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Equal Employment Opportunity Commission,
Plaintiff, v. Comet Rice Ingredients Company aka
Comet Ventures Inc. and American Rice Inc.
Defendants.

Judge Samuel B. Kent

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Equal Employment Opportunity Commission, Plaintiff, v. Comet Rice Ingredients Company aka Comet Ventures Inc. and American Rice Inc. Defendants.

Keywords

Equal Employment Opportunity Commission, Comet Rice Ingredients Company, Comet Ventures Inc., American Rice Inc., G-97-557, Consent decree / Settlement, Disparate Treatment, Hiring, Other physical impairment disability, Agriculture, Employment Law, ADA

MAY 18 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

Michael N. Milby, Clerk of Court

19

Equal Employment Opportunity)
 Commission,)
)
 Plaintiff,)
)
 V.)
)
 Comet Rice Ingredients Company)
 a.k.a. Comet Ventures Inc. and)
 American Rice Inc.)
 Defendants.)
)

Civil Action No. G-97-557

CONSENT DECREE

I. GENERAL PROVISIONS

A. On September 25, 1997, the Equal Employment Opportunity Commission (the "Commission") filed a Complaint against the Defendants, Comet Rice Ingredients Company a.k.a. Comet Ventures Inc. ("Comet Rice") and American Rice Inc. ("American Rice" and collectively the "Companies") claiming that the Companies violated the Americans With Disabilities Act of 1990 (the "ADA") when they revoked job offers to a class of qualified job applicants based on back x-rays showing that each job applicant had a "Class V back." A Class V back consists of the conditions listed on Exhibit "A" attached hereto.

B. On October 20, 1997, the Companies filed their Answer denying the Commission's claims of disability discrimination and affirmatively asserting that it had followed the ADA in all of its hiring practices.

C. Through a Memorandum of Settlement, a copy of which is attached as Exhibit

"B", the Commission and the Companies (collectively referred to as the "Parties") have agreed to settle their disputes in order to insure equal employment opportunities for all qualified job applicants. The Memorandum of Settlement is subsumed in the Decree This Consent Decree (the "Decree") resolves and settles all claims arising in and from this lawsuit and Charges of Discrimination 330-96-1213 and 330-97-0194.

D. As part of the Decree, the Companies have agreed to:

- (1) pay a total of \$38,000 in Backpay to Steve Parmentier, Michael Kelley, Zeferino Balzaldia and Alberto Gonzales (collectively referred to as the "Claimants"),
- (2) alter its hiring practices to insure that qualified job applicants with Class V backs are provided with equal employment opportunities,
- (3) offer fulltime employment to the Claimants and
- (4) provide the Commission with semiannual reports on the Companies' job offers, hiring and nonhiring of job applicants with Class V backs.

E. The Companies' consent to entry of the Decree does not constitute an admission of the allegations in the Complaint, wrongdoing, liability or violation of the ADA or any other federal or state law.

F. The Parties stipulate to the jurisdiction of this Court and waive a hearing and entry of findings of fact and/or conclusions of law and trial by jury on all matters.

II. BACKPAY AND JOB OFFERS TO THE CLAIMANTS

A. Within 14 days of entry of the Decree, the Companies will pay the Claimants Backpay (minus applicable federal withholding taxes). The payments to the Claimants will be by Cashier's Check or Bank Check, in the following amounts and sent by certified mail to the following addresses:

and appropriate W2s from each claimant is furnished to the Company

1. Steve Parmentier (\$12,000)

[REDACTED]
[REDACTED]
[REDACTED]

2. Michael Kelley (\$10,000)

[REDACTED]
[REDACTED]

3. Zeferino Balzaldia (\$8000)

[REDACTED]
[REDACTED]

4. Alberto Gonzalez (\$8000)

[REDACTED]
[REDACTED]

B. When the payments are sent to the Claimants, copies of the checks will be sent to the Commission c/o Guy D. Kidd, Senior Trial Attorney, 7th Floor, Houston, Texas 77002.

C. The Companies will offer fulltime employment to the Claimants for the jobs for which they originally applied (or a higher paying job if the individual Claimant agrees) with compensation at the current rate offered by the Companies.

D. Within fourteen (14) days of entry of the Decree, the Companies will provide each of the individual Claimants with an application for employment. The applications for employment will be sent to the Claimants by certified mail at the addresses in listed in ¶ II(A). The applicant must return the application within 14 days from the date of receipt. After an individual Claimant completes and returns the application for employment, such Claimant will undergo the post-offer physical examination set forth in ¶ III(A), (B) and (C) hereafter. If such Claimant is hired, the Claimant will receive credit for years of service

retroactive to the date upon which the Claimant was first previously rejected for employment by the Companies. "Credit for years of service" referred to above includes receiving credit for the number of years (or portion thereof) required toward vesting in the employer's retirement plan and receiving vacation days and sick days as though the Claimant had been employed for the entire period of such years or portion thereof. Claimants hired for fulltime employment will be entitled to receive and have full use and enjoyment of the credited vacation and sick days referred to above notwithstanding any policy prohibiting their carryover from year to year and notwithstanding the Claimant's recent instatement.

E. The personnel coordinator for Comet Rice is Daisy Thibodiaux and the personnel coordinator for American Rice is Velma Gutierrez. For each Claimant hired, the applicable personnel coordinator will send the Claimant a letter explaining the benefits he will receive as "credit for years of service" as referred to in ¶ III(D) and a copy of each such letter will simultaneously be provided to the Commission along with a written copy of the Companies' sick leave and vacation policy.¹

III. POST OFFER PHYSICAL EXAMINATION HIRING PRACTICES FOR ALL JOB APPLICANTS

A. After an interview of a job applicant and a provisional job offer is made, the job applicant will undergo an Employment Entrance Examination. The examination will begin with the administration of a drug screen. If the job applicant passes the drug screen,

¹The effective dates of employment for those Claimants hired will be as follows: Steve Parmentier-2/12/95, Michael Kelley-7/10/95, Zeferino Balzaldia-6/7/95 and Alberto Gonzalez-6/13/94

he or she will receive a physical examination which will include a vision test, an audiometric exam, the taking of a medical history, a chest x-ray, and a back x-ray. The results of the examination will be provided to the appropriate plant personnel coordinator.

B. If the job applicant has a Class V back, the applicable personnel coordinator will have the job applicant undergo a Back Fitness Evaluation. This evaluation will include range of motion, reflex, walking, standing, muscle strength/flexibility, and lift testing. The maximum weight for the lift test will be 80 pounds. If the job for which the applicant applies does not require an 80-pound lift test, the lift test will be for the amount of weight determined by the Companies to be appropriate for that particular job. The Companies' determinations shall be documented in written job descriptions. If the Applicant passes the Back Fitness Evaluation test, he or she will be hired. If the job applicant fails the Back Fitness Evaluation test, the Companies may still hire the Applicant if in their judgment they believe it appropriate. If the Applicant does not have a Class V back, he will be hired unless the Companies otherwise determine that the Applicant is not qualified to perform the essential job functions.

C. The results of the Back Fitness Evaluation will be communicated in writing to the job applicant within seven (7) days of the exam. If the job applicant or the Companies' respective personnel coordinators are dissatisfied with a Back Fitness Evaluation that indicates that a job applicant is not fit for the job, either the job applicant or the respective personnel coordinator may request a second Back Fitness Evaluation by another physician not professionally affiliated with the physician performing the first Back Fitness Evaluation. If the job applicant requests a second evaluation, he or she will be

provided with a copy of his or her back x-ray within seven (7) days of the request for the second evaluation. If either the job applicant or the Companies decide to request a second opinion, he or she must do so within 14 days of the date of the first opinion.

III. POSTING OF NOTICE AND REPORTING

A. Within fourteen (14) days of entry of the Decree, the Companies will conspicuously post a notice informing all employees and job applicants of their right to be free from discrimination based on race, sex, national origin, religion and disability. The notice will include a statement informing employees and job applicants of their right to contact the Equal Employment Opportunity Commission at 1919 Smith Street, 7th Floor, Houston, Texas 77002, (713) 209-3372 or such telephone number as the Commission designates. The notice will be posted in locations reasonably calculated to be seen by all employees and job applicants. After posting the notice, the Companies will send a copy of the notice to the Commission along with a letter identifying the location of the notice posting.

B. Following entry of the Decree, the Companies will notify the Commission every six (6) months for two (2) years of the total number of job applicants examined, the total number of job applicants rejected from employment on the basis of the physical examination or the Back Fitness Examination, the number of those job applicants rejected following a finding of a Class V back and provided the job applicant(s) agrees, the names, addresses, and telephone numbers of those job applicants with Class V backs who are rejected from employment. The Companies' respective personnel coordinators will notify (in writing) all persons denied employment following an examination triggered by a Class

V back finding that the Commission desires his or her name, address and telephone number. Through its respective personnel coordinators, the Companies will notify the Commission of the mailing address and telephone number at work of the Companies' respective personnel coordinators, and will notify the Commission of any successor to his or her position should he or she no longer serve in his or her capacity.

IV. MISCELLANEOUS PROVISIONS

A. When notice to the Parties is required under the Decree, it will be provided to the following:

For the Plaintiff: Guy D. Kidd, Equal Employment Opportunity Commission, Houston District Office, 1919 Smith Street, 7th Floor, Houston, Texas 77002, (713) 209-3405, Fax: 209-3402.

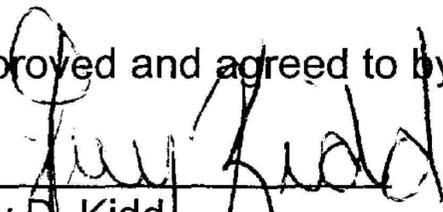
For the Defendants: John E Richards, Vial Hamilton, Koch & Knox, L.L.P., 1717 Main Street, Suite 4400, Dallas, Texas 75201-7388, (214) 712-4400, Fax: (214) 712-4402.

B. The Decree will remain in effect for two years following its entry by the Court.

C. The Parties recognize that change in medical knowledge or advice could necessitate revising ¶s III(A)(B) and/or (C) of the Decree. Thus, the Parties agree that if either of the Parties seeks a change in the Decree and a dispute arises, the Parties agree to mediation of the dispute prior to filing a motion for alteration of the Decree with the Court. However, the Commission's obligation to first mediate any such dispute is subject to the Commission's ability to procure funds for such a mediation.

D. Each Party will bear its own attorneys fees and costs.

Approved and agreed to by:

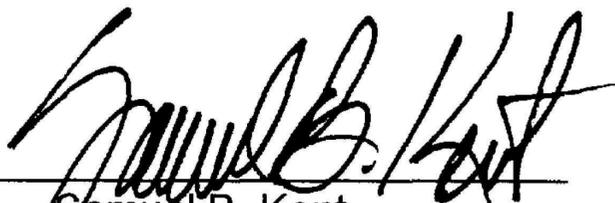


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Signed this 18th day of May, 1998



Samuel B. Kent
United States District Judge