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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JACOB DANIEL TUMULTY, TAJ
KARL UHDE, individually and on behalf
of a class of similarly situated individuals,

Plaintiffs,

v.

FEDEX GROUND PACKAGE SYSTEM,
INC., et. al.

Defendants.

NO. C04-1425MJP

Declaration of Jacob Tumulty

Jacob Tumulty declares under penalty of perjury under state and federal law to the best of his recollection as follows:

1. I performed package pick-up and delivery for FedEx Ground (“FEG”) from September 2001 to January 2003 (“my FEG tenure”). During this time, FEG had Terminals in Auburn (where I was based), Everett, Olympia and Spokane. FEG employed roughly 10 Managers in Auburn who oversaw package pick-up and delivery (“p/d”). It also employed persons who loaded and unloaded trucks. There are 3 groups of persons who perform package pick-up and delivery for FEG at the Auburn Terminal. Group 1 consists of “P&D Contractors” (“Contractors”), who enter into

1 agreements with FEG for p/d on specific FEG route(s). Some Contractors have more than
2 one route. Group 2 consists of "Second Van Drivers" ("SVD" aka "Contractor Drivers"),
3 who perform p/d on a specific Contractor route. Group 3 consists of "Temporary Drivers"
4 ("Temps"), who fill gaps that Contractors/SVDs cannot service. I was a member of Group
5 2 (SVD for Clere, Sparks, and others) and 3 (Temp); Uhde was a member of Group 2
6 (SVD for Clere and Herren), and Clere and Sparks were members of Group 1. Pomerantz
7 issued my Temp paychecks.

8 **Temp (September 2001)**

9 2. In early September, 2001, I saw a FEG advertisement for Temp Drivers. See
10 Ex. 1 (similar Temp ad). I called the number listed in the ad and left a message.
11 Johnny Major, a FEG Human Resources Representative, returned my call and invited
12 me to interview at the Auburn Terminal shortly thereafter. See Ex. 2 (Major biz card).
13 During my interview, Mr. Major told me that if hired, I would fill a delivery driver
14 position about to open in Tacoma. Before FEG hired me, I demonstrated my driving
15 skills to a FEG Manager ("Dan") by driving a truck at the Terminal parking lot. FEG
16 also sent me to a doctor where I took a physical and drug test.
17

18 3. After I was hired, FEG gave me a uniform, which consisted of a shirt with
19 FEG logo and khaki pants. See Ex. 9 (picture of shirt). I wore the same uniform
20 during my entire FEG tenure. The shirt contained FEG logo (with no other logo of
21 Pomerantz, Clere, Sparks, other Contractor logo). FEG provided me with a FEG
22 badge which I carried throughout my FEG tenure. See Ex. 3 (badge). Mr. Major

23 Declaration of Jacob Tumulty - 2

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1 gave me a number of booklets, some of which I attach as Ex. 4 (Temp P&D Driver
2 Program, Contractor Customer Service Program, and Contractor's Companion). I
3 spent my first few days observing the p/d process, accompanying several persons
4 including a Contractor (other than Clere). My paycheck for those first few days was
5 issued by Pomerantz and left for me at the Terminal. I was paid \$105 a day
6 regardless of the number of hours I worked. While a Temp during my FEG tenure, I
7 never went to a Pomerantz office, saw a Pomerantz employee, wore a uniform/drove
8 a truck with Pomerantz logo, or received Pomerantz training or feedback.

9
10 **Clere (Sept. 2001-May 2002)**

11 4. In late 9/01, I became a SVD for Mr. Clere's newest Tacoma route (his
12 5th), as Mr. Major and I had discussed. I drove this route Monday-Friday and was
13 paid by Mr. Clere at a rate of \$120 a day regardless of the hours worked, with no
14 state or federal taxes withheld. Mr. Clere had no office where I reported and did not
15 have me complete an application. He issued me a cell phone which both he and FEG
16 used to contact me. A FEG Manager (I believe Jason Carroll) gave me a pager in
17 which FEG would enter "911" for important p/d matters. I carried an "insurance
18 identification" card, listing FEG as the "named insured." See Ex. 5 (insurance card).

19 5. I wore the same uniform as I described above (no Clere logo). I drove a
20 truck owned by Mr. Clere, which usually remained at the Terminal overnight. Mr.
21 Clere's truck, like all other Contractor trucks I drove during my FEG tenure, had no
22 separate Clere logo and instead bore FEG's purple and green logo. See Ex. 6 (top

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1 photo of FEG truck). This logo contrasts with the purple and orange colors of FedEx
2 Express, a different company. Id. (bottom photo of FedEx Express truck).

3 6. I typically reported to the Auburn Terminal each day by 7:30 a.m. and
4 returned to the Terminal after 4:00 p.m. Mr. Clere told us not to return to the
5 Terminal early or FEG management would be angry. These were typical hours
6 during my FEG tenure and I held no other job during these times. Mr. Clere had a
7 box at the Terminal where I retrieved my scanner and daily pick-up sheet. I was
8 required to use the scanner to record package deliveries and pick-ups and had to use
9 particular FEG codes (i.e. package refused, etc.). The pick-up sheet was prepared by
10 FEG and listed the day's pick-ups, with specific time frames FEG had negotiated
11 with the customer dictating when the pick-up had to be made.
12

13 7. The following routine was typical during me FEG tenure, whether as a
14 Temp or SVD. FEG employees usually loaded my truck in the morning and
15 unloaded it at the end of the day. After retrieving my scanner and pick-up sheet, I
16 would typically exit the Terminal and start my deliveries. Sometimes, however,
17 FEG locked the Terminal gates and/or delayed my departure until late-arriving
18 packages had been loaded. I would generally do my deliveries in the morning and
19 my pick-ups in the afternoon. I followed the same FEG procedures – i.e. scan the
20 package, obtain signatures, collect cash on c.o.d.'s, etc. Throughout my FEG tenure,
21 I would deliver FEG packages, as well as occasional packages with FedEx Home
22 Delivery labels. The FedEx Home packages could be read by FEG scanners. At the
23

1 end of the day, I returned to the Terminal, turned in my scanner and awaited a print-
2 out (“settlement record”) which was generated from the scanner. See Ex. 7
3 (settlement record of 12/31/01). The settlement record listed my day’s p/d, and
4 required me to write my miles driven, “Total P&D Hours” (i.e. hours on the road)
5 and “Total Duty Hours” (i.e. measured from time I arrived at Terminal in a.m. until I
6 left Terminal in p.m.). For example, this Exhibit lists 100 miles driven on 12/3/01,
7 with 9 hours on the road and 9.5 total hours. FEG corrected any mistakes on the
8 record, such as the “9.5” correcting my entry of “9.15” under “Total Duty Hours.”
9 FEG maintained these records.

10
11 8. I regularly interacted with FEG management, with whom I was on a first-
12 name basis. FEG held weekly meetings for Contractors/SVD/Temps, which I
13 sometimes attended. The meetings would include such topics as safety, customer
14 service, and morale boosting (i.e. awarding safety pins, T.V.’s, catered lunches).
15 FEG Manager Jason Carroll gave me a certificate for good service to a customer.
16 See Ex. 8 (certificate). He also gave me a safety pin for good driving.

17 9. FEG Manager Jason Carroll once asked me to drive a West Seattle
18 Contractor’s route, while Mr. Clere drove my route (I agreed). When I had 2 motor
19 vehicle accidents, FEG sent its investigator (a male) to the scene each time. I recall
20 after one accident, Mr. Clere told me that FEG had settled the claims of the two other
21 drivers involved in the accident. When FEG “corporate” visited the Terminal,
22 several FEG Managers (including Jason Carroll) instructed all Drivers like myself to

1 do a particularly good job so as to impress them. I received similar instructions as a
2 Sparks' SVD when "corporate" visited on another occasion.

3 10. I stopped driving the Clere route in 5/02 because I was tired of the long
4 hours and lack of overtime pay.

5 **Temp/SVD/Temp/SVD/Temp/Termination (6/02-1/03)**

6 11. In June 2002, FEG Manager Jason Carroll called me and invited me to
7 return as a Temp, promising I would not have to work more than 8 hours a day. I
8 began to drive a Vashon route that FEG had assigned to Contractor Fairley Sparks,
9 whom I had never met. Pomerantz initially paid me for these days, and then Sparks
10 began paying me. Mr. Sparks paid me by check, at a rate of roughly \$120 a day,
11 with no payment for overtime and no withholdings. Mr. Sparks often left my check
12 at the Terminal. Mr. Sparks provided no training.

13 12. My routine as a Sparks' SVD mirrored the routine I followed as a Clere
14 SVD. I wore the same FEG-logo uniform (no Sparks logo), carried the same FEG
15 badge, and drove Sparks' FEG-Logo truck (no Sparks logo, kept at Terminal
16 overnight). I reported to the Terminal around the same time as with Clere, where I
17 retrieved a scanner and pick-up sheet from Spark's "box." I followed the identical
18 FEG p/d procedure and submitted the identical settlement record. I interacted with
19 FEG management regularly, often via FEG's pager (given to me by FEG Manager
20 "Lisa"). I would go days at a time without seeing Mr. Sparks, who had no office
21 where I reported. FEG Manager Jason Carroll once instructed me to take photos of a
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1 customer's damaged lawn. On another occasion, I returned to the Terminal around 3
2 p.m. because I had a Court hearing. FEG Manager Mark Cendejas was angry with
3 me for returning to the Terminal "early." On another occasion, I returned to the
4 Terminal in my Court attire after another hearing and Mr. Cendejas chided me for
5 not being in uniform. On another occasion, a FEG Manager (I believe it was Chip
6 Anderson) instructed me to retrieve a package in Snoqualmie, even though I was
7 preparing to board the Vashon Ferry.

8
9 13. During the summer of 2002, I spent roughly a month as a SVD for 2
10 other Contractors (Gable and Bertram), and followed the same routine as above. I
11 wore the same uniform, drove the Contractor's FEG-logo truck (kept at Terminal
12 with no Contractor logo), reported to the Terminal around the same time, used the
13 same material (scanner, pick-up sheets), performed identical p/d duties, and
14 completed a settlement record. After these stints, I resumed working as a Temp on
15 some days and a SVD on the Sparks' route on other days. As a Temp, I was paid by
16 Pomerantz and would often do p/d on different Contractor routes that were
17 overloaded. FEG (usually Chip Anderson or Mark Cendejas) usually told me upon
18 my arrival at the Terminal whether I would be a Temp or a Sparks SVD that day.

19
20 14. In late January, 2003, Mr. Anderson fired me. Shortly thereafter I called
21 FEG Manager Cendejas and asked if I could work as a SVD for any Contractor, to
22 which he replied "No," ending my FEG tenure.

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1 Dated this 11 day of November, 2004.
2 Jacob Tumulty
3 Jacob Tumulty, Location: TAC, WA

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