

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BRADLEY R. CASEY,

Plaintiff,

v.

CITY OF HORSESHOE BAY,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:18-cv-00803

JURY DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT AND JURY DEMAND

COMES NOW, BRADLEY R. CASEY, and brings this action against the CITY OF HORSESHOE BAY for violations of the USERRA as well as the FLSA. In support of such claims, Casey would show as follows:

I. JURISDICTION

1. This action arises under The Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301, et seq., as well as the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq.
2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1332 and 1337.

II. PARTIES

3. Plaintiff Bradley R. Casey (“Plaintiff” and “Casey” throughout) is a citizen of the United States and resides in Llano County, Texas.
4. Defendant City of Horseshoe Bay (“Horseshoe Bay” and “city” herein) is a Texas municipality located in Llano County and Burnet County. The City of Horseshoe Bay may be

served with summons through its current city manager, Stan R. Farmer, at 1 Community Drive, Horseshoe Bay, Texas 78657.

5. For purposes of Casey's claims, Horseshoe Bay is a covered employer under the USERRA, pursuant to 38 U.S.C. § 4303(4) and § 4311(b).

6. For purposes of Casey's claims, Horseshoe Bay is a covered employer under the FLSA pursuant to 29 U.S. Code § 203(d).

III. STATEMENT OF FACTS

7. Casey worked as a firefighter for Horseshoe Bay for 16 years, until he was terminated on or about January 31, 2018.

8. In the final 9 years of his employment, Casey served in the role of Fire Captain. He had received consistently good reviews, until about one week before his termination. He had never been admonished for how he employed fire strategy or tactics, or for not following department policies and procedures, in his 16-year career with Horseshoe Bay. He has received the 911 Firefighter of the Year Award and the 100 Club Firefighter of the Year Award.

9. Casey is currently a Sergeant Major in the U.S. Army Reserves.

10. During his employment, Casey had concerns about the way that he was being paid, in connection with his intermittent military leave.

11. Earlier in his career with Horseshoe Bay, the city had no formal, developed leave policy with respect to military leave by its employees, despite the fact that the USERRA was passed in 1994 as an amendment to the Veteran's Reemployment Rights Act of 1974. During the first approximately 14 years of his employment with the city, Casey had to use his PTO leave and sick leave to get paid while on military leave. He estimates that he would lose approximately \$3,000-\$5,000 per year due to this. Furthermore, Casey complained that he would lose overtime

pay when his military leave would cut into a workweek in which he would have otherwise been paid overtime had he been working his regular schedule that week. Casey believed in good faith that these pay discrepancies were against the law.

12. Casey made persistent complaints about these pay issues. His persistence led the city to retain a lawyer approximately 2 years ago to investigate this and advise the city on how to properly administer pay with employees who take military leave. At the meeting about the lawyer's findings, the lawyer advised that Casey was correct, and that the city is required to provide at least 15 days of paid leave for military members taking leave for service, per year. When Casey began asking the lawyer about how Chapter 437 of the Texas Government Code applies to his unresolved back pay, Fire Chief Joe Morris became angry and ended the meeting.

13. Over the next two years, the city refused to resolve Casey's pay complaints. Around January 15, 2018, Chief Morris brought Casey into his office for a closed-door meeting. Chief Morris began the meeting with positive comments about the progress of the fire department, and discussed where he would like to take the department in the future. Casey, thinking this would be a good opportunity to discuss the military pay issues further, brought them up and asked if the Chief would help him file a grievance at this time with the city. Chief Morris became very angry, stated that the matter was settled, told Casey that he can hire a lawyer if he wants to, but "trust me, you do not want to be the person who sues the city." Casey said that he would therefore hire a lawyer to assist him on this. Chief Morris repeated again that Casey doesn't want to be the person who sues the city.

14. On or about January 21, 2018, Chief Morris called a company evaluation on a last-minute basis, and that was hastily prepared. During the evaluation, Chief Morris treated Casey like he was the worst Fire Captain ever. This was an obvious and sudden turn in how Chief Morris felt

about Casey, and it obviously had nothing to do with Casey's actual job performance and everything to do with Casey's military pay complaints.

15. On or about January 25, 2018, Casey's first shift following the company evaluation, Chief Morris ordered Casey onto paid administrative leave pending an "investigation," and required him to respond to a list of charges by the following morning.

16. On or about January 31, 2018, Casey was instructed to report to the fire department at 0900 hours. He did so, and was terminated.

IV. FIRST CAUSE OF ACTION – USERRA VIOLATIONS

17. By the allegations described above, Defendant Horseshoe Bay violated the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301 *et seq.*, by terminating Casey's employment because of, in whole or in part, his membership in a uniformed service, his obligation to perform in such uniformed service, and his protected complaints regarding his good faith belief that Horseshoe Bay had violated his rights under the USERRA.

18. Furthermore, Defendant Horseshoe Bay violated the USERRA by requiring Casey to use his PTO and sick leave benefits in order to get paid during such military leave, which denied Casey the opportunity to use such benefits for personal, non-military reasons. Because the Veterans Benefit and Improvement Act of 2008 eliminated the statute of limitations for USERRA claims, Casey demands payment of all pay and benefits that he was required to use, in violation of USERRA, in order to perform his duties as a member of the military during his employment with Defendant Horseshoe Bay.

19. Horseshoe Bay's violations justify an award of damages, including back pay, front pay (where reinstatement is not feasible), denied benefits and compensation, attorney fees, expert witness fees, litigation expenses, pre- and post-judgment interest, and any relief to which Casey

may be entitled. Further, the violations committed by Horseshoe Bay were willful, justifying an award of liquidated damages.

V. SECOND CAUSE OF ACTION – FAIR LABOR STANDARDS ACT RETALIATION

20. By the allegations described above, Defendant Horseshoe Bay unlawfully discriminated against Casey by terminating him due to his protected complaints about his good faith concerns that he was being denied overtime pay under the law. The Fair Labor Standards Act of 1938 prohibits an employer from discharging or in any other manner discriminating against any employee because such employee has filed a complaint of a violation of the FLSA pursuant to the employee's good faith belief that a violation had occurred. Oral complaints are protected. See *Kasten v. Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 17 (2011).

21. As a result of Defendant's conduct, Casey is entitled to back pay, front pay (where reinstatement is not feasible), mental anguish damages, liquidated damages, attorney fees, expert witness fees, court costs as well as pre- and post-judgment interest at the highest rates allowed by law.

VI. DEMAND FOR JURY TRIAL

22. Casey timely demands a trial by jury.

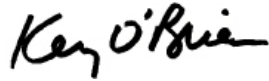
VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff Casey requests that:

- a. The Court assume jurisdiction of this cause and that Defendant City of Horseshoe Bay be summoned to appear;
- b. The Court award damages to Casey as specified above, including economic, compensatory and non-compensatory damages, as well as liquidated damages and exemplary damages, attorney fees, costs, equitable relief of reinstatement (or front pay in lieu of

reinstatement where reinstatement is not feasible), pre- and post-judgment, and any other relief required by law that the Court may deem proper.

Respectfully submitted,



Kerry V. O'Brien

Texas Bar No. 24038469

Board Certified in Labor & Employment Law by the TBLS



1011 Westlake Drive

Austin, Texas 78746

email: ko@obrienlawpc.com

phone: (512) 410-1960

fax: (512) 410-6171

COUNSEL FOR PLAINTIFF CASEY

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
RADLEY R. CASEY

(b) County of Residence of First Listed Plaintiff Llano
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 erry O'Brien - O'Brien Law Firm (lead counsel)
 011 Westlake Drive, Austin, TX 78746; ph (512) 410-1960

DEFENDANTS
CITY OF HORSESHOE BAY

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
The Uniformed Services Employment and Reemployment Rights Act of 1994

Brief description of cause:
FLSA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 09/20/2018

SIGNATURE OF ATTORNEY OF RECORD: /s/ Kerry V. O'Brien

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.