

IN THE CIRCUIT COURT OF SALINE COUNTY, ARKANSAS
DIVISION

FILED
SALINE COUNTY
CLERK

2005 JAN 17 PM 1:05

DAVID HARRIS, on Behalf of
Himself and all others Similarly
Situated

Plaintiff,

vs.

FEDEX GROUND PACKAGE
SYSTEM, INC., and FEDEX
GROUND PACKAGE SYSTEM,
INC. d/b/a FEDEX HOME DELIVERY.
Defendants.

BY: [Signature]
CLASS ACTION COMPLAINT

JURY DEMANDED

Case No. 06-2006-66-3

4:06CV00175SWW

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. This is an action brought by a former delivery driver of FedEx Ground Package System, Inc. or FedEx Home Delivery (collectively "Defendants" or FedEx Ground") for Defendants' unlawful misclassification of drivers as independent contractors instead of employees. The named Plaintiff brings this action on behalf of a class of similarly situated persons who have worked as delivery drivers for FedEx Ground in the state of Arkansas for Defendants' statutory and common law violations that stem from this mis-classification.

II. PARTIES

2. Plaintiff David Harris is an adult resident of Bauxite, Saline County, Arkansas. Plaintiff worked for FedEx Ground from April 2004 until July 2005. Plaintiff has consented to appear in this action in writing as evidenced by Exhibit 1 to this complaint.

3. Plaintiff David Harris brings this action on his own behalf and on behalf of a

proposed class of all others similarly situated. That class includes all individuals who worked within the State of Arkansas for FedEx Ground Package System, Inc. and/or its subsidiary, FedEx Home Delivery, as pickup and delivery drivers and who were improperly classified by the Defendants as independent contractors. The proposed class meets the requirements of Rule 23 of the Arkansas Rules of Civil Procedure.

4. Defendant FedEx Ground Package System, Inc., together with its division, FedEx Ground Package System, Inc. d/b/a FedEx Home Delivery, is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. The registered agent for service is The Corporation Company, 425 West Capitol Avenue, Suite 1700, Little Rock, AR 72201. At all times relevant, FedEx Ground, an affiliate of FedEx Corporation, engaged in transportation and delivery services in Arkansas.

III. JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court. The Plaintiff is a resident of Saline County, Arkansas.

6. Defendants have substantial contact with the State of Arkansas and has done and continues to do business within the State of Arkansas, in which it has shipped or delivered hundreds of thousands of packages in Arkansas and employs Arkansas residents.

7. The claims of individual class members inclusive of interest, attorney's fees, costs and a pro rata share of damages, may meet or exceed the federal minimum jurisdictional limits.

8. Venue is proper in this Court because Plaintiff is a resident of this County, and because Defendants have violated the laws of the State of Arkansas and have entered into contractual agreements with the Plaintiff and putative class members within Arkansas and have elected to

maintain a corporate presence in Arkansas.

IV. STATEMENT OF FACTS

9. FedEx Ground, as an affiliate of FedEx Corporation, employs more than 50 drivers in Arkansas to pick up and deliver packages to customers of the Defendants.

10. As a condition of employment, the Defendants required every driver to sign a Pickup & Delivery Standard Contractor Operating Agreement, together with several Addendums (collectively referred to as the "Agreement"). The Agreement is a form contract establishing the terms and conditions of employment of FedEx Ground drivers.

11. At all material times both Plaintiff and the class were individually parties to the Agreement with FedEx Ground described above in paragraph 9.

12. Neither the named Plaintiff nor class member drivers (collectively, the "Drivers") were able to negotiate for different terms and conditions from those appearing in the form Agreement provided by the Defendants. By way of example, the Defendants unilaterally set the compensation to be paid to the drivers.

13. Though the Agreement labels the drivers as independent contractors, the degree of control exercised over the drivers by the Defendants demonstrates that the drivers are employees rather than independent contractors. Such control includes, but is not limited to, the following matters:

a. Defendants employ supervisors and managers who have supervisory responsibility over the drivers and assign and direct their work. The supervisors have discretion regarding matters that affect rates of compensation, and the ability of a driver to sell his route to a third party. The supervisors and managers work in the terminals where the drivers report to retrieve the packages that

they deliver for the Defendants' customers in furtherance of the Defendants' business operations.

b. The drivers are required to comply with the Defendants' instructions in terms of written and unwritten policies, procedures, and directives appearing in the Agreement and unilaterally issued by the Defendants from time to time regarding the required standards for performance of the drivers' duties. Drivers suffer financial penalties and/or disciplinary actions for failure to comply with such policies, procedures, and directives.

c. When beginning to work for the Defendants, the drivers receive training in the Defendants' policies and procedures, in the documentation required of drivers by Defendants, and in the technology the Defendants' require the drivers to use in the performance of their work for the Defendants.

d. The drivers are required to purchase the vehicles they use in working for the Defendants and to purchase the uniforms they wear in performing their work.

e. The fact that Defendants' logo appears on the drivers' trucks and uniforms effectively prohibits the drivers from using their vehicles or uniforms for any business other than the business of Defendants during the working day.

f. In addition to paying the drivers for each package picked up and/or delivered, the Agreement provides that the Defendants will pay the drivers a set amount for each day that the driver provides services to the Defendants as well as a premium for the drivers' time when the drivers' route contains a small amount of package deliveries. Such payments are made to the drivers each week. Therefore, the drivers pay rate is determined by both the volume of package deliveries and by the amount of time spent working.

g. Though the Agreement purports to give the drivers proprietary control over the

routes, the Defendants change the drivers' routes from time to time without the drivers' permission and prohibit the drivers from selling their routes or having other individuals perform in their place without the express prior approval of the Defendants.

i. The Defendants exert a high degree of control over the drivers' work. For example, they have begun installing GPS systems in the drivers' vehicles enabling the Defendants to track the drivers' whereabouts at all times while working.

14. Though the Agreement labels the drivers as independent contractors, the type of relationship between the Defendants and the drivers demonstrates that the drivers are employees rather than independent contractors. Factors showing an employment relationship include, but are not limited to, the following:

a. The work of the drivers in picking up and delivering packages for the Defendants' customers is completely integrated into the business of the Defendants such that the Defendants' business depends significantly on the performance of the services that the drivers perform.

b. Though the drivers are required to purchase or lease the vehicles they use in working for the Defendants, and to purchase the uniforms they wear in performing said work, the Defendants require that the drivers adorn their vehicles and uniforms with the Defendants' logo and effectively prohibit the drivers from using their vehicles or uniforms for other business while so adorned. Such requirement prevents the drivers from using their vehicles and uniforms to offer services for other, similar businesses.

c. Though the Agreement purports to give the drivers proprietary control over their routes, the Defendants exert a high degree of control over the drivers' ability to sell their routes or have other individuals perform in their place. Such sales and substitutions require the express prior

approval of the Defendants, making the services of a type that must be rendered personally by drivers who have effectively been hired by the Defendants.

d. The Defendants prevent the drivers from choosing when and how much they care to work for the Defendants, instead requiring the drivers to work a minimum number of hours and shifts and prohibiting the drivers from refusing to work, such as picking up certain packages.

e. Defendants typically schedule such a high volume of package deliveries for individual drivers that the work cannot possibly be completed in a 40 hour work week.

f. Many drivers have had a continuous working relationship as drivers for the Defendants exclusively over many years.

15. The Defendants, per the Agreement, require the drivers to pay the Defendants' operating expenses, including but not limited to:

a. costs relating to the purchase and operation of vehicles to perform work for the Defendants and costs for maintenance and repair of such vehicles;

b. costs relating to the purchase of insurance, including vehicle insurance and work accident insurance;

c. costs relating to the purchase of uniforms adhering to the Defendants' precise specifications;

d. the share of federal employment taxes for which employers are liable; and

e. other costs normally associated with the operation of a business and included in the Defendants' business support package, such as maps, logos and signs, training, modems, and scanners.

16. By retaining behavioral and financial control over the drivers despite the express

language to the contrary in the Agreement, the Defendants have committed a widespread and systemic breach of the terms of said Agreement.

17. By retaining behavioral and financial control over the drivers despite the express language to the contrary in the Agreement, the Defendants have mis-characterized the drivers as independent contractors (and thus entitled to a variety of legal benefits that inure from the employment relationship).

18. The Defendants do not contribute to workers' compensation and unemployment insurance programs.

19. The package delivery schedules created by Defendants result in many hours of unpaid overtime work, in violation of Arkansas wage and hour laws.

20. The fair value of the services performed by the drivers exceeds the amount of pay received by the drivers for the work they perform, as compared to drivers performing substantially the same work for other similar businesses and for Defendant FedEx Corporation's other affiliated companies.

21. Under the rules established by the Internal Revenue Service ("IRS") regarding classification of employees and independent contractors, FedEx Ground drivers are employees. Upon information and belief, Defendants are in breach of a 1995 agreement reached between their predecessor company, Roadway Package System, Inc. ("RPS"), and the IRS regarding this classification issue.

22. Under the laws of the State of Arkansas, Defendants have mis-classified the Drivers as independent contractors when they are in fact employees.

23. Despite their knowledge that they have improperly classified the drivers as

independent contractors instead of employees, the Defendants have willfully continued to mis-classify the drivers as independent contractors.

COUNT I

Declaratory Judgment

24. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

25. Under the relevant laws of the United States and of Arkansas, Defendants have mis-classified the Plaintiff and Class Members as independent contractors rather than as employees; therefore, this Court should issue a declaratory judgment establishing that the Plaintiff and Class Members are or were employees of Defendants and that the Plaintiff and Class Members are or were therefore entitled to all the rights and benefits of employment pursuant to the laws of the state of Arkansas and the United States of America.

COUNT II

Violation of Arkansas Wage and Hour Law

Arkansas Code Annotated §11-4-201 *et seq.*

26. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

27. For at least five years preceding the filing of this lawsuit, Plaintiff and members of the class are or were employed by Defendants within the State of Arkansas. Defendants were required to compensate Plaintiff for all hours worked, but failed to carry out the duties and responsibilities as an employer imposed under the laws and regulations of the State of Arkansas and breached their employment contract by:

(a) failing to pay Plaintiff for all hours worked; failing to provide rest periods as required by law, failing to provide meal periods as required by laws, being forced to work through lunch or meal periods, and illegally and not accurately recording time worked.

(b) As a direct result of the actions of Defendants, Plaintiff has suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and costs and attorney's fees in seeking to compel Defendants to fully perform their obligations under state law, resulting in damages in amount according to proof at time of trial, but collectively in amounts in excess of the minimum amounts required for federal jurisdiction.

COUNT III

Breach of Contract

28. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

29. Defendants have breached their written contracts with Plaintiff and Class Members, in which they made express representations concerning the party's rights and duties which proved untrue, to Plaintiff and Class Members' detriment, and Defendants are therefore in breach of those contracts.

COUNT IV

Misrepresentation

30. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

31. Defendants have committed misrepresentations in their representations concerning the party's rights and duties, in particular in misrepresenting to the drivers that they are independent

contractors rather than employees, the Plaintiff reasonably relied upon the representations made by Defendants and suffered damages as a direct and proximate result of such reliance upon the representations of Defendants.

COUNT V

Unjust Enrichment

32. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

33. As a result of Defendants' conduct in misclassifying Plaintiff and Class Members as independent contractors, the Defendants have forced Plaintiff and Class Members to bear the normal operating costs and overhead of the Defendants' business and have thus unjustly enriched themselves to the detriment of Plaintiff and Class Members.

COUNT VI

Conversion

34. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

35. By engaging in conduct in forcing the Plaintiff and Class Members to bear the normal operating costs and overhead incident to the Defendants' business operations, the Defendants also converted the property of the Plaintiff and Class Members to the Defendants' own use.

COUNT VII

Quantum Meruit

36. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

37. Plaintiff and Class Members have been deprived by the Defendants of the fair value of their services and are thus entitled to recovery in *quantum meruit*.

COUNT VIII

Injunctive Relief

38. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

39. As the Defendants have at all time continued to misclassify Plaintiff and Class Members as independent contractors despite retaining control over them as employees, the Plaintiff and Class Member seek permanent injunctive relief enjoining Defendants from practicing the unlawful practices alleged herein.

COUNT IX

**Violations of the Fair Labor Standards Act
(29 U.S.C. §216)**

40. Plaintiff hereby incorporates by reference as if fully set forth herein each and every allegation in preceding paragraphs of this complaint.

41. The Plaintiff was employed by the Defendant in the relevant time period.

42. Plaintiff was engaged in commerce.

43. Defendant failed to pay Plaintiff the minimum wage required by law.

DAMAGES

44. As a direct and proximate result of the acts of Defendants as alleged herein, the Plaintiff is damaged and seeks remedies as follows:

(a) Compensatory damages

- (b) for restitution of all monies due to Plaintiff;
- (c) for interest accrued to date;
- (d) for costs;
- (e) for reasonable attorney fees; and
- (f) for all other relief that the Court may deem just and proper.

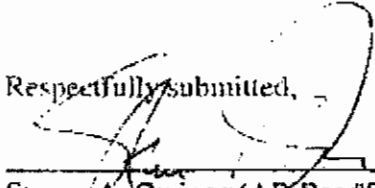
JURY DEMAND

Plaintiff requests a trial by jury on his claims.

WHEREFORE, Plaintiff requests that his Court enter relief as follows:

1. Certification of this case as a Arkansas class action pursuant to Rule 23 of the Arkansas Rules of Civil Procedure;
2. A declaratory judgment that Plaintiff and other similarly situated persons are employees, not independent contractors;
3. Compensatory damages as requested herein;
4. All damages to which Plaintiff and Class Members may be entitled; and
5. All other just, proper and equitable relief to which Plaintiff and Class Members may be entitled.

Respectfully submitted,


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STATE OF ARKANSAS)
COUNTY OF GARLAND)

AFFIDAVIT OF DAVID HARRIS

I, David Harris, hereby swear and affirm, that the following is true to the best of my knowledge, information and belief.

I hereby verify that I have given my consent to my attorneys to file a Fair Labor Standard Acts case, and I have given my consent to appear in that case as a representative to appear for a proposed class of similarly situated drivers.

FURTHER THE AFFIANT SAYETH NOT.


DAVID HARRIS

Subscribed and sworn to before me, a Notary Public, this 8th day of November, 2005.


NOTARY PUBLIC

