

UNITED STATES FEDERAL COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

JUN 13 2011

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

DENNIS CROFT,
PLAINTIFF,

VS.

CITY OF ROANOKE, VIRGINIA
DEFENDANT.

Case No. 7:11cv277 (Judge Conrad)

ORIGINAL COMPLAINT

Comes now the Plaintiff and in support of his cause of action states as follows:

1. Plaintiff is a resident of Bedford County, Virginia.
2. Defendant City of Roanoke (hereafter Roanoke) is a municipality incorporated pursuant to the Constitution of the Commonwealth of Virginia and the subject of subsequent legislative enactments granting Roanoke various powers, rights and privileges.

JURISDICTION

3. That at all times relevant hereto the actions taken by Roanoke occurred within the corporate city limits on Roanoke city property.

4. That Plaintiff brings suit alleging discriminatory discharge on the basis of gender, in violation of 42 U.S.C. Section 2000e-2(a)(1).

5. That after his termination, Plaintiff timely filed a complaint with the EEOC and has received a Right to Sue Letter which allowed Plaintiff to file suit within 90 days from March 17, 2011, and is attached hereto.

5. That jurisdiction of this Court is based on original jurisdiction, and the amount in controversy in this matter is greater than \$75,000.00.

FACTUAL ALLEGATIONS

6. Plaintiff Croft was employed by Roanoke as a firefighter for 22 years. During Plaintiff's employment tenure, Croft was promoted by the City of Roanoke to the rank of captain.

7. While employed by the Defendant, Plaintiff became romantically involved with another employee of the Roanoke City Fire Department, one Deborah Van Ness.

8. Deborah Van Ness was and is currently employed by the City of Roanoke as a paramedic.

9. On or about April 15, 2010, Plaintiff and Van Ness were socializing in the Roanoke Fire Station #4 in the late evening hours. Plaintiff was on duty and Van Ness was not on duty, having just completed her shift.

10. Although there is no department rule or curfew concerning visiting hours with the opposite sex, established custom within the Roanoke Fire Department is for visiting hours to end at 10:00 p.m.

11. The meeting between Plaintiff and Van Ness extended until approximately 12:50 a.m.

12. On April 16, 2010, Plaintiff notified his supervisors that Van Ness had been in the fire station after hours. An investigation was conducted; Plaintiff was disciplined for the policy violation and received a verbal reprimand.

13. Van Ness was not given any type of discipline and was not part of any investigation conducted by Roanoke city management.

14. On or about June 5th, 2010, Plaintiff terminated his romantic relationship with Van Ness.

15. Believing Croft was having a relationship with another employee of the Roanoke City Fire Department, Van Ness became enraged as a result of the break-up, sending harassing text messages to another city employee with whom she believed Croft was fraternizing.

16. On June 10, 2010, Van Ness was directed by Fire Chief David Hoback to meet with him and discuss the problems Van Ness had created with the city employee over the period of June 6th through June 10th, 2010.

17. At the June 10, 2010 meeting, Van Ness told Chief Hoback that she had engaged in consensual sexual relations with Croft on April 15, 2010.

18. Croft adamantly denied these allegations.

19. As a result of Van Ness' allegations, Fire Chief Hoback conducted an investigation which uncovered no evidence of any consensual sex occurring between Plaintiff and Van Ness, other than Van Ness' allegation.

20. Based solely upon Van Ness' allegation, Fire Chief Hoback terminated Croft's employment. Van Ness was not terminated, suspended or demoted. Van Ness suffered no disciplinary action, of any kind except for an admonishment by the Fire Chief to stay off City Property during non-work hours.

21. Croft filed a grievance with the City of Roanoke and proceeded to participate in the City's grievance procedure authorized by Virginia Code Section 15.2-1507 (2011)

22. On May 23, 2011, Croft was reinstated to his employment, but was demoted to the rank of First Lieutenant and instructed to participate in sexual harassment training.

COUNT I. DISCRIMINATORY DISCHARGE

Plaintiff hereby repleads and incorporates paragraphs 1-22 set forth above and in addition thereto states as follows:

23. Plaintiff is a member of a protected class of male employees who are entitled to the same benefits and protections afforded to all employees regardless of their gender, and who are protected from discrimination based upon gender under Title VII of the Civil Rights Act of 1964 and 1991, as amended.

24. That Van Ness, as a female employee, was outside the protected class of employees for the purposes of this litigation.

25. That the conduct which Croft was accused of committing, i.e., engaging in consensual sexual relations with Van Ness in Roanoke fire station #4, was not only comparable, but was the same conduct which Van Ness claims that she had committed on April 15, 2010.

26. That by being terminated, Croft suffered more severe discipline for his unproven, alleged misconduct than Van Ness, who, as a female, was outside the protected class of male employees.

27. That the verbal reprimand Croft received on or about April 17, 2010 was more severe discipline than that which Van Ness received after admitting that she had been in the Roanoke fire station after hours.

28. That in terminating Plaintiff for alleged consensual sexual relations in the fire station and while simultaneously refusing to discipline Van Ness, who alleges that she actually did commit the actions resulting in Croft's termination, Defendant City of Roanoke has discriminated against the Plaintiff on the basis of his gender.

29. That despite his reinstatement, Plaintiff has suffered damages as a result of Defendant's conduct, including lost back pay, lost front pay, lost fringe benefits, retirement benefits, mental anguish, pain and suffering, attorneys' fees, court costs and any other damages allowed by law.

WHEREFORE, Plaintiff prays that judgment be entered against the Defendants and that damages be awarded to the Plaintiff in an amount sufficient to compensate plaintiff for his lost back pay, lost front pay, lost fringe benefits, retirement benefits, emotional distress, pain and suffering, attorneys fees, court costs, and any other relief deemed appropriate by this court and allowable by law.

COUNT II: RETALIATORY DISCHARGE

Comes now plaintiff and hereby incorporates and re-alleges paragraphs 1-22 as if fully set forth herein, and in support of his claim of retaliatory discharge states as follows:

30. Plaintiff is provided, pursuant to Virginia Code, with the benefit of a grievance procedure which sensibly allows Plaintiff and the City to resolve personnel problems prior to final disposition, which in this case was discharge.

31. At the intermediate steps of the grievance procedure Plaintiff advised management for the City of Roanoke that the allegations being made by Van Ness were not only false, but that the City's previous verbal reprimand was discriminatory as the discipline Croft received was more severe than any discipline imposed upon Van Ness, who received no discipline of any kind.

32. That during the initial investigation of the charges made by Van Ness, Plaintiff again objected to the course of the investigation, advising that Van Ness's charges

were not only false, but that Van Ness had received and continued to receive more favorable treatment from the Department Fire Chief because of her gender, and that Plaintiff opposed this practice.

33. That as a result of Plaintiffs objections to the City's preferential treatment of Van Ness, Plaintiff was terminated.

34. That despite Plaintiff's ultimate reinstatement, Plaintiff has suffered damages as a result of Defendant's conduct, including lost back pay, lost front pay, lost fringe benefits, retirement benefits, mental anguish, pain and suffering, attorneys' fees, court costs and any other damages allowed by law.

WHEREFORE, Plaintiff prays that judgment be entered against the Defendants and that damages be awarded to the Plaintiff in an amount sufficient to compensate plaintiff for his lost back pay, lost front pay, lost fringe benefits, retirement benefits, emotional distress, pain and suffering, attorneys fees, court costs, and any other relief deemed appropriate by this court and allowable by law.

A JURY TRIAL IS HEREBY DEMANDED ON ALL COUNTS

Dennis Croft

_____/s/_____
By: John M. Loeschen

Counsel for Plaintiff
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VSB # 48996

CERTIFICATE OF SERVICE

I certify that on the 13th day of June, 2011, I electronically filed the foregoing Complaint with the Clerk of this Court using the CM/ECF system which will send notification of such filing to the following:

Counsel for Defendants.

/s/John M. Loeschen