

FILED
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN JOHNSON,

U.S. DISTRICT COURT
N.D. OF ALABAMA

PLAINTIFF,

vs.

CIVIL ACTION NO.: _____

CITY OF BESSEMER, ALABAMA,

KENNETH GULLEY, Individually

and in his capacity as Mayor of the

City of Bessemer, PAUL SYX,

Individually and in his capacity as

Chief of City of Bessemer Fire

Department,

DEFENDANTS.

COMPLAINT

The plaintiff, John Johnson, moves the Court for entry of judgment in his favor against the City of Bessemer, Alabama, Kenneth Gulley, Mayor of the City of Bessemer, Paul Syx, Chief of City of Bessemer Fire Department.

NATURE OF ACTION AND JURISDICTION

1. This is a civil action under 42 U.S.C. Section 1983 seeking damages and injunctive relief against the Defendants for committing acts, under color of law, with the intent and for the purpose of depriving Plaintiff of rights secured under the Constitution and laws of the United States, retaliating against the Plaintiff for his exercise of constitutionally protected speech; and for refusing or neglecting to prevent such deprivation and denials to Plaintiff.

2. This case arises under the United States Constitution and 42 U.S.C. Sections 1983 and 1988 as amended. This Court has jurisdiction in this matter pursuant to 28 U.S.C. Sections

1331 and 1343. The declaratory and injunctive relief sought is authorized by 28 U.S.C. Sections 2201 and 2202, 42 U.S.C. Section 1983 and Rule 57 of the Federal Rules of Civil Procedure.

3. Plaintiff brings this action resulting from damages incurred due to his suspension from the City of Bessemer on or about June 27, 2012 through July 6, 2012. Plaintiff was suspended from his position as a Fireman for the City of Bessemer in violation of his federal constitutional rights to free speech.

4. This Court is an appropriate venue for this cause of action pursuant to 28 U.S.C. 1391(b)(1) and (b)(2). This actions complained of took place in this judicial district; evidence and employment records relevant to the allegations are maintained in this judicial district; and the City of Bessemer and the City of Bessemer Fire Department are present and regularly conduct affairs in this judicial district.

PARTIES

5. Plaintiff, John Johnson (“Johnson”) is a fireman with the City of Bessemer Fire Department. He currently resides in Pleasant Grove, Alabama.

6. Defendant, City of Bessemer is a municipal corporation organized under the laws and Constitution of the State of Alabama, and is a corporate entity capable of suing and being sued. Defendant City maintains and operates the City of Bessemer Fire Department.

7. Paul Syx is the chief of the City of Bessemer Fire Department. He is sued for damages in his individual capacity and for declaratory and injunctive relief in his official capacity.

8. Kenneth Gulley is the Mayor of the City of Bessemer. He is sued for damages in his official capacity and for declaratory and injunctive relief in his official capacity.

9. At all times relevant, Defendants acted under color of state law.

FACTS

10. John Johnson (hereinafter “Plaintiff” or “Johnson”) works as a fireman for the City of Bessemer. He was so employed for thirteen years at the time of his suspension for nine (9) working days or three (3) shifts. He has been with the department for fifteen years.

11. Johnson also has been a licensed practical nurse for 18 years. He is also employed as a licensed practical nurse at St. Vincent’s East in addition to his duties as a fireman. He works in the long term care unit.

12. Johnson started his career with the City of Bessemer Fire Department. Approximately two years after his employment began, on or about 2000, while assigned to Station One Johnson was in the bay area with fellow firefighters, including some superior officers, when one of the firefighters threw a rope with a noose over the rafters and hung it there. The noose was left hanging over the pool table cover which had a confederate flag painted on it.

13. Johnson reported the incident to his then Captain and nothing was done about the matter. He did not report any further given the fact that superior officers were present and his complaint was not taken seriously.

14. In 2009 Johnson was sitting in the common area of his assigned station. He was there with his son and fiancé watching a special on white supremacy groups. Three firemen, including one Lieutenant, walked into the area. They proceeded to the dry erase board and drew a swastika on the board. Offended Mr. Johnson filed a report on the matter. The three offending parties were given written reprimands and sent to sensitivity training. The report stated that the men were not aware that the swastika was offensive to African Americans.

15. Johnson was not satisfied with the handling of this matter and he subsequently filed an EEOC complaint on or about January 21, 2010. EEOC issued a finding of no discrimination.

16. After these incidents Johnson was subjected to various forms of harassment and repeated attempts to discipline him based upon false allegations.

17. On or about April 25, 2012 a white fireman with the City of Bessemer Fire Department was upset over the Trayvon Martin matter. He began posting offensive remarks on his personal facebook page. This resulted in a few days of back and forth arguments between this officer and a few fellow officers from the City of Bessemer. The arguments did not carry over into the workplace but was limited to the facebook post.

18. On or about April 30, 2012, Johnson was at home and read the continued arguments on the fireman's page. Johnson went onto his personal computer and his personal facebook page and wrote:

“WOW! THIS IS RIDICULOUS! I WORK AT A PLACE WHERE IT’S OK TO MAKE POLITICAL STATEMENTS VIA SOCIAL MEDIA, COMMUNICATIONS BOARDS, VERBAL COMMENTS, ETC SUCH AS POSTS ON FB, DRAWING SWASTIKS ON DRY ERASE BOARDS, EVEN TO HANGING A NOOSE UP IN THE MIDDLE OF A BUILDING! THE THING THAT IS MOST DISTURBING IS THAT IT IS ALLOWED! THE PEOPLE WHO ARE RESPONSIBLE FOR THOSE ACTS ARE NEVER HELD ACCOUNTABLE. BUT, AS SOON AS SOMEONE COMPLAINS THAT THESE ACTIONS ARE OFFENSIVE OR CAN BE VIEWED AS RACIST THEN THERE IS A PROBLEM...I MEAN COME ON PEOPLE, GROW THE HELL UP, GET YOUR HEAD OUT YOUR ASS! ANYONE EVER HEARD OF A HOSTILE WORKING ENVIRONMENT? I’M JUST SAYING... SUPPOSE THE SHOE WAS ON THE OTHER FOOT? NO NEED TO CALL NAMES, YOU KNOW WHO YOU ARE. BUT I CAN CALL NAMES. I AIN’T SCARED!”

19. The statement did not mention the City of Bessemer, The City of Bessemer Fire Department, the chief of the department, the mayor of the City or any other city personnel or officials.

20. A few days after this post, Johnson received a friend request from Captain Eidson. He accepted the request. Shortly thereafter he received a “Notice of Contemplated Disciplinary Action” based upon his facebook post.

21. A hearing was held on or about May 29, 2012 in the Office of the City Attorney, R. Shan Paden. Pursuant to said hearing Johnson was notified on June 22, 2012 that disciplinary action would be taken. The City’s findings of fact included but are not limited to the following:

(a) “I find that you chose to make untrue statements in a public forum that creates a misconception that the City of Bessemer allows and tolerates discriminatory conduct in the workplace. . .

(b) Your oral and written statements contain several inconsistencies and rely on Misunderstandings of the rights that you have as an employee in the pubic service. Specifically if an employee’s comments are termed as them speaking only on matters of personal interest, then these are not entitled to constitutional protection. Additionally when an employee of public service speaks about a matter of public concern, an employer can restrict that speech if the topic relates to any matter of political, social or other concern to the community.. .

(c) I find that your Facebook posting addressed a matter of public concern, where you insinuate that a department of the City allows activities to take place which would otherwise prevent it from effectively and efficiently performing its intended function. . .”

22. The disciplinary actions against Johnson included the following:

(a)” You are advised that the use of social media to post messages (including clicking the “like” function of the post of another employee) that impair discipline by superiors or harmony among co-workers, and that has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary is strictly prohibited.

(b) You are advised that where close working relationships are essential in fulfilling public responsibilities, a wide degree of deference to the employer’s judgment is appropriate.

(c) You are hereby suspended for 9 working days/3 shifts beginning 0700 hours on June 26, 2012 and ends 0700 hours on July 5, regarding your use of social media and false statements as contained herein and that failure to comply with the above listed rules and regulations could result in further disciplinary action, up to termination.

(d) Additionally, you are required to be evaluated by our employee assistance provider and will be required to attend sensitivity training with our employee assistance provider and/or the Jefferson County Personnel Board.”

23. Johnson appealed this decision to the Personnel Board of Jefferson County, Alabama. A hearing was held before a Hearing Officer in November of 2012. The Hearing Officer found that “both parties agree that Mr. Johnson’s speech addressed matters of public concern. . .” She further stated “After balancing the City of Bessemer’s interest in quelling public discussion of racially divisive issues against Mr. Johnson’s interest in free speech, this hearing officer must conclude that the latter is more compelling under Pickering . . . The evidence in this case does not show that Mr. Johnson’s speech presented an imminent conflict or a significant threat to any interest of the City of Bessemer. The City of Bessemer has not met its burden in demonstrating that Mr. Johnson violated the Rules and Regulations of the Personnel Board of Jefferson County. . .”

24. The Hearing Officer recommended that the Personnel Board of Jefferson County reverse the City of Bessemer’s decision to suspend the employment of Mr. Johnson.

25. The matter was then heard by the 3 Member Board on December 11, 2012. The Board issued its Order on December 11, 2012. The Board “agree[d] that the Respondent’s [herein Johnson] addressed a matter of public concern . . . The Hearing Officer incorrectly found that the suspension should be reversed because there was no actual disruption to the City of Bessemer’s function. The Board disagrees with the Hearing Officer that a showing of actual disruption is required.” They upheld the City’s decision to suspend Johnson.

26. The 3 member Board herein based their decision on facts that were not contained in Johnson’s initial disciplinary hearing, the hearing before the Hearing Officer or nothing else contained in his file. All of the facts asserted were based upon information that was in the other fireman’s facebook post and subsequent disciplinary hearing. None of the information relied on alleging disruption came from Johnson’s file or any testimony rendered or evidence submitted.

27. On or about May 3, 2013 a Notice of Claim was filed with the City of Bessemer against the City of Bessemer, the City of Bessemer Fire Department, Chief Paul Syx and Mayor Kenneth Gulley. [SEE ATTACHED EXHIBIT "A"]

28. Contrary to the City's statement in Johnson's disciplinary action, neither of the two firemen who clicked "like" to his facebook post were disciplined. One was promoted shortly thereafter.

29. Johnson's Facebook post contained absolutely no identifiers, it was a general statement. The City claims that they knew it was about the City because they "recognized" the incidents that he was addressing. The City violated his First Amendment Rights by making assumptions about the subject of his post and denying Johnson his free speech rights as a private citizen. In the alternative, they also violated his rights as a employee to address matters that they City admitted were protected speech.

30. The City did not have an Internet or Social Media policy in place. The only policy regarding social media stated "Participation in social chat channels and bulletin boards is not permitted using Bessemer Fire Department computing resources. . ."

31. Testimony from fellow firemen, superior officers, during the Personnel Board Hearing indicated that there was no disruption to the workplace after Johnson's post. They testified that the majority of the department was not aware of Johnson's post until he received notice of disciplinary action.

32. Johnson has been the subject of constant harassment and retaliation as a result of complaining of prior incidents as well as the Facebook post that serves as the basis for this Complaint.

CAUSES OF ACTION

COUNT ONE

Constitutional and Civil Rights Pursuant to 42 U.S.C. Sections 1983 and 1988

Violation of First Amendment Free Speech Rights

(Against All Defendants)

33. The foregoing allegations are incorporated as if re-alleged herein.

34. Johnson's Facebook post on his private page are speech protected by the First Amendment to the U.S. Constitution.

35. Johnson was speaking as a private citizen, therefore his conduct fell within the realm of protected public employee speech.

36. Johnson's speech did not disrupt the function of the City or have a negative impact on the efficiency of the Fire Department.

37. Johnson's speech did not name the City, the Fire Department, the Chief, the Mayor or any City official.

38. Johnson never engaged in speech that was detrimental to any department of the City.

39. Johnson's free speech right to engage in discussion as a private citizen outweighed any interest of the Defendant's in suppressing that speech.

40. Defendant's violated Johnson's right to free speech by suspending him and restricting his personal social media posts because of his discussion about what he considered racial harassment.

41. Defendants acted intentionally and with callous disregard for Johnson's clearly established constitutional rights.

42. As a direct and proximate result of the Defendant's violations of Johnson's constitutional rights, Johnson has suffered severe and substantial damages. These damages include lost salary, lost raises, diminished earnings capacity, lost career opportunities, uncomfortable and hostile work environment, litigation expenses including attorney's fees, loss of reputation, humiliation, embarrassment, inconvenience, mental and emotional anguish and distress and other compensatory damages in an amount to be determined by a jury and the Court.

COUNT TWO

Unconstitutional Prior Restraint Pursuant to

42 U.S.C. Sections 1983, 1988

43. The foregoing allegations are incorporated as if re-alleged herein.

44. Defendant's, via their discipline, prohibited Johnson from expressing himself via his facebook posts or other social media.

45. Defendants prohibition to Johnson from expressing himself on social media and his unlawful suspension constituted an unconstitutional prior restraint.

46. As a result of the actions, statements and/or policies of the Defendants, Johnson suffered an unconstitutional deprivation of his rights under the First and Fourteenth Amendments to the U.S. Constitution.

47. Defendants acted intentionally and with callous disregard for Johnson's known statutory and constitutional rights.

48. As a direct and proximate result of the Defendants' violations of Johnson's statutory and constitutional rights as described herein, Johnson has suffered damage to reputation, humiliation, embarrassment, mental and emotional anguish and distress and violation of right to

free speech as protected under the Constitution as well as other compensatory damages, in an amount to be determined by a jury and the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, John Johnson, requests judgment against Defendants as follows:

- A. For appropriate declaratory relief regarding the unlawful and unconstitutional acts of the Defendant.
- B. For appropriate compensatory damages in an amount to be determined at trial;
- C. For appropriate equitable relief against all Defendants as allowed by the Civil Rights Acts of 1871, 42 U.S.C. Section 1983, including the enjoining and permanent restraining of these violations, and direction to Defendants to take such affirmative action as is necessary to ensure that the effects of the unconstitutional and unlawful employment practices are eliminated and do not continue to affect Plaintiff, or others' employment environment or opportunities.
- D. For such other and further relief to which Plaintiff may show himself justly entitled.

PLAINTIFF REQUESTS TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted,



John Johnson
Pro Se Plaintiff

JJ 109 Victoria Lane 3013 PANOLAMA East Apt J
JJ Pleasant Grove, AL 35127 Birmingham, AL 35215
(205)413-0638

DEFENDANTS

The City of Bessemer
c/o Beverly Wheeler
Acting City Clerk
1800 3rd Avenue North
Bessemer, AL 35022

Chief Paul Syx
1111 2nd Avenue North
Bessemer, AL 35020

Mayor Kenneth Gulley
c/o Bessemer City Hal
1800 3rd Avenue North
Bessemer, AL 35020

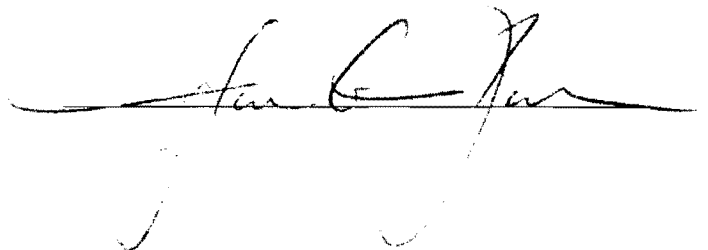
- EXHIBIT "A" -

NOTICE OF CLAIM

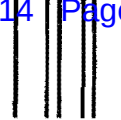
TO: Beverly Wheeler
Acting City Clerk
City of Bessemer
1800 Third Avenue North
Bessemer, AL 35020

PLEASE TAKE NOTICE that Mr. John Johnson, hereby makes claims against the City of Bessemer, Alabama, the City of Bessemer Fire Department, Mayor Kenneth Gulley (individually and in his official capacity) and Chief Paul Syx (individually and in his official capacity), by and through injuries resulting from violation of his First Amendment Rights resulting in his suspension for 9 days occurring on or about the 26th day of June, 2012, as is more fully set out in the attached copy of a demand letter which is incorporated herein by reference, claims the following damages: for injuries to Mr. John Johnson of **ONE HUNDRED FIFTY THOUSAND & 00/100 DOLLARS (\$150,000.00)**

DATED this the 3rd day of May, 2013.



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P.O. Box 59752
HUNTSVILLE, AL 35259

John Johnson v City of Bessemer

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Beverly Wheeler
 ACTING CITY CLERK
 City of Bessemer
 1800 3rd Ave N
 Bessemer, AL 35022

2. Article Number
 (Transfer from service label)

7012 2210 0001 3259 5699

COMPLETE THIS SECTION ON DELIVERY

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 * *Monica Stephens* A

B. Received by (Printed Name) A
Monica Stephens

C. Date of Delivery A
5/26

D. Is delivery address different from item 1? Y
 If YES, enter delivery address below: N

3. Service Type

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4. Restricted Delivery? (Extra Fee) Y