

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

THOMAS E. PEREZ,)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)

Plaintiff,)

v.)

LEAR CORPORATION EEDS AND)
INTERIORS, RENOSOL SEATING, LLC,)
CHRISTOPHER JONES, CONNIE MESSER, and)
MICHAEL WALKOWSKI,)
Defendants.)

CASE NO.
2:15-CV-205-CG-M

COMPLAINT
(Injunctive Relief Sought)

Plaintiff Thomas E. Perez, Secretary of Labor, United States Department of Labor (“the Secretary”), brings this action for injunctive and other appropriate relief pursuant to the provisions of Section 11(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq., hereinafter the “Act.”

1. Jurisdiction over this action is conferred upon the Court by § 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2).

2. This action is brought by the Secretary pursuant to authority granted by Section 11(c)(2) of the Act, 29 U.S.C. § 660(c)(2).

3. Defendants Lear Corporation EEDs and Interiors and Renosol Seating, LLC, (hereinafter collectively referred to as “Lear”), are persons within the meaning of Section 3(4) of the Act, 29 U.S.C. § 652(4).

4. Additionally, at all times material hereto Lear has been an employer engaged in the business of manufacturing foam cushions for use in car seats and car headrests affecting commerce within the meaning of Section 3(5) of the Act, 29 U.S.C. § 652(5).

5. Lear operates a business office at 6 Meadowcraft Parkway, Selma, Alabama 36701, within the jurisdiction of this Court.

6. At times material hereto, Defendant Christopher Jones (“Jones”), a person within the meaning of Section 3(4) of the Act, 29 U.S.C. §652(4), was a Plant Manager of Lear, a business affecting commerce within the meaning of § 3(5) of the Act, 29 U.S.C. § 652(5). On information and belief, Defendant Jones resides at 93 Brookhaven Trail, Wetumpka, Alabama, in Elmore County, Alabama.

7. At times material hereto, Defendant Connie Messer (“Messer”), a person within the meaning of Section 3(4) of the Act, 29 U.S.C. §652(4), was a Human Resources Manager of Lear, a business affecting commerce within the meaning of § 3(5) of the Act, 29 U.S.C. § 652(5). On information and belief, Defendant Messer resides at 743 County Road 95, Jones, Alabama, in Autauga County, Alabama.

8. At times material hereto, Defendant Michael Walkowski (“Walkowski”), a person within the meaning of Section 3(4) of the Act, 29 U.S.C. §652(4), at all times material hereto was an Operations Director North America for Foam with Lear, a business affecting commerce within the meaning of § 3(5) of the Act, 29 U.S.C. § 652(5). On information and belief, Defendant Walkowski resides at 60891 Havenridge Road, Lenox, Michigan.

9. The events or omissions giving rise to the claims in this case, or a substantial part thereof, occurred in Selma, Alabama, within the jurisdiction of this Court.

10. During the period from about 2005 to the present, LeTasha Irby (“Irby”) was employed by Defendant Lear as a production line worker and was therefore an employee of Defendant within the meaning of § 3(6) of the Act, 29 U.S.C. § 652(6).

11. During the period from about 2006 to the present, Denise Barnett (“Barnett”) was employed by Defendant Lear as a production line worker and was therefore an employee of Defendant within the meaning of § 3(6) of the Act, 29 U.S.C. § 652(6).

12. During the period from about 2005 until about March 16, 2015, Kimberly King (“King”) was employed by Defendant Lear as a production line worker and was therefore an employee of Lear within the meaning of § 3(6) of the Act, 29 U.S.C. § 652(6).

13. On or about May 8, 2014, Irby, Barnett, King, and several other co-workers provided to Defendant Messer a signed letter regarding employee exposure to the chemical toluene diisocyanate (“TDI”). The letter contained complaints about the way management had handled a TDI leak at the plant the previous week; demanded medical screening for all workers in the plant, a written explanation of why the TDI alarms had gone off multiple times on or about April 29, 2015 through May 5, 2015, and an explanation of what steps Lear had taken and was going to take in order to protect workers’ health. The letter also demanded copies of Lear’s Occupational Safety and Health Administration (“OSHA”) 300 logs.

14. On or about May 16, 2014, Lear employees, including Irby, Barnett, King filed complaints with the Mobile Area Office of OSHA regarding TDI exposure at Lear’s Selma, Alabama plant. As a result of the complaint, OSHA compliance officers entered the Lear facility in Selma, Alabama on or about May 27, 2014 to begin an investigation concerning the safety and health hazards alleged in the complaint.

15. On or about June 14, 2014, the National Broadcasting Company (“NBC”) published a news article on nbc.com, which focused on King as a subject and described how workplace chemicals, including TDI, correlate with certain respiratory diseases like asthma. The article included statements from King and Barnett discussing their alleged work-related illnesses, and it included a photograph of Irby. A similar version of the story was repeated by an Alabama news agency “al.com”, which included an interview with King.

16. On or about July 17, 2014, King and Irby each gave a statement to OSHA as part of OSHA’s safety and health investigation regarding the hazards alleged in the May 16, 2014 complaint to OSHA.

17. On or about September 11, 2014, Lear management, including Messer and Walkowski, separately called King, Irby, and Barnett into the office and told each of them that they were being transferred to the warehouse.

18. Irby was told that she was being transferred to the warehouse, effective September 15, 2014 due to her reporting that the plant was poisoning her, but because she was the most senior employee, she would be placed on first shift.

19. King was told that she was being transferred to the warehouse, effective September 15, 2014 due to her activity with the labor board, the news articles and to remove her out of the environment that she believed to be causing her respiratory illness. Based on seniority, King was offered second or third shift, and she chose the third shift.

20. Barnett was told that she was being transferred to the warehouse due to her allegations of illness from chemicals in the plant and for her own safety and health. Barnett was offered second shift based on her seniority. When Barnett asked why Lear could not create a job for her on first shift, she was told that there was no choice because of seniority. The

change in schedule from first shift to second shift disrupted Barnett's childcare schedule, and she had to pay for childcare that she did have to pay for when she was on first shift.

21. After being transferred to the warehouse, Irby, King, and Barnett were not able to take advantage of overtime to the extent they could when they worked at the plant.

22. Additionally, after their transfer to the warehouse, Irby, King, and Barnett were isolated from the other employees and from each other.

23. On or about September 11, 2014 King, Irby and Barnett each timely filed whistleblower complaints with the Mobile Area Office of OSHA alleging that Lear discriminated against them in violation of Section 11(c)(1) of the Act, 29 U.S.C. § 660(C)(1); each alleging that the move to the warehouse was retaliation for protected activity, including talking with OSHA during the health and safety inspection and talking to the media. Upon receipt of the whistleblower complaints, OSHA conducted an investigation pursuant to § 11(c)(2) of the Act.

24. On or about November 19, 2014, King and Irby were interviewed for a YouTube video, in which they complained about their working conditions, exposure to TDI, and their health issues. King described suffering from a constant cough that she cannot control and her need to use three inhalers and a nasal spray, treatment that is costing her about \$200.00 per month. She explained that she tested positive for TDI on a test given by Dr. Carrie Redlich of Yale University. King also stated that Lear's management told the workers that OSHA's coming to the plant was not good for the company.

25. The YouTube video featuring King and Irby became available for online viewing on or about January 13, 2015. After it was released online, Lear conducted a plant meeting to inform its employees that they could be terminated for making statements about the company.

26. King and Irby also were featured in various news articles regarding their health concerns throughout December 2014 and January 2015. Lear repeatedly called King and Irby to the office to question them about the articles.

27. On or about January 21, 2015, Lear management called King and Irby to the office and questioned them about the YouTube video. Ultimately, King and Irby were each suspended from work for three days without pay for participating in the video.

28. On or about March 5, 2014, King went to the Hyundai plant (a customer of Lear's) in Montgomery County, Alabama to deliver a letter signed by her and others in the community, demanding that Hyundai require Lear to "make the necessary investments to ensure good, safe, fair working conditions through its supply chain." The letter ultimately was not delivered, but King did read it aloud to a group at a nearby restaurant later that day.

29. On or about March 9, 2015, Lear called King to the office and suspended her for seven (7) days. King was also presented with a statement for signature that she had lied and made false statements against the company. She was told to take the letter home and think about whether she wanted to continue working for Lear.

30. On or about March 16, 2015, Lear terminated King's employment. After King was terminated, Lear held an uncustomary plant meeting to inform the other employees that King was terminated for slander and making false statements against Lear.

31. On or about March 18, 2015, Lear filed a Verified Complaint for a Temporary Restraining Order against King in the Circuit Court of Montgomery County for allegedly making false statements to the media and third parties, for interfering with Lear's business contract with Hyundai, and for harming its reputation. Lear alleged that King engaged in Intentional Interference with Business Relations and Defamation. In April 2015, the Secretary

sought a temporary restraining order to enjoin Lear from engaging in and threatening retaliation against the Company's current and former employees, including impeding whistleblower investigation by intimidating, threatening, suspending, and terminating, and suing employees of the Company who participated in the investigation and otherwise engaged in protected activity. On May 7, 2015, the United States District Court Judge issued her preliminary injunction Order against Lear (Document 28).

32. On or about May 8, 2015, Messer posted a message to Facebook stating that "UAW and OSHA will want everyone to think they are winning their campaign to unionize the Lear Selma facility, but don't be fooled . . . Selma cannot afford to lose 135 jobs . . . Maybe if we get the truth out there then the UAW and OSHA will leave us alone."

33. On May 14, 2015, Irby and other Lear employees attended Lear's annual shareholders' meeting and spoke directly to Lear's CEO and the company's board of directors to ask for good jobs and safe workplaces at its plants nationwide. This visit was reported in various news outlets.

34. On or about June 1, 2015, Messer posted on the plant's bulletin board a letter she wrote to OSHA in response to OSHA's recommendations regarding TDI exposure at the Lear plant, and she read the letter at a plant meeting. The letter essentially discredited OSHA's recommendations and stated that Lear did not have to follow OSHA's recommendations.

35. On or about July 20, 2015, Barnett and Irby informed the OSHA whistleblower investigator that they were being required to perform tasks differently than other employees, and in such a fashion that could result in ergonomic injury. Specifically, they were

being required to perform the same task for an entire eight hour shift or longer, while typically employees would change to another task every two to three hours to avoid hand/wrist injury.

36. Additionally, Irby told the whistleblower investigator that she was being denied leave for no apparent reason.

37. Upon information and belief, Defendants Lear, Jones, Messer, and Walkowski discriminated against King by taking the following actions in response to her speaking publicly about health and safety conditions in the workplace and for her raising concerns about TDI to Lear management and OSHA, acts that were protected activities under the Act:

- (a) transferred her to the warehouse facility;
- (b) suspended her;
- (c) terminated her for speaking publicly about health and safety conditions in the workplace and for raising her concerns about TDI to Lear management and OSHA; and
- (d) sued her for intentional interference with business relations and defamation.

38. Upon information and belief, Defendants Lear, Jones, Messer, and Walkowski discriminated against Irby by taking the following actions in response to her speaking publicly about health and safety conditions in the workplace and for raising her concerns about TDI to Lear management and OSHA, acts that were protected activities under the Act:

- (a) transferred her to the warehouse facility;
- (b) suspended her;

(c) required her to perform tasks differently and in a more difficult manner than other employees doing similar work;

(d) and denied her request for leave.

39. Upon information and belief, Defendants Lear, Jones, Messer, and Walkowski discriminated against Barnett by taking the following actions in response to her speaking publicly about health and safety conditions in the workplace and for raising her concerns about TDI to Lear management and OSHA, acts that were protected activities under the Act:

(a) transferred her to the warehouse facility;

(b) required her to perform tasks differently and in a more difficult manner than other employees doing similar work.

40. By the acts described above, Defendants Lear, Jones, Messer, and Walkowski did intentionally discriminate and have continued to discriminate against King, Irby, and Barnett because of their exercise of rights secured by the Act, and thereby did engage in, and continue to engage in conduct which violates Section 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1).

41. As a result of this unlawful discrimination, King, Barnett, and Irby have suffered loss of wages, as well as other losses and harms.

42. WHEREFORE, cause having been shown, the Secretary prays the Court to enter an Order:

(1) finding that Defendants Lear, Jones, Messer and Walkowski unlawfully discriminated against King, Irby and Barnett in violation of § 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1);

- (2) permanently enjoining Lear and its agents, servants, employees and all persons in active concert or participation with them from violating the provisions of § 11(c)(1) of the Act, 29 U.S.C. § 660(c)(1);
- (3) directing Lear to reimburse King, Irby, and Barnett those amounts equal to loss of wages and other benefits suffered by reason of such unlawful discrimination, plus interest calculated at the rate set forth in the Internal Revenue Code section 6621, 26 U.S.C. § 6621;
- (4) directing Jones, in his personal capacity, to reimburse King, Irby, and Barnett those amounts equal to loss of wages and other benefits suffered by reason of such unlawful discrimination, plus interest calculated at the rate set forth in the Internal Revenue Code section 6621, 26 U.S.C. § 6621;
- (5) directing Messer, in her personal capacity, to reimburse King, Irby, and Barnett those amounts equal to loss of wages and other benefits suffered by reason of such unlawful discrimination, plus interest calculated at the rate set forth in the Internal Revenue Code section 6621, 26 U.S.C. § 6621;
- (6) directing Walkowski, in his personal capacity, to reimburse King, Irby, and Barnett those amounts equal to loss of wages and other benefits suffered by reason of such unlawful

discrimination, plus interest calculated at the rate set forth in the Internal Revenue Code section 6621, 26 U.S.C. § 662;

- (7) directing Lear to reinstate King as an employee;
- (8) directing Lear not to require Irby to perform tasks differently and in a more difficult manner than other employees doing similar work;
- (9) directing Lear not to require Barnett to perform tasks differently and in a more difficult manner than other employees doing similar work;
- (10) directing Lear to grant Irby's request for leave;
- (11) directing Lear to expunge its records of all adverse actions and/or negative references related to King, Irby, and Barnett's protected activities;
- (12) directing Lear to post a notice for its employees stating that Lear will not in any manner discriminate against employees because of their engagement in activities protected under the Act;
- (13) granting the Secretary his costs; and
- (14) further ordering such other appropriate relief as may be necessary.

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