

FILED
MAY 07 2013
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

COMMONWEALTH OF KENTUCKY
48th JUDICIAL CIRCUIT
FRANKLIN CIRCUIT COURT – DIVISION II
CIVIL ACTION NO. 13-CI-340

STEPHANIE BASTIN PLAINTIFF

vs. COMPLAINT
JURY TRIAL DEMANDED

BOARD OF REGENTS OF KENTUCKY DEFENDANT
STATE UNIVERSITY

Serve: Lori Davis
Office of the President
Kentucky State University
400 E. Main Street
Frankfort, KY 40601

MARY SIAS, DEFENDANT
In Her Individual Capacity

Serve: Mary Sias
Office of the President
Kentucky State University
400 E. Main Street
Frankfort, KY 40601

LORENZO ESTERS, DEFENDANT
In His Individual Capacity

Serve: Lorenzo Esters
Office of the President
Kentucky State University
400 E. Main Street
Frankfort, KY 40601

* * * * *

Plaintiff Stephanie Bastin for her Complaint against defendants states
as follows:

I

Nature of the Case

1. This is an action pursuant to the Kentucky Whistleblower Act, KRS 61.102 and KRS 61.103, and the Kentucky Civil Rights Act, KRS Chapter 344 *et seq.*, arising from violations of plaintiff's rights secured by those statutes seeking recovery of compensatory and punitive damages, back pay, front pay, attorney's fees, costs and litigation expenses.

II

Jurisdiction and Venue

2. Franklin Circuit Court has jurisdiction over this matter pursuant to KRS 23A.010, KRS 344.450, and KRS 61.103(2). Venue is proper in Franklin Circuit Court because the claims asserted herein arose in Franklin County, Kentucky.

III

Parties

3. Plaintiff Stephanie Bastin (Bastin) is a citizen of the United States of America and a resident of Jessamine County, Kentucky.

4. Defendant Board of Regents of Kentucky State University (hereinafter referred to as "defendant") is the body corporate of Kentucky State University.

5. Defendant Mary Sias (Sias) is, upon information and belief, a resident of Franklin County, Kentucky. She is sued in her individual capacity

for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

6. Defendant Lorenzo Esters (Esters) is, upon information and belief, a resident of Franklin County, Kentucky. He is sued in his individual capacity for wrongful acts committed and injuries inflicted in Franklin County, Kentucky.

IV

Facts Giving Rise to Lawsuit

7. Bastin is a Caucasian woman and the Kentucky Civil Rights Act prohibits discrimination against her with respect to her employment including its terms and conditions based on her gender and/or race.

8. Bastin, at all times pertinent hereto and up to on or about February 7, 2013, was an employee of defendant within the meaning of KRS Chapter 344.

9. Bastin, at all times pertinent hereto and up to on or about February 7, 2013, was an "employee" of defendant within the meaning of KRS 61.102.

10. Defendant, at all times pertinent hereto, and up to on or about February 7, 2013, was Bastin's employer within the meaning of KRS 344.040 and KRS 61.102.

11. Esters, at all times pertinent hereto, was a "person" within the meaning of KRS 344.280.

12. Bastin, at all times pertinent hereto, was employed by defendant as Chief of the Kentucky State University Police Department.

13. In January 2008, Bastin began work for defendant as the KSU Chief of Police, charged principally with building a police department from an organization that had lapsed into dysfunction and disarray.

14. Over the course of her employment with defendant Bastin performed well her job duties as reflected on the performance evaluations issued her by defendant.

15. As a consequence of her successful job performance, Bastin received substantial professional recognition including being named 2010 Police Chief of the Year by the Kentucky Association of Chiefs of Police, receiving a Professional Achievement award from the Louisville Defender newspaper also in 2010 and Kentucky Women's Law Enforcement Network Leadership Award in 2008.

16. On or about September 1, 2013, defendant Esters, who had become KSU's Vice-President for Student Success and Enrollment Management, became Bastin's immediate supervisor.

17. At the time Esters became Bastin's supervisor, the KSU police department was short-staffed but had progressed substantially with the hiring of another police officer, a white man, who was fully qualified for the position.

18. Notwithstanding the need to hire more police officers and the adverse impact that the shortage had and was having both for KSU officers and campus safety, Esters refused to authorize Bastin to hire the white applicant, telling her instead that he wanted a more “diverse” applicant pool.

19. Esters continued to refuse to authorize Bastin to hire the white applicant, although Bastin repeatedly informed Esters of the adverse impact that the short-staffing in the KSU police department was having on both police officer and campus safety.

20. Because the short-staffing in the police department was endangering or threatening to endanger the safety of students, faculty and staff on campus as well as that of KSU police officers, Bastin reported the dire situation and requested the assistance of Ivory Griskell, KSU’s risk manager.

21. Griskell took no meaningful action in response to Bastin’s report but simply passed it on to Esters, whose refusal to permit the hiring of a qualified white police officer had contributed materially to the problem to begin with.

22. Esters ultimately directed Bastin to not send any further written communication to him regarding the need to hire more police officers.

23. The KSU police department was plagued by patrol vehicles that were used up, worn-out, unreliable and costly to maintain, if possible to maintain.

24. Prior to Esters assuming responsibility for the KSU police department and becoming Bastin's supervisor, funding for new and absolutely necessary vehicles had been authorized.

25. Bastin requested from Esters authorization to spend the allocated money and secure the necessary vehicles and further advised Esters that the absence of sufficient reliable vehicles was materially impairing the functions of the KSU police department and imperiling public and campus safety.

26. Custom at KSU was for some KSU police officers to accompany the KSU football team and related entourage to some away games including that at Tuskegee University.

27. Due to the shortage of reliable vehicles and lack of police staffing both of which were aggravated by Esters' refusal to authorize expenditures of funds to acquire the necessary, reliable vehicles and his refusal to permit the hiring as a police officer of a qualified white applicant, Bastin was compelled to advise the KSU athletics director in October 2012 that no KSU police officer would be able to accompany the football team on a trip to Tuskegee University due to a lack of reliable vehicles and/or available personnel.

28. Esters accused Bastin of not being a "team player" because of this action, although he still refused to authorize hiring of a qualified white applicant as a police officer and/or acquisition of the necessary reliable vehicles for the KSU police department.

29. Also due to the shortage of reliable vehicles and short-staffing in the KSU police department Bastin was compelled to terminate the practice of a KSU police officer accompanying athletics department personnel to the bank following an event to deposit gate and other receipts.

30. Esters also criticized Bastin for this decision, although he still refused to authorize the hiring as a police officer of a qualified white applicant and/or the expenditure of monies to acquire the necessary reliable vehicles for the KSU police department.

31. Bastin informed and reiterated to Esters on numerous occasions that his refusals to allow amelioration of the short-staffing in the police department and/or to authorize the purchase or lease of reliable police vehicles was endangering campus and public safety as well as that of KSU police officers.

32. Bastin became aware that a male KSU police officer, Bryant Bowles, was sexually harassing a female KSU police officer, Sirrethia Fox.

33. In accordance with KSU's policy and procedure, Bastin reported the sexual harassment of Fox by Bowles to KSU's human resources officer, Gary Meiseles.

34. Meiseles, in response, advised Bastin that KSU would neither investigate nor take any other action with regard to the sexual harassment unless Fox filed an official report.

35. Bastin advised Meiseles that Fox was too afraid of Bowles to file an official report and that some action needed to be taken by KSU both to protect Fox and to stop her sexual harassment by Bowles.

36. Despite Bastin's report of sexual harassment and the real prospect of retaliation, KSU through Meiseles declined to take any investigative, corrective or ameliorative action until and unless Fox filed an official complaint and report.

37. Bastin informed Fox that she had reported to Meiseles Bowles's sexual harassment of her but that she needed to file an official complaint or report before KSU would take any official action.

38. Bastin further informed Fox that she had done what she could to stop the sexual harassment and further action would be dependent upon Fox filing an official report or complaint.

39. Bryant Bowles was known to have become a confidant of Esters and received favorable treatment as a result.

40. Shortly after Bastin had reported to Meiseles that Bowles was sexually harassing Fox, Bowles was the source of rumors that Bastin would be terminated at an upcoming meeting between Bastin and Esters; Bowles said repeatedly "today's the day" referring to Bastin's firing by Esters.

41. Bastin, upon hearing the rumors spread and started by Bowles that she would be fired by Esters, called Meiseles, informed him that she expected to be fired by Esters, informed Meiseles that Bowles was going around

stating “today’s the day” referring to her firing and asked that, upon her firing, Meiseles act to protect Fox.

42. Esters knew and was aware of Bastin’s actions to get Fox’s sexual harassment by Bowles stopped.

43. Fox later filed an official report charging Bowles with sexual harassment.

44. Bowles was placed on paid leave as a result of Fox’s report.

45. On February 5, 2013, Bastin filed a grievance regarding unfounded and unfair disciplinary action that Esters had directed at her.

46. Bastin was terminated from employment at KSU on February 7, 2013.

47. As a direct and proximate result of the wrongful actions of defendant, Sias and Esters, Bastin has suffered, is suffering and is reasonably certain to suffer in the future injuries and damages including loss of income and benefits, emotional distress and mental anguish, embarrassment and humiliation and violation of her rights.

48. Defendants have acted with gross negligence and/or wanton and reckless indifference for Bastin’s rights.

V

CAUSES OF ACTION

Count 1 – Reprisal for Whistle Blowing

49. Bastin incorporates paragraphs 1 through 40 hereof as if fully set forth herein.

50. Bastin was subjected to reprisal and retaliation based on her protected disclosures and reports in violation of KRS 61.102.

51. As a result and proximate result of the unlawful reprisal and retaliation to which she was subjected in violation of KRS 61.102, Bastin has suffered, is suffering and is reasonably certain to suffer in the future injuries and damages including loss of income and benefits.

Count 2 – Discrimination Based On Bastin’s Race

52. Bastin incorporates paragraphs 1 through 51 hereof as if fully set forth herein.

53. Bastin was subjected to discrimination in the terms and conditions of her employment including its termination based on her race in violation of KRS 344.040.

54. A substantial and motivating factor for Bastin’s termination from employment was her race, white.

55. As a direct and proximate result of the discrimination in the terms and conditions of her employment based on her race in violation of KRS 344.040, Bastin has suffered, is suffering and is reasonably certain to suffer in the future injuries and damages including loss of income and benefits, emotional distress and mental anguish and embarrassment and humiliation.

Count 3 – Aiding & Abetting Wrongful Race Discrimination

56. Bastin incorporates paragraphs 1 through 55 hereof as if fully set forth herein.

57. Esters and Sias aided and abetted in violation of KRS 344.280(2) the discrimination based on her race, white, to which Bastin was subjected in violation of KRS 344.040.

58. As a direct and proximate result of Sias's and Esters's actions in violation of KRS 344.280(2), Bastin has suffered, is suffering and is reasonably certain to suffer in the future injuries and damages including loss of income and benefits, emotional distress and mental anguish, and embarrassment and humiliation.

Count 4 – Retaliation and Aiding and Abetting Retaliation

58. Bastin incorporates paragraphs 1 through 57 hereof as if fully set forth herein.

59. Bastin took action in opposition to unlawful employment practices: the sexual harassment to which Bowles was subjecting Fox.

60. A substantial and motivating factor for Bastin's termination from employment was retaliation for her opposition to unlawful employment practices as above-described.

61. Sias and Esters initiated and approved Bastin's termination, thus retaliating and aiding and abetting the other's retaliation against Bastin.

62. As a direct and proximate result of Sias's and Esters's actions in violation of KRS 344.280(2), Bastin has suffered, is suffering and is reasonably certain to suffer in the future injuries and damages including loss of income and benefits, emotional distress and mental anguish, and embarrassment and humiliation.

VI

Demand for Relief

WHEREFORE, plaintiff Stephanie Bastin demands as follows:

(1) entry of a judgment awarding her monetary damages in an amount to fairly compensate her for injuries pleaded herein, including loss of income and benefits, emotional distress and mental anguish, embarrassment and humiliation;

(2) entry of a judgment awarding her punitive damages to punish defendants' wrongful conduct and deter repetition of same;

(3) entry of a judgment awarding her attorney's fees, costs and litigation expenses pursuant to CR 54, KRS 344.450 and KRS 61.990; and,

(4) all other relief to which she is entitled.

Demand for Trial By Jury

Plaintiff demands pursuant to CR 38 trial by jury of all issues herein so triable.



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