was present at the warehouse for several weeks at a time, and then spent several weeks at other ATR sites before returning.

10. Bennington racially harassed Plaintiff Staples on a near-daily basis whenever Bennington was at the worksite.

11. For instance, a Caucasian former coworker of Mr. Staples states under oath: “I heard project manager Josh Bennington refer to Mr. Staples and other African American workers as “boy” and/or “boys” on a daily basis throughout 2019. As the only white worker, Josh referred to me as [B] or Mr. G[]¹. He never called the African American workers by their given names.” Ex. A, Declaration of B.G. at ¶3.

12. Another of Mr. Staples’ former coworkers, J.A., states under oath: “Project Manager Josh Bennington was present in the warehouse for several weeks at a time, and

¹ These witnesses' identities are being kept private for purposes of the Complaint, but will be disclosed to Defendant as needed.

whenever he was there, I heard him call me, Marcus, and other African-American employees in the warehouse “boy” on a near-daily basis. He also called the African-American workers “my boys” and “you sons of bitches.” Josh never called [B.G.], the only white worker, “boy” or “my boy.” I told Josh not to call me and the other African-American workers these names, but he continued to do it whenever he was at the warehouse. Ex. B, Declaration of J.A. at ¶¶4-7.

13. Another former coworker states under oath: “Project Manager Josh Bennington came back and forth between our warehouse and other sites, each time staying for a few weeks at a time, and then working elsewhere for a few weeks. Whenever he was at our warehouse, Josh always referred to black employees, including but not limited to Marcus, as “boy” or “boys,” instead of their given names. However, he referred to [B.G.], a white worker, by his real name. He also referred to black workers as “yo yo.” Ex. C, Declaration of A.M. at ¶¶4-6.

14. A fourth former coworker states under oath: “Project Manager Josh Bennington called the African-American employees in the warehouse, including Mr. Staples, “boy” on numerous occasions. For example, in early 2019 Josh told me, ‘boy, if you cut them cable wires again I’m gonna smack the shit out of you.’ I am African-American.” Ex. D, Declaration of L.T. at ¶¶4-5.

15. ATR was on notice of Bennington’s racially offensive conduct throughout 2019: “Shaneka [Butts] heard everything that was said and went on, her office was right on the warehouse floor. It is a small area and there is no way she did not hear Josh’s constant racial slurs toward Mr. Staples and the other African American workers. I was so upset by Josh’s offensive racism, I frequently complained to Shaneka about it myself. During 2019, I complained to Shaneka about Josh’s behavior on approximately a weekly basis, either on my own or with co-

workers. She said she would take care of it, but nothing changed to remedy the situation." Ex. A at ¶¶5-6.

16. In or about April 2019, co-workers witnessed Bennington make extremely racially offensive remarks to Mr. Staples—and then publicly mock him with a racist “gift” the following day.

17. Coworker A.M. stated: "I was present and heard Josh tell Marcus that he is a “monkey,” and that he looks like a monkey and he eats bananas. I also heard Josh make a comment to Marcus to the effect that “I am God and you are not.” Marcus became very upset and told Josh that the things he just said were racist." Ex. C at ¶¶9-11.

18. Coworker J.A. stated: "In or around April 2019 some coworkers came to tell me Josh had just called Marcus a “monkey.” I went over to see Marcus right away and found him very upset. The next day, I saw Josh hand Marcus a ziplock bag of fried chicken. Marcus was extremely upset. I felt this was a totally racist thing to do on Josh’s part, and I will never forget the image of Josh handing Marcus a bag of chicken right after he called him a “monkey.”" Ex. B at ¶¶8-10.

19. Coworker B.G. stated: "I was not present the day Josh called Mr. Staples a “monkey who eats bananas,” however, I was present the very next day when Josh handed Mr. Staples a bag of chicken. I was both shocked and offended by Josh’s extremely racist targeted behavior toward Mr. Staples." Ex. A at ¶4.

20. Coworker L.T. stated: "I was not present on the day Josh called Mr. Staples “monkey,” but I was present on the next day, and saw Josh bring Mr. Staples fried chicken as a mocking “apology.”" Ex. D at ¶6.

21. Mr. Staples complained to his supervisor concerning these events immediately – but she did not even interview all the witnesses to the incident.

22. Coworker A.M. wrote a statement regarding the harassment: "Marcus told me that he complained about these comments [calling him a monkey and comments regarding God] to our manager Shaneka. Shaneka called me in, and I wrote a statement for her about what I heard Josh say." Ex. C at ¶¶12-13.

23. Coworkers J.A. and L.T. were never interviewed at all: "As we were leaving work at the end of that day, Marcus told our supervisor Shaneka Butts that he couldn't believe Josh had offered him a ziplock bag of chicken after calling him a monkey. Shaneka brushed it off, saying "I don't think he meant it like that." Neither Shaneka nor anyone else from management ever interviewed me about Josh's conduct" (Ex. B at ¶¶11-12.); "Mr. Staples told me he had complained to supervisor Shaneka Butts and corporate. However, neither Shaneka nor anyone else from the company ever interviewed me about his complaint" (Ex. D at ¶7).

24. Bennington continued to engage in the exact same racially offensive conduct—calling African-American workers "boy" on a near-daily basis—following the company's inadequate response to Mr. Staples' complaints.

25. Coworker B.G. stated: "I was both surprised and affronted that corporate permitted Josh to remain as Mr. Staples's project manager, and that his ongoing racist and disrespectful treatment toward Mr. Staples and the other African American workers was swept under the rug. Josh continued to call Mr. Staples and other African American workers "boy" and/or "boys" daily, even after corporate and supervisor Shaneka were long aware this was going on." Ex. A at ¶7.

26. Coworker J.A. stated: "Josh was at the warehouse for several weeks after the day he handed Marcus chicken, and in that time he continued to call Marcus and the other African-American workers "boy" and "my boys" on a near-daily basis the same as before." Ex. B at ¶13.

27. Coworker A.M. stated: "After that [Bennington bringing Mr. Staples a bag of chicken], he continued to call Marcus and the other black employees "boy" the same as before. I eventually quit because I found Josh's constant racism intolerable, as well as disrespectful and unprofessional." Ex. C at ¶¶15-16.

28. Coworker L.T. stated: "After Mr. Staples' complaint, Josh continued to come into the warehouse where we worked, and continued to call the African-American workers "boys." For example, in early summer 2020 Josh called me "boy." I told him, "you call me boy, I call you pimp," because I was so offended by his continued racist comments." Ex. D at ¶¶8-9.

29. The harassment continued unabated.

30. On February 8, 2020, Mr. Staples filed an EEOC charge regarding the hostile work environment Defendant failed to remedy.

31. Just seven weeks after Plaintiff Staples filed an EEOC Charge, ATR issued him discipline.

32. The discipline was baseless and retaliatory.

33. For instance, in or about the week of March 16, 2020, Bennington informed Mr. Staples that his schedule would be changed from 8am-5pm to 7:30am-3:30pm.

34. Bennington asked Mr. Staples if he would have any issue with the new schedule, noting that children were out of school at the time due to the ongoing pandemic.

35. Mr. Staples told him that because of caretaking responsibilities for his son in the morning, he would likely only be able to make it work between 7:30 and 8am.

36. Bennington responded that this would be fine, and there was no issue.

37. However, approximately two weeks later on March 31, 2020, ATR Chief Operating Officer Ken Ehresman gave Mr. Staples a disciplinary write-up stating that he would be fired immediately if he was late within the next 60 days. This was unwarranted and entirely prospective in nature, Mr. Staples had not been late.

38. On September 3, 2020, Frank Brooks, who was Mr. Staples's direct supervisor at that time, called Mr. Staples and all his coworkers into the office and informed them that everyone would collectively be written up for using profane language.

39. As Mr. Staples' former coworker K.A. states under oath:

We were all confused because this discipline seemed to have come out of nowhere. He said each person would be brought in for a write-up while an employee from HR was on the phone line. [] **In front of everyone, Brooks turned to Marcus and said his situation was going to be handled separately because he had filed an EEOC charge.**

[] Marcus spoke with me privately after the meeting, and told me he was upset that our manager had disclosed his EEOC charge to everybody in the workplace. I found it inappropriate as well, because that information should have been kept confidential. [] Marcus told Brooks that he did not feel comfortable speaking with him without a representative present. [] After that, Brooks told us that no one would receive a write up after all. Instead, we would all just acknowledge receiving a training.

[] Not long afterward, we all sat in the conference room for a training. Human Resources was on a conference call with us, and they said that the handbook prohibited use of profanity. All the employees signed to acknowledge they heard the training. None of us were written up.

Ex. E, Declaration of K. A. dated 4-20-2021 (emphasis added)

40. ATR managers made clear to Brooks that they bore animus toward Mr. Staples and resented having to seem to take action due to his harassment complaints.

41. K.A. explained:

My supervisor Frank Brooks, the Site Manager, attended ATR managers' meetings as part of his role. Those meetings were recorded.

[] Brooks told me that in a managers' meeting where they were discussing Marcus's complaint about Bennington, management was portraying Marcus as a bad person who had fabricated the racial harassment, and management had said something to the effect that they did not want to have to fire one of their good people over something like this.

Ex. E.

42. EEOC issued a Determination finding probable cause that ATR subjected Mr. Staples to a racially hostile work environment on September 17, 2020, and initiated a voluntary conciliation process.

43. On October 5, 2020, the EEOC notified Ehresman that Mr. Staples "has indicated he does not wish to continue with the conciliation process and has also indicated his desire to receive the Right to Sue."

44. Just ten days after EEOC informed ATR that Mr. Staples had requested his Notice of Right to Sue (and, by implication, that he planned to pursue legal action against Defendant), on or about October 15, 2020, ATR abruptly fired Mr. Staples.

45. Defendant claimed that Mr. Staples was being fired for profanity; specifically, allegedly using the word "ho."

46. Mr. Staples did not ever use such a word, as he truthfully told ATR in an interview.

47. In fact, the individual who complained that Mr. Staples had allegedly used profanity was Brooks—the manager who had previously publicly disclosed Mr. Staples' EEOC Charge to the entire workplace, and who openly told coworker K.A. that management bore animus toward Mr. Staples for his harassment complaint.

48. As K.A. explained under oath:

For several years, from the time I started working at ATR, it was common for employees to casually use profanity in the workplace as part of conversation. No one had ever been fired for using profanity.

....

My understanding is that in his meeting [with management], Marcus [Staples] pointed out that Brooks had continued to use profanity regularly after the training we all received.

The next day, management brought everyone in to individual meetings to ask about Brooks's use of profanity, and had us each write a statement. In my meeting as well as in my written statement, **I confirmed that Brooks had continued to use profanity at work after the training**, and gave examples. Another employee told me that in his statement he had also confirmed Brooks had used profanity.

Neither Brooks nor anyone else at work was ever fired for profanity after that. [] Employees continued to commonly and casually use profanity at work after Marcus was fired, the same as they had always done. It was like the training and Marcus's firing had never happened.

Ex. E (emphasis added).

49. As one example, Brooks commented in Mr. Staples's presence at work that he "spent \$20,000 in three days on women" in Dubai.

50. After the training, Brooks continued to make such comments in Mr. Staples' presence, including saying of a woman who came into the workplace "she got nice breasts."

51. The harassment caused Mr. Staples severe distress. He felt depressed, embarrassed, and ashamed due to being called slurs such as "boy" and "monkey."

COUNT I:

HOSTILE WORK ENVIRONMENT IN VIOLATION OF 42 U.S.C. § 1981

52. Plaintiff Staples incorporates by reference paragraphs 1 through 51.

53. ATR subjected Plaintiff to a racially hostile work environment in violation of 42 U.S.C. § 1981. ATR's conduct constituted illegal discrimination based on race and illegal discrimination against Plaintiff in the terms and conditions of his employment.

54. ATR allowed the hostile environment to exist despite notice.

55. As a direct, actual and proximate result of the Defendant's race discrimination and racial harassment against him, Plaintiff has suffered significant non-pecuniary damages including mental anguish, pain, suffering, humiliation and loss of quality and enjoyment of life.

WHEREFORE, Plaintiff Staples respectfully requests that this Court:

- 1) Enter a declaratory judgment that the actions, conduct and practices of Defendant complained of herein violate the laws of the United States;
- 2) Enter an injunction and order permanently restraining the Defendant from engaging in such unlawful conduct;
- 3) Order the Defendant to make Plaintiff whole with appropriate lost earnings, future lost earnings, compensation for loss of future pensions and benefits with pre-judgment and post-judgment interest as applicable;
- 4) Order the Defendant to make Plaintiff whole by providing all compensation contemplated under the Civil Rights Act of 1866, 42 U.S.C. § 1981, for non-pecuniary losses including, without limitation, pain, suffering, inconvenience, frustration, loss of quality of life, humiliation, loss of reputation and mental anguish in amounts to be proved at trial with pre-judgment and post-judgment interest as applicable;
- 5) Order the Defendant to pay Plaintiff punitive damages in amounts to be proved at trial with pre-judgment and post-judgment interest as applicable and in amounts sufficient to adequately punish the Defendant for engaging in this conduct and to prevent this conduct in the future;
- 6) Order the Defendant to pay Plaintiff's reasonable attorney's fees, expert fees and all costs incurred in bringing and prosecuting this action with pre-judgment and post-judgment interest as applicable; and

- 7) Enter an order providing all such other relief as this Court deems appropriate.

COUNT II:

RETALIATION
IN VIOLATION OF 42 U.S.C. § 1981

56. Plaintiff Staples incorporates by reference paragraphs 1 through 51.
57. Plaintiff engaged in protected activity, of which Defendant was aware.
58. Defendant took materially adverse actions against Plaintiff because of his protected activity, including but not limited to issuing him unfounded discipline and firing Plaintiff.
59. As a consequence of Defendant's actions, Plaintiff suffered significant pecuniary and non-pecuniary damages including loss of benefits, loss of promotion opportunities, loss of back pay, loss of future pay, mental anguish, pain, suffering, humiliation, frustration, loss of reputation and loss of quality and enjoyment of life.
60. Defendants' actions proximately caused Plaintiff's injuries.

WHEREFORE, Plaintiff Staples respectfully requests that this Court:

- 1) Enter a declaratory judgment that the actions, conduct and practices of Defendant complained of herein violate the laws of the United States;
- 2) Enter an injunction and order permanently restraining the Defendant from engaging in such unlawful conduct;
- 3) Order the Defendant to make Plaintiff whole with appropriate lost earnings, future lost earnings, compensation for loss of future pensions and benefits with pre-judgment and post-judgment interest as applicable;
- 4) Order the Defendant to make Plaintiff whole by providing all compensation contemplated under the Civil Rights Act of 1866, 42 U.S.C. § 1981, for non-pecuniary losses including, without limitation, pain, suffering, inconvenience, frustration, loss of quality of life,

humiliation, loss of reputation and mental anguish in amounts to be proved at trial with pre-judgment and post-judgment interest as applicable;

5) Order the Defendant to pay Plaintiff punitive damages in amounts to be proved at trial with pre-judgment and post-judgment interest as applicable and in amounts sufficient to adequately punish the Defendant for engaging in this conduct and to prevent this conduct in the future;

6) Order the Defendant to pay Plaintiff's reasonable attorney's fees, expert fees and all costs incurred in bringing and prosecuting this action with pre-judgment and post-judgment interest as applicable; and

7) Enter an order providing all such other relief as this Court deems appropriate.

JURY DEMAND

Plaintiff herein requests a jury trial on all matters raised in this Complaint.

Dated: January 20, 2022

Respectfully submitted,

By: /s/ James H. Shoemaker Jr.
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