

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KIMBERLY McCRAW,

Plaintiff,

v.

DELTA AIR LINES, INC.,

Defendant.

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:
: Civil Action Number:
:
:
:
: **JURY TRIAL DEMANDED**
:
:

COMPLAINT

Plaintiff Kimberly McCraw, (“McCraw”) by and through the undersigned counsel and pursuant to Fed. R. Civ. P. 3, brings this Complaint against Defendant Delta Air Lines, Inc. (“Delta”) and shows the Court as follows:

INTRODUCTION

1.

McCraw was formerly employed as a Delta pilot. She brings this action against her former employer under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* as amended by the Civil Rights Act of 1991, (“Title VII”) to correct the unlawful employment practices alleged herein.

2.

Delta subjected McCraw to a sexually hostile work environment, and created, fostered and maintained an atmosphere of sexual discrimination and harassment.

3.

Delta issued McCraw a lengthy suspension from flight duty and ultimately terminated her employment because of her gender and in retaliation for conduct that is protected by Title VII.

4.

McCraw seeks injunctive relief, compensatory and punitive damages and reimbursement of her costs of litigation, including her reasonable attorneys' fees pursuant to § 706 (g) of Title VII, 42 U.S.C. § 2000e-5(g).

JURISDICTION AND VENUE

5.

This Court has original jurisdiction over the present action under Article III, §2 of the United States Constitution and 28 U.S.C §§ 1331, because this case arises under the Title VII, a federal statute that affects interstate

commerce.

6.

Venue properly lies in the Northern District of Georgia under 42 U.S.C. § 2000e-5(f)(3) because the bulk of the unlawful employment practices alleged herein occurred in this District and Delta maintains the employment records material hereto in this District.

7.

Venue properly lies in the Northern District of Georgia under 28 U.S.C. § 1391 because Delta is located in this judicial district and a substantial portion of the events giving rise to the claims set forth herein occurred in this judicial district.

THE PARTIES

8.

McCraw is a citizen of the United States, a resident of the State of Georgia and is competent in all ways to bring this action.

9.

McCraw is entitled to bring actions of this kind and nature in this judicial district.

10.

McCraw is female.

11.

At all times material hereto, McCraw was an “employee” of Delta within the meaning of 42 U.S.C. § 2000e(f).

12.

Delta is a corporation organized under the laws of the State of Delaware.

13.

Delta is registered to do business in the State of Georgia.

14.

Delta maintains a principal office address at 1030 Delta Boulevard, Dept. 982, Atlanta, Georgia 30354.

15.

All times material hereto, Delta has been an “employer” of McCraw within the meaning of 42 U.S.C. § 2000e(b).

16.

Delta is subject to the personal jurisdiction of this Court.

17.

Delta's counsel has agreed to accept service of the Complaint and waive service of a summons, in accordance with Fed. R. Civ. P. 4(d).

18.

On June 17, 2011, McCraw filed a Charge of Discrimination against Delta with the United States Equal Employment Opportunity Commission ("EEOC"). The EEOC designated this Charge as Charge 410-2011-04203 (hereafter referred to as "the Charge of Discrimination").

19.

In the Charge of Discrimination, McCraw asserted that Delta subjected her to sexual harassment and that it created, fostered and maintained an atmosphere of sexual harassment.

20.

In the Charge of Discrimination, McCraw further asserted that Delta discriminated against her on the basis of her gender and retaliated against her for opposing employment practices made unlawful by Title VII when it terminated her employment.

21.

McCraw filed the Charge of Discrimination within 180 days of the unlawful employment practices alleged therein.

22.

The EEOC issued McCraw a Notice of Right to Sue (hereafter “the Notice of Right to Sue”) with respect to her Charge of Discrimination, bearing a mailing date of May 30, 2013.

23.

McCraw received the Notice of Right to Sue on or about June 3, 2013.

24.

This action is commenced within 90 days of McCraw’s receipt of the Notice of Right to Sue.

FACTUAL ALLEGATIONS

25.

Delta employed McCraw as an airline pilot from September 11, 1997 through December 20, 2010.

26.

At all times material hereto, Delta was responsible for promulgating

employment policies and making employment decisions regarding McCraw's employment.

27.

At all times material hereto, Delta engaged in a practice and pattern of discrimination on the basis of gender.

28.

Beginning in or about 1998, various male Delta pilots subjected McCraw to sexual harassment.

29.

In 1998, for example, a male Delta pilot named Keith Rosencranz operated a Delta aircraft as a First Officer and second-in-command during a flight in which McCraw worked as a Flight Engineer.

30.

As a Flight Engineer, McCraw worked in the cockpit, in close proximity to Rosencranz.

31.

During the flight Rosencranz used sexually explicit language in the cockpit.

32.

During the flight, Rosencranz attempted to engage McCraw in a sexually explicit conversation.

33.

The Captain and pilot-in-command of that flight, Allen Watson, is also male.

34.

Watson was aware of Rosencranz's use of sexually explicit language in close proximity to McCraw.

35.

Watson failed and refused to take any steps to curtail or rectify the Rosencranz's use of sexually explicit language in the cockpit.

36.

The flight crew laid over that evening at Fort Walton Beach, Florida. They were scheduled for a 5:00 a.m. hotel pickup to report for the next day's flight.

37.

At approximately 11:30 p.m., McCraw had just hung up from a telephone

call she had placed from her room, when the telephone in her hotel room rang.

38.

McCraw answered the phone and discovered that Rosencranz was the party calling her.

39.

During that telephone call, Rosencranz propositioned McCraw using sexually explicit language.

40.

McCraw told Rosencranz that she objected to his comments.

41.

The next day, Watson and Rosencranz warned McCraw that she was a still a probationary pilot (i.e., an at-will employee for the duration of a one-year probation period) and that a “he said/she said” dispute would be detrimental to her ability to complete probation.

42.

Shortly after this flight, McCraw confided with a senior female Delta pilot, Arlene Hankins, about the sexual harassment that Watson and

Rosencranz subjected her to.

43.

Hankins, thereafter, *sua sponte* conveyed McCraw's complaint of sexual harassment to Delta Chief Pilot Dean Bloom.

44.

Bloom then called McCraw and instructed her to report to his office.

45.

McCraw met with her Chief Pilot. Mindful of the warning given by Watson and Rosencranz about her probationary status, McCraw declined to identify Rosencranz to Bloom.

46.

McCraw's complaint as set forth above was in opposition to conduct made unlawful by Title VII.

47.

Beginning in 1998, Rosencranz and other male Delta pilots, including Greg Megan, Jim Kachadurian, Robert Wetzels and George Wilson (hereafter collectively referred to as "Rosencranz and his confederates") began a continued campaign to harass McCraw because of her perceived opposition

to Rosencranz's unlawful conduct by spreading vicious and false rumors among the pilot group about McCraw's alleged proclivity to file frivolous sexual harassment complaints against pilots, flight attendants and passengers, and disparaged her previous career as a pilot with the United States Air Force.

48.

Megan openly referred to McCraw as a "Black Widow" in reference to the false assertion that she frequently filed frivolous sexual harassment complaints against pilots, flight attendants and passengers.

49.

As a result of this campaign of false and vicious rumors about McCraw, male Captains frequently refused to fly with McCraw, refusing to talk to her during flight operations or otherwise showed open hostility to her during flight operations.

50.

This campaign of false and vicious rumors about McCraw and the frequent hostility from male Captains that it generated continued through the time of McCraw's termination in 2010.

51.

Shortly after the resumption of U.S. commercial air operations after the terrorist attacks of September 11, 2001, McCraw and Watson had a chance encounter at an airport.

52.

During that encounter, Watson told McCraw that he and Rosencranz believed that McCraw had complained to Bloom about Rosencranz's sexual harassment of her because Bloom had questioned them about the allegation.

53.

On or about May 27, 2009, McCraw reported for a flight assignment as a First Officer.

54.

She was assigned to fly that day with Captain Allen Watson.

55.

When McCraw reported to the cockpit for duty, Captain Watson threatened her with reprisal if she complained of sexual harassment during their flying rotation.

56.

McCraw immediately complained to Delta that she had been threatened by Captain Watson with reprisals if she filed a complaint of sexual harassment and that Captain Watson had been the Captain on the flight in 1998 when McCraw had been sexually harassed by Rosencranz.

57.

In response to McCraw's complaint, Delta removed her from that flying assignment, without pay.

58.

Delta failed and refused to investigate or address McCraw's complaint that the Captain had threatened her with reprisal if she filed a sexual harassment charge.

59.

McCraw's complaint to Delta was an act in opposition to conduct made unlawful by Title VII.

60.

On June 19, 2009, McCraw sent Delta two memorandums in which she

complained of the sexual harassment that she was subjected to by Watson and Rosencranz in 1998, the campaign of vicious rumors against McCraw that had been perpetrated by Rosencranz and his confederates up to that day and the threats that Captain Watson had made to McCraw on May 27, 2009.

61.

The memorandums that McCraw sent Delta on June 19, 2009 constituted opposition to conduct that is unlawful under Title VII.

62.

Delta failed and refused to investigate or address the complaints that McCraw set forth in her memorandums on June 19, 2009.

63.

Delta failed and refused to respond to McCraw about the memorandums she sent on June 19, 2009.

64.

On or about August 25, 2010, McCraw served as a First Officer on a flight rotation between New York and London, England.

65.

Delta arranged for overnight accommodations for the flight crew at a

hotel in Kensington, England.

66.

That evening, McCraw consumed several glasses of wine at dinner.

67.

Later that evening, McCraw went to an airline crew lounge at the layover hotel for the purpose of conducting an internet “Skype” conversation.

68.

While in the hotel airline crew lounge, McCraw became engaged in a verbal argument with a male flight attendant, who had complained to her about the loudness of her skype conversation.

69.

As a result of the verbal confrontation, McCraw was arrested by British police.

70.

McCraw was released the following day. British police dropped all charges against her after issuing a warning.

71.

McCraw had no prior history of employee discipline at Delta.

72.

Upon learning of her arrest, Delta suspended McCraw from active flight status pending an investigation.

73.

McCraw remained on suspension from active flight status for 117 days, *i.e.*, from August 26, 2010 until December 20, 2010.

74.

On December 20, 2010, Delta terminated McCraw's employment.

75.

During the course of McCraw's employment with Delta, numerous male pilots were disciplined for comparable conduct while on layovers.

76.

Delta applied a more benign level of discipline on these similarly situated male pilots than the termination it imposed on McCraw.

77.

The reasons articulated by Delta to support its suspension and discharge of McCraw are pretextual.

SUBSTANTIVE ALLEGATIONS

COUNT I

**RETALIATION AGAINST McCRAW BECAUSE OF
CONDUCT THAT IS PROTECTED BY TITLE VII**

78.

The allegations set forth in all previous paragraphs above are incorporated by reference herein as if fully set out in this paragraph.

79.

Delta received the written memorandums complaining of sexual harassment and retaliation that McCraw sent on June 19, 2009.

80.

Delta had actual knowledge of the written memorandums complaining of sexual harassment and retaliation that McCraw sent on June 19, 2009.

81.

Delta's failure to respond to McCraw's June 19, 2010 written complaints of sexual harassment and retaliation is indicative of its disdain for sexual harassment complaints made by female pilots.

82.

But for McCraw's actions in opposition to practices made unlawful by Title VII, Delta would not have suspended McCraw from active flight status for 117 days.

83.

But for McCraw's actions in opposition to practices made unlawful by Title VII, Delta would not have terminated McCraw's employment.

84.

Delta retaliated against McCraw because she opposed actions and activities made unlawful by Title VII when it suspended her from active flight status for 117 days.

85.

Delta intentionally retaliated against McCraw because she opposed actions and activities made unlawful by Title VII when it suspended her from active flight status for 117 days.

86.

Delta acted with malice or with reckless indifference to the federally protected rights of McCraw when it suspended her from active flight status for 117 days.

87.

Delta retaliated against McCraw because she opposed actions and activities made unlawful by Title VII when it terminated her employment.

88.

Delta intentionally retaliated against McCraw because she opposed actions and activities made unlawful by Title VII when it terminated her employment.

89.

Delta acted with malice or with reckless indifference to the federally protected rights of McCraw when it terminated her employment.

90.

As a direct and proximate result of Delta's unlawful retaliation against McCraw, McCraw has suffered and continues to suffer loss of income, loss

of health care and other benefits of employment, loss of retirement benefits. emotional distress and emotional pain and suffering, in an amount to be proved at trial.

91.

As the direct and proximate result of Delta's unlawful retaliation against McCraw, McCraw has been forced to incur attorneys' fees and expenses of litigation for which Delta is liable.

COUNT II

GENDER DISCRIMINATION

92.

The allegations in all previous paragraphs above are incorporated by reference as if fully set out in this paragraph.

93.

Delta's 117 day suspension and ultimate termination of McCraw constitutes treatment of McCraw that is materially differently than Delta's treatment of similarly situated male pilots.

94.

Delta's 117 day suspension and ultimate termination of McCraw

constitutes discrimination against McCraw on the basis of her gender.

95.

Delta intentionally discriminated against McCraw on the basis of her gender.

96.

Delta acted with malice or reckless indifference to the federally protected rights of McCraw when it discriminated against McCraw on the basis of her gender.

97.

As a direct and proximate result of Delta's unlawful conduct, McCraw has suffered loss of employment, loss of income, loss of retirement and healthcare benefits, and emotional pain and suffering, in an amount to be proven at trial.

98.

As a direct and proximate result of Delta's unlawful conduct, McCraw has been forced to incur attorneys' fees and expenses of litigation for which Delta is liable.

COUNT III

HOSTILE WORK ENVIRONMENT

99.

The allegations in all previous paragraphs above are incorporated by reference as if fully set out in this paragraph.

100.

The campaign of vicious rumors perpetrated by Rosencranz and his confederates and the resulting hostility toward McCraw by many male pilots was pervasive and excessive.

101.

The campaign of vicious rumors perpetrated by Rosencranz and his confederates and the resulting hostility toward McCraw by many male pilots resulted in the creation of a hostile environment based on sex.

102.

This hostile environment was so severe as to unreasonably interfere with McCraw's ability to perform her job.

103.

Delta was aware of the hostile environment to which McCraw was subjected.

104.

Delta took no steps to correct the hostile work environment to which McCraw was subjected.

105.

By its inaction, Delta fostered and ratified the hostile work environment to which McCraw was subjected.

106.

Delta intentionally took no steps to correct the hostile work environment that McCraw was subjected to.

107.

Delta acted with malice or with reckless indifference for the federally protected rights of McCraw when it took no steps to correct the hostile work environment that McCraw was subjected to.

108.

As a direct and proximate result of Delta's unlawful conduct, McCraw has suffered emotional pain and suffering in an amount to be proven at trial.

109.

As a direct and proximate result of Delta's unlawful conduct, McCraw has been forced to incur attorneys' fees and expenses of litigation for which Delta is liable.

WHEREFORE, McCraw respectfully prays:

- a) That McCraw be reinstated to her former position as a Delta pilot with full restoration of seniority and longevity;
- b) That McCraw be awarded damages to cover all lost income, lost health care and other benefits and lost retirement benefits which she would have received or accrued but for the unlawful actions taken against her;
- c) That McCraw be awarded general damages to compensate her for the emotional injuries, pain and suffering and other losses and injuries suffered as a result the unlawful actions taken against her;

- d) That McCraw be awarded punitive damages against Delta as a consequence of its willful, malicious, reckless and intentional conduct;
- e) That McCraw be afforded a trial by jury;
- f) That McCraw be awarded her reasonable attorneys' fees and expenses of litigation; and
- g) That McCraw be awarded such other and further relief as is just, equitable and proper.

Respectfully submitted,

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