

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BRYNNE SOUKUP,

Plaintiff,

v.

FRONTIER AIRLINES, INC.,

Defendant.

§
§
§
§
§
§
§
§
§

Civil Action No. 1:20-cv-648

**PLAINTIFF’S ORIGINAL COMPLAINT AND
DEMAND FOR JURY TRIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, BRYNNE SOUKUP, by and through her counsel, hereby files this Complaint against Defendant, FRONTIER AIRLINES, INC. (“Frontier”), for willful violations of the Texas Commission on Human Rights Act (“TCHRA”), TEX. LAB. CODE §§ 21.051 and 21.055. In support of her causes of action, Plaintiff states the following:

**I.
PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff, BRYNNE SOUKUP, is an individual residing in Houston, Texas.
2. Defendant, FRONTIER AIRLINES, INC., is a corporate entity formed and existing under the laws of the State of Colorado, where it also operates its corporate headquarters.
3. Defendant, at all relevant times, operated an international commercial airline terminal located in this judicial district, continuously conducted business in this judicial district, contracted to do business in this judicial district, and directly employed residents of this judicial district for employment herein.
4. The events at issue in this Complaint occurred while Plaintiff worked with and for Defendant primarily from her former residence located in Austin, Texas.

5. This Court has jurisdiction to hear the merits of Plaintiff's claims under 28 USC § 1332(a).

6. Plaintiff exhausted her administrative remedies under the TCHRA by timely filing a Charge of Discrimination with the Texas Workforce Commission, and by filing this suit within the time limits under relevant law.

7. Venue is proper in this judicial district and division under 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

II. **FACTUAL BACKGROUND**

8. Plaintiff is a tenured veteran of the aviation industry with over two decades of successful experience related to the administration and management of commercial airports and airlines.

9. Plaintiff is a transgender woman, and transitioned from her assigned male sex to align with her female gender identity prior to the events described herein.

10. In September 2017, Plaintiff began working as a General Manager for Flight Services & Systems, LLC ("FSS"), a staffing and ground services provider for commercial airlines.

11. On February 16, 2018, FSS promoted Plaintiff to Regional Director of Operations.

12. Both Defendant and FSS jointly exercised significant control over the details and means by which Plaintiff performed her work. For instance, although FSS hired Plaintiff and paid her wages throughout her employment, Plaintiff received extensive training from Defendant and was expected to conduct business for and on behalf of Defendant in accordance with its policies and procedures. Plaintiff worked in close association with, and often at the direction of, Defendant

and its employees. On-the-job corrections and admonishments were delivered by Defendant's employees to FSS employees. Defendant's employees had the right to terminate and end the assignment of specific FSS workers. Ultimately, Defendant's employees had the right to control FSS employees.

13. FSS further admitted that Defendant's employees interacted with and supervised FSS's employees servicing Frontier flights.

14. Because Defendant was among FSS's largest and most influential clients, Plaintiff was largely economically-dependent upon the business of Defendant.

15. In late-2018/early-2019, Plaintiff's subordinates reported several incidents of harassing and derogatory behavior by Defendant's Regional Manager concerning Plaintiff and Plaintiff's gender identity. For instance, one subordinate reported that the Regional Manager unjustifiably derided Plaintiff's job performance and remarked that Plaintiff was a "he-she" and a "waste of space." In a separate incident, a different subordinate reported that the Regional Manager again derided Plaintiff's job performance and arbitrarily outed her as transgender to the subordinate, stating, "You know [Plaintiff] is transgender, right?"

16. In January 2019, Plaintiff complained to FSS's leadership and Defendant's Human Resources Department about the Regional Manager's derogatory harassment.

17. On February 6, 2019, Defendant's Human Resources Business Partner claimed that Defendant had concluded a "complete and thorough investigation", but refused to identify any remedial actions taken by Defendant to address Plaintiff's complaint.

18. Defendant's Human Resources Department did not contact Plaintiff to obtain additional information about Plaintiff's complaints.

19. Upon information and belief, Defendant's Human Resources Department did not contact Plaintiff's subordinates to obtain additional information about Plaintiff's complaints.

20. Upon information and belief, Defendant still employs the Regional Manager who referred to Plaintiff as a "he-she" and a "waste of space."

21. On February 25, 2019, Plaintiff learned she was being demoted, transferred to a location 500 miles away from her home in Austin, Texas, and placed on a 90-day "probationary period", during which if Plaintiff failed to meet certain undefined "performance standards and expectations", her employment would be terminated.

22. Plaintiff's job performance throughout her tenure with FSS and Defendant was stellar, and she had no disciplinary history.

23. After Plaintiff refused to accept the unjustified demotion, transfer, and probation, her employment was terminated.

III. **CAUSES OF ACTION**

Count 1: Gender Identity Discrimination under TEX. LAB. CODE § 21.051

24. Plaintiff incorporates paragraphs 1-22, *supra*, as if repeated verbatim herein.

25. This action is brought pursuant to TEX. LAB. CODE § 21.051, part of the TCHRA.

26. "The law governing claims under the TCHRA and Title VII is identical." *Shackelford v. Deloitte & Touche, LLP*, 190 F.3d 398, 404 n.2 (5th Cir. 1999). "Courts analyze Title VII and parallel claims under the Texas Labor Code identically. Because TCHRA is intended to correlate with Title VII, the same analysis is applied for each claim." *Cornett v. United Airlines, Inc.*, No. A-18-CV-698 LY, 2019 WL 453365, at *3 (W.D. Tex. Feb. 5, 2019) (*citing Allen v. Radio One of Tex. II, L.L.C.*, 515 F. App'x. 295, 297 (5th Cir.), *cert. denied*, 571 U.S. 880 (2013); *Shackelford* at 404) (internal quotations omitted).

27. Both the TCHRA and Title VII prohibit discrimination by employers on the basis of sex. § 21.051; 42 U.S.C. § 2000e-2.

28. Plaintiff, a transgender woman, belongs to a protected class under Title VII, and accordingly, the TCHRA. § 2000e-2; *Bostock v. Clayton County, Georgia*, No. 17-1618, 2020 WL 3146686 (U.S. June 15, 2020).

29. Defendant is an employer within the meaning of the TCHRA and functioned as a joint employer of Plaintiff with FSS.

30. Defendant discriminated against Plaintiff in connection with the terms, conditions, and privileges of her employment by, *inter alia*, terminating or causing the termination of Plaintiff's employment because of her transgender status; and perpetuating a severe and pervasive hostile work environment toward Plaintiff because of her transgender status.

31. Defendant engaged in this unlawful intentional employment practice with malice or reckless indifference to Plaintiff's rights under the TCHRA.

32. The unlawful practices committed by Defendant directly caused Plaintiff's economic and noneconomic harm, as set forth below.

Count 2: Retaliation Under TEX. LAB. CODE § 21.055

33. Plaintiff incorporates paragraphs 1-22, *supra*, as if repeated verbatim herein.

34. Plaintiff engaged in protected activity under the TCHRA by opposing an unlawful discriminatory practice.

35. Plaintiff engaged in this protected activity in good faith.

36. Defendant took adverse employment actions against Plaintiff after she engaged in this protected activity.

37. A causal connection exists between Plaintiff's protected activity and Defendant's adverse employment actions including, *inter alia*, her demotion, transfer, probation, and eventual termination.

38. Defendant engaged in this unlawful intentional employment practice with malice or reckless indifference to Plaintiff's rights under the TCHRA.

39. Defendant's unlawful retaliation caused Plaintiff's economic and non-economic harm, as set forth below.

IV. **DAMAGES**

40. As a result of Defendant's unlawful conduct, Plaintiff has suffered economic damages, including past and future lost income, interest on back and front pay, lost earning capacity in the past and future, lost benefits under the contract or employment relationship, job search expenses, and other financial damages.

41. Plaintiff has also incurred non-economic damages as a result of Defendant's unlawful conduct, including emotional pain and suffering, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

42. Defendant intentionally engaged in unlawful employment practices by discriminating and retaliating against Plaintiff with malice or reckless indifference to Plaintiff's rights under the TCHRA.

43. Defendant's conduct calls for the imposition of compensatory and punitive damages under TEX. LAB. CODE § 21.2585 in an amount sufficient to deter Defendant from engaging in such acts of retaliation in the future.

V.
ATTORNEY'S FEES

44. A prevailing party may recover reasonable attorneys' and experts' fees under TEX. LAB. CODE § 21.259.

45. Plaintiff seeks all reasonable and necessary attorneys' fees and expert witness fees in this case from Defendant.

46. Plaintiff additionally seeks recovery of all costs associated with the prosecution of this action.

VI.
JURY DEMAND

47. Plaintiff demands a trial by jury of all the issues and facts in this case.

VII.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that:

48. The Court assume jurisdiction of this cause and that Defendant be cited to appear;

49. The Court award Plaintiff economic, compensatory, and punitive damages as specified above;

50. The Court award all reasonable and necessary attorneys' fees and expert witness fees in this case;

51. The Court award Plaintiff the equitable remedy of reinstatement or, in the alternative, front pay;

52. The Court award Plaintiff pre- and post-judgement interest at the highest rate allowable; and

53. The Court award Plaintiff any such other relief as the Court may find proper, whether at law or in equity.

Respectfully submitted,

ROSS • SCALISE LAW GROUP
1104 San Antonio Street
Austin, Texas 78701
T: (512) 474-7677
F: (512) 474-5306

/s/ Daniel B. Ross

Daniel B. Ross
State Bar No. 00789810
dan@rosslawgroup.com

Trenton Lacy
State Bar No. 24106176
trenton@rosslawgroup.com

ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS: BRYNNE SOUKUP; (b) County of Residence of First Listed Plaintiff - HARRIS; (c) Attorneys; DEFENDANTS: FRONTIER AIRLINES, INC.; County of Residence of First Listed Defendant - DENVER, CO; NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED; Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 main columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each cell contains a list of legal categories with checkboxes for selection.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original State Court 2 Removed from Appellate Court 3 Remanded from Reopened 4 Reinstated or Reopened Another District 5 Transferred from Litigation 6 Multidistrict Proceeding
- (specify)

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

TEX. LAB. CODE §§ 21.051 and 21.055; 28 USC § 1332(a).

Brief description of cause: Gender/Sex Discrimination TEX. LAB. CODE §§ 21.051 and 21.055.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION DEMAND \$ _____ CHECK YES only if demanded in complaint:

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE June 21, 2020

SIGNATURE OF ATTORNEY OF RECORD /S/ Daniel B. Ross

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNDER RULE 23, F.R.Cv.P.
JS 44 Reverse (Rev. 12/12)

JURY DEMAND: ♦ Yes No

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.

- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in the box. You are filing a class action under Rule 23, F.R.C.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.