

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

ANNIE BUTLER,

Plaintiff

v.

FOUNTAIN-FORT CARSON SCHOOL DISTRICT 8,

Defendant.

Complaint

COMES NOW Plaintiff, Annie Butler, and for her Complaint against Defendant, alleges the following:

Introduction

1. This is a proceeding for reinstatement and damages to redress violations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e and 29 U.S.C. § 623 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et. seq.* (ADEA). Plaintiff claims that she was subjected to discriminatory terms and conditions of employment, job assignments, and termination on the basis of her age, race, and in retaliation for her opposition to discrimination.

Jurisdiction

2. This Court has jurisdiction pursuant to 28 U.S.C. §1331 to enforce the provisions of Title VII and Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. § 621 *et. seq.*

Venue

3. The unlawful employment actions described below were committed in the state of Colorado. Venue is proper in the United States District Court for the District of Colorado under 28 U.S.C. § 1391(b).

Exhaustion of Administrative Remedies

4. On or about October 8, 2009, Plaintiff filed a charge of discrimination against Defendant with the United States Equal Employment Opportunity Commission in Denver, Colorado alleging discrimination on the grounds of race, age, and retaliation.

5. On or about April 20, 2010, Plaintiff filed a second charge of discrimination against Defendant with the United States Equal Employment Opportunity Commission in Denver, Colorado alleging discrimination on the grounds of race, age, and retaliation.

6. On or about May 17, 2011, the Equal Employment Opportunity Commission mailed a Right to Sue letter to Plaintiff. This action was commenced within 90 days of Plaintiff's receipt of that letter.

Parties

7. Annie Butler is a 63 year old African American woman, who was formerly employed by Fountain-Fort Carson School District 8 as a Certified Nurse Aide (hereinafter "CNA") and paraprofessional at various schools within the District. Plaintiff has been licensed by the State of Colorado as a CNA since September, 1990.

8. Fountain-Fort Carson School District 8 is a school district organized and operating pursuant to the laws of the State of Colorado.

General Allegations

9. Paragraphs 1 through 8 are incorporated herein.

10. Plaintiff Annie Butler was born on October 4, 1947.

11. Plaintiff was briefly employed by Defendant as a paraprofessional from January-May, 2004. Her contract for that position was not renewed.

12. Plaintiff commenced her employment as a CNA with Defendant in October, 2007. Thereafter she continuously worked for Defendant as a CNA or paraprofessional until her employment was terminated on March 3, 2010.

13. In her role as a CNA, Plaintiff worked with students of the District with medical needs that required supervision or intervention by trained medical personnel.

14. At the start of her employment as a CNA, Plaintiff was assigned to work at Jordahl Elementary School, where she worked directly with two diabetic students, DH and AO,¹ who required assistance with monitoring blood sugar and delivery of insulin.

15. With the exception of substitute teachers or substitute paraprofessionals, Plaintiff was the only African American employee employed at Jordahl Elementary School in the 2007-2008 school year.

16. There were no complaints about Plaintiff or problems with her performance noted during the 2007-2008 school year.

¹ The students are referred to by their initials in order to protect their privacy.

17. As a result of her successful performance during the 2007-2008 school year, Plaintiff's contract was renewed for the 2008-2009 school year, and she remained working at Jordahl Elementary School, where she continued to work with DH.

18. With the exception of substitute teachers or substitute paraprofessionals, Plaintiff was the only African American employee employed at Jordahl Elementary School in the 2008-2009 school year.

19. Plaintiff's duties with regard to DH included monitoring and calculating his carbohydrate intake to insure he received the appropriate amount of insulin, and administering insulin to DH.

20. The school nurse at Jordahl Elementary School in 2008-2009 was Tamara Bailor, a Caucasian woman who is significantly younger than Plaintiff.

21. Plaintiff performed duties under the supervision of Ms. Bailor, and worked under Ms. Bailor's nursing license.

22. In addition to working under Ms. Bailor's supervision, Plaintiff reported to, and was evaluated by, Anne Cook, the assistant principal at Jordahl Elementary School.

23. From the commencement of their work together, Ms. Bailor treated Plaintiff poorly and with an attitude that Plaintiff did not know what she was doing or how to perform the duties of her job.

24. While working with Plaintiff, Ms. Bailor made a number of racially insensitive and derogatory comments to Plaintiff.

25. Ms. Bailor repeatedly expressed her belief that all African Americans were poor, and that they had to explain or account for how they obtained any nice belongings.

26. For example, Ms. Bailor asked me how I, as a black person, could afford to own a Lexus automobile. She also asked me “are you sure that you can afford to drive that nice of a car?” or words to that effect.

27. Ms. Bailor stated to me that it must be very hard for black people to have nice things without working two jobs. She then said that the black people she knew did not have nice things, including their cars.

28. Ms. Bailor also commented about the clothing that I wore, and asked me how I, as a black person, could afford to wear nice clothes.

29. In addition to the derogatory comments noted above, Ms. Bailor’s overall treatment of Plaintiff was significantly demeaning and hostile to such a degree that Plaintiff and other employees of Jordahl Elementary School noted it and reported it to Anne Cook.

30. On February 11, 2009, a day Plaintiff was not at work, Ms. Bailor was responsible for calculating DH’s carbohydrate intake in order to insure he received the proper amount of insulin.

31. That day, Ms. Bailor neglected to properly account for DH’s carbohydrate intake, and neglected to monitor DH’s use of insulin.

32. As a result of Ms. Bailor’s failure to adequately monitor DH and account for the correct carbohydrate count, DH administered himself too much insulin.

33. Ms. Bailor’s neglect could have had life-threatening consequences for DH.

34. Despite Ms. Bailor’s failures, she was not disciplined in any way.

35. Approximately two months later, on April 16, 2009, Ms. Bailor accused Plaintiff of making an error on DH's carbohydrate count that put the student, and Ms. Bailor's nursing license, at risk.

36. Ms. Bailor's accusation was based on her review of the carbohydrate count done by DH himself, not the count done by Plaintiff. DH had miscalculated his carbohydrate intake; however, Plaintiff's count of his carbohydrates was correct. Accordingly, there was no error by Plaintiff.

37. Ms. Bailor refused to listen to Plaintiff's explanation of what happened, and refused to review the correct carbohydrate count performed by Plaintiff.

38. Thereafter, Ms. Bailor requested that Plaintiff be moved from under her supervision.

39. On April 17, 2009, Brian Printz, Defendant's Executive Director of Special Programs, met with Plaintiff and informed her that her assignment was being changed from CNA at Jordahl Elementary School to an itinerant CNA/paraprofessional position throughout the District.

40. Dr. Printz made this decision based solely on the information he received from Ms. Bailor, and did not speak to Plaintiff or conduct an independent investigation into the allegations against Plaintiff prior to taking action against her.

41. After Plaintiff's transfer from Jordahl Elementary School, Plaintiff was replaced by a Caucasian CNA who was assigned to care for DH.

42. Plaintiff met with Dr. Printz on May 15, 2009 to discuss his decision to change her assignment. During that meeting, Dr. Printz told Plaintiff that she had been

transferred and repeated all of the negative things that Ms. Bailor had to say about Plaintiff and the quality of her work.

43. Ms. Bailor's accusations that Plaintiff's work was of poor quality were unfounded. For example, on April 23, 2009, Rebecca Clark-Hermocillo, the principal of Jordahl Elementary School wrote a glowing recommendation letter praising Plaintiff's work performance, dependability and judgment. Similarly, on May 18, 2009, Julie LeBlanc, the school nurse at the District's high school, sent Dr. Printz an email informing him of how conscientious and responsible Plaintiff was in the performance of her job duties.

44. Plaintiff disputed a number of the allegations that Dr. Printz and Ms. Bailor had made against her, and notified Dr. Printz that other concerns which had been raised by Ms. Bailor had never been discussed with her or brought to her attention.

45. Dissatisfied with Dr. Printz's explanation for the position change, Plaintiff met with the District's Superintendent, Cheryl Walker on May 27, 2009. Superintendent Walker informed Plaintiff that the move from CNA at Jordahl Elementary School to itinerant CNA/paraprofessional was not a transfer, but rather, was a demotion.

46. As a result of the demotion to itinerant CNA, Plaintiff no longer worked at one fixed location, and was required to drive to multiple schools within the District for work assignments. Additionally, she was required to perform more paraprofessional work than CNA work.

47. Following Plaintiff's demotion, Ms. Bailor called Cecilia Tipton, the school nurse at one of Defendant's schools where Plaintiff was performing CNA work, and made negative comments about Plaintiff.

48. Ms. Bailor also made similar calls to Barbara Burke, the head nurse for the District, in which made derogatory comments about Plaintiff.

49. Plaintiff completed the 2008-2009 school year performing mostly paraprofessional duties. The teacher for whom she worked focused more attention on the younger, non-African American paraprofessionals, and excluded Plaintiff from preparation of assignments and lesson plans.

50. On July 21, 2009, Plaintiff received notification from Dr. Printz that she had been reassigned to work at Patriot Elementary School as a CNA/paraprofessional for the 2009-2010 school year. The notice informed Plaintiff that she may be required to perform more paraprofessional duties than she had in the past.

51. In August, 2009, Plaintiff called Henry Gonzales, Defendant's Executive Director of Human Resources, to inform him that she was disappointed that she had not been assigned very much CNA work in her new position, and to request a job description for her position, because she was concerned that she was being denied the opportunity to continue to work as a CNA.

52. Mr. Gonzales responded to Plaintiff's request by telling her that he would tell Dr. Printz of Plaintiff's concerns, and Dr. Printz would then make Plaintiff's life miserable.

53. Plaintiff understood Mr. Gonzales's statement to be a threat of retaliation, and thereafter, she was reluctant to call him to discuss any problems or concerns about her employment situation.

54. After starting work at Patriot Elementary, Plaintiff was assigned to work as a paraprofessional in a special needs classroom. Plaintiff was the oldest employee assigned to the room, and the only African American.

55. The teacher in Plaintiff's classroom gave Plaintiff the least desirable and most menial assignments, while the younger, non-African American paraprofessionals were treated more favorably. For example, Plaintiff was assigned to work lunch duty every day, while the other paraprofessionals worked lunch duty less frequently, and were given the option to choose whether to work that duty.

56. Administration at Patriot Elementary also treated Plaintiff less favorably than her younger, non-African American coworkers. For example, employees' birthdays would be recognized by an announcement over the PA system or posted on a board in the staff lounge; however, Plaintiff's birthday was ignored.

57. Another example of administration's poor treatment of Plaintiff can be seen in the actions of Gary Duncan, the principal at Patriot Elementary. Mr. Duncan offered "Step Up to Writing" binders to any staff that requested one. Plaintiff received the offer from Mr. Duncan via email, and requested that she be provided with a binder. Mr. Duncan ignored Plaintiff's multiple requests from August through October, 2009, at which time he asked Plaintiff to justify her need for a binder. After Plaintiff explained why she wanted one, Mr. Duncan ignored her response, and refused to provide her with the binder. Younger, non-African American paraprofessionals were provided with the binder upon their request.

58. On October 8, 2009, Plaintiff filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission alleging discrimination based on race and age, retaliation. The basis for her charge was her treatment by Ms. Bailor and Dr. Printz, and her demotion in April, 2009.

59. Not long after filing her Charge of Discrimination, Plaintiff received a disciplinary write-ups and a poor performance evaluation.

60. In late autumn 2009 the student with medical needs that had been assigned to Plaintiff left the District, and as a result, Plaintiff was given strictly paraprofessional duties to perform.

61. Dissatisfied with working solely as a paraprofessional, Plaintiff requested a transfer to a vacant CNA position at Aragon Elementary school in December, 2010.

62. Plaintiff was qualified for the open position.

63. Despite Plaintiff's qualifications for the open CNA position, a younger, non-African American employee with less experience as a CNA was given the position.

64. In January, 2010, Plaintiff was assigned to work with a kindergarten student diagnosed with autism. Plaintiff worked with the student for approximately two weeks before being told that she was not qualified to work with small students, and was replaced by a younger, non-African American employee.

65. Despite being told that she was not qualified to work with small students, Plaintiff was then assigned to work in a preschool room working with small students.

66. On March 3, 2010, Plaintiff's employment with Defendant was terminated.

67. As a result of being subjected to discrimination because of her race and age, Plaintiff suffered past and future pecuniary loss, including loss of benefits and seniority, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

68. As a result of being subjected to retaliation for her complaints of discrimination, Plaintiff suffered past and future pecuniary loss, including loss of benefits and seniority, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

First Cause of Action (Age Discrimination—29 U.S.C. § 623)

69. Plaintiff realleges all prior paragraphs and incorporates them herein.

70. Plaintiff has exhausted her administrative remedies under the Age Discrimination in Employment Act.

71. Defendant denied Plaintiff job opportunities because of her age, subjected her to disparate terms and conditions of employment because of her age, and created a hostile work environment based on Plaintiff's age.

72. Defendant's acts and omissions violated Plaintiff's rights under 29 U.S.C. § 623.

73. Defendant's violation of Plaintiff's rights was willful and wanton.

Second Cause of Action (Race Discrimination—Title VII—42 U.S.C. § 2000e-2)

74. Plaintiff realleges all prior paragraphs and incorporates them herein.

75. Plaintiff has exhausted her administrative remedies under Title VII of the Civil Rights Act of 1964, as amended.

76. Defendant denied Plaintiff job opportunities because of her race, subjected her to disparate terms and conditions of employment because of her race, and created a hostile work environment based on Plaintiff's race.

77. Defendant's acts and omissions violated Plaintiff's rights under 42 U.S.C. 2000e-2.

Third Cause of Action (Retaliation—Title VII—42 U.S.C. § 2000e-2)

78. Plaintiff realleges all prior paragraphs and incorporates them herein.

79. Plaintiff has exhausted her administrative remedies under Title VII of the Civil Rights Act of 1964, as amended.

80. Plaintiff engaged in protected activity by opposing discrimination in internal complaints and in filing a Charge of Discrimination with the EEOC.

81. Plaintiff was subjected to materially adverse employment actions by Defendant in retaliation for her complaints.

Prayer for Relief

WHEREFORE, Plaintiff prays for the following relief, pursuant to 29 U.S.C. §§ 216, 626, 42 U.S.C. §§ 1981, 1988, 2000e-5(g), and Fed. R. Civ. P. 54:

- a. Nominal damages;
- b. Nonpecuniary and compensatory damages, including damages for emotional distress and consequential damages;
- c. Punitive damages;
- d. Reinstatement and back pay, including loss of benefits and seniority, or front pay in lieu of reinstatement;
- e. Liquidated damages;
- f. Injunctive relief;

- g. A declaration that Defendant's conduct violated Plaintiff's rights under Title VII and the Age Discrimination in Employment Act;
- h. Pre- and post-judgment interest at the highest rate allowed by law;
- i. Costs and reasonable attorneys fees; and
- j. All other legal or equitable relief to which Plaintiff is entitled.

Jury Demand

Plaintiff requests this matter be tried by a jury.

Respectfully submitted this 16th day of August, 2011.

CORNISH & DELL'OLIO

s/Ian D. Kalmanowitz

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