

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

Surjit Singh Saund, an individual,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	COMPLAINT
	:	(Jury Trial Demanded)
M.M. Fowler Inc., d/b/a/ Family Fare Convenience	:	
Stores, a North Carolina corporation,	:	
	:	
Defendant.	:	
	:	

Plaintiff Surjit Singh Saund (“Mr. Saund”), by and through his undersigned counsel, brings this complaint against Defendant M.M. Fowler Inc., d/b/a/ Family Fare Convenience Stores (“Fowler”). The allegations below concerning Mr. Saund are based on personal knowledge; all other allegations are based on information and belief after investigation by Mr. Saund and his counsel.

NATURE OF THE COMPLAINT

Mr. Saund seeks redress for Fowler’s refusal to enter into an employment contract based on Mr. Saund’s racial and religious identity as a Sikh; for its refusal to reasonably accommodate Mr. Saund’s sincerely held religious beliefs; and for its policies, practices and adverse conduct which unlawfully discriminate against Mr. Saund as a member of the Sikh religion.

JURISDICTION AND VENUE

1. This action arises under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 *et seq.* (hereinafter “Title VII”), and the Civil Rights Act of 1866, 42 U.S.C. § 1981.

2. This action also arises under North Carolina common law.

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. This Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.

4. Fowler has sufficient contacts within the Eastern District of North Carolina to subject it to personal jurisdiction in this District, Mr. Saund resides within the Eastern District of North Carolina, and the employment opportunity that Mr. Saund sought and was denied is located in the Eastern District of North Carolina. Accordingly, venue in this District is proper pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 2000e-5(f)(3).

5. On or about July 24, 2008, Mr. Saund timely filed a charge of discrimination against Fowler with the Raleigh Area Office of the Equal Employment Opportunity Commission (the “EEOC”). On or about June 23, 2010, following an unsuccessful attempt at conciliation with Fowler, the EEOC issued a Notice of Right to Sue to Mr. Saund.

6. Mr. Saund has exhausted all his administrative remedies.

7. This action is being initiated within ninety days of Mr. Saund’s receipt of the EEOC’s Notice of Right to Sue.

PARTIES

8. Mr. Saund is a 59-year-old citizen of the United States who resides in Wake County, North Carolina; Mr. Saund has resided in North Carolina since 2003. Mr. Saund is a college graduate, has a bachelor’s degree in chemistry from a university in Gujarat, India, and worked as

a sales representative for an international pharmaceutical company for over 25 years before immigrating to the United States. Mr. Saund has worked in gas stations and convenience stores since July 2002, and has worked for the past six years at a Mobil station and convenience store, where his responsibilities include the general management and oversight of the store's day-to-day operations.

9. Fowler is a corporation duly organized and existing under the laws of the State of North Carolina, doing business as Family Fare Convenience Stores ("Family Fare") at approximately 70 locations within the State of North Carolina, including at least five locations in Wake County, North Carolina.

10. At all relevant times, Fowler employed more than fifteen employees and was an "employer" as defined by Title VII.

FACTS

11. Mr. Saund is an ethnic Sikh and a devout follower of the Sikh faith.

12. Sikhism is the fifth largest religion in the world, ranking after Christianity, Islam, Hinduism and Buddhism.

13. Sikhs possess a religious, cultural and historical identity that distinguishes them from other South Asian ethnicities. Sikhs were identified by the British as a unique "race" in the nineteenth century and, since that time, multiple courts in the United States and Britain have treated Sikhs as a race for the purposes of anti-discrimination legislation.

14. The Sikh religion is monotheistic and originated in the fifteenth century in the Punjab region of South Asia. Sikhs practice honesty, compassion, humility, universal equality and respect for all religions.

15. Sikhism has approximately 25 million adherents worldwide; approximately 500,000 Sikhs live in the United States and there are approximately 1,000 Sikhs in North Carolina, with four Sikh gurdwara, or places of worship, in North Carolina (two in Durham, NC; one in Charlotte, NC; and one built but not yet dedicated in High Point, NC).

16. As a Sikh, Mr. Saund has a sincerely held religious belief – required by his faith – that he may not cut his hair, including his facial hair, and must wear a turban on his head into which his hair is tucked and almost completely concealed. The requirements – to maintain unshorn hair and wear a turban – are central requirements of the Sikh religion.

17. Mr. Saund was born and raised in an observant Sikh family, has not cut his hair since birth and has covered his hair since childhood.

18. Mr. Saund keeps his beard tied back with thread, and has worn a turban and beard in previous jobs without incident. In his current employment at a Mobil convenience store, Mr. Saund is permitted to wear a patka, or under-turban, underneath a baseball cap. This accommodation enables Mr. Saund to remain faithful to the requirements of his religion.

19. Mr. Saund's head covering and beard have never prevented or interfered with Mr. Saund's satisfactory performance of his duties in any gas station or convenience store.

20. At all relevant times, Jim Hanson ("Mr. Hanson") was an account executive with Fowler, and was expressly authorized to act on behalf of Fowler with respect to Fowler's hiring decisions.

21. At all relevant times, Mr. Hanson acted pursuant to his authority and within the scope of his employment with Fowler.

22. In or around January 2008, Fowler advertised openings for the position of store operator.

23. In or around January 2008, Mr. Saund called Fowler to inquire about a job as a store operator of a Family Fare Convenience Store owned by Fowler in the Raleigh, NC area.

24. In or around January 2008, Mr. Hanson spoke with Mr. Saund via telephone regarding Mr. Saund's employment inquiry. Over the telephone, Mr. Hanson asked Mr. Saund about his qualifications and prior work experience. Based on the telephone interview, Mr. Hanson advised Mr. Saund that he was pre-qualified for a position as a store operator with Fowler, and Mr. Hanson invited Mr. Saund to attend an in-person meeting at Fowler's Durham offices to formalize his employment relationship with Fowler.

25. Shortly thereafter, in or around January 2008, and in response to Mr. Hanson's invitation, Mr. Saund met with Mr. Hanson at Fowler's Durham offices. Mr. Saund arrived for the meeting in conservative business attire, wearing a grey sport jacket, black pants, white shirt, and a tie; he wore his beard neatly tied and his hair neatly tucked under his turban.

26. Mr. Saund met Mr. Hanson in the reception area of Fowler's Durham office. Mr. Hanson immediately informed Mr. Saund that he would not speak with Mr. Saund about the position of store operator unless he removed his turban, cut his hair and shaved his beard. Mr. Hanson informed Mr. Saund that his turban, hair and beard were not permitted by Fowler's company policy.

27. In response to Mr. Hanson's statement, Mr. Saund explained to Mr. Hanson that he wore a turban because of his Sikh religion and that because of his faith, he could not remove his turban, shave his beard or cut his hair. Mr. Hanson told Mr. Saund that he was familiar with the Sikh religion, but that there was a company policy prohibiting hats and that Mr. Saund could not wear a turban. Mr. Hanson also asked Mr. Saund to return with short hair and a shaved beard.

28. Fowler refused to provide a reasonable accommodation for Mr. Saund's religious practices.

29. By reason of Mr. Saund's observance of Sikh religious requirements, and because he is a Sikh, Fowler denied Mr. Saund the store operator position that he otherwise would have received.

30. After refusing to hire Mr. Saund in January 2008, Fowler continued to advertise openings for the position of store operator in local newspapers and on the internet.

31. On or about April 6 or 7, 2008, Mr. Saund applied a second time for a job with Fowler to operate a Family Fare Convenience Store in the Raleigh, NC area. Mr. Saund spoke on the telephone with Mr. Hanson. Based on Mr. Saund's prior experience and qualifications, Mr. Hanson invited Mr. Saund to meet him at Fowler's Durham offices, and asked him to bring with him documents, including a social security card and green card. Mr. Hanson told Mr. Saund that if he complied with Mr. Hanson's request for documents, Mr. Saund would be given a position as a store operator at one of Fowler's Family Fare Convenience Stores.

32. On or about April 9, 2008, Mr. Saund returned to Fowler's offices to meet Mr. Hanson, bringing with him the requested documents. Mr. Saund was accompanied by his daughter, Gurpreet Saund. Mr. Saund again wore business-appropriate clothing and, as before, he wore a turban and his beard was neatly groomed and tied.

33. Upon meeting Mr. Saund, Mr. Hanson informed him that Fowler had a dress policy and that Mr. Saund could not wear a turban, long hair or a beard as a store operator. Mr. Hanson repeatedly promised Mr. Saund that if he removed his turban, cut his hair, shaved his beard and "looked good" and "looked smart," then Mr. Hanson would give Mr. Saund a gas station to operate.

34. In fact, at all relevant times, Fowler's dress policy did not include any provision regarding hair length or facial hair.

35. In fact, at all relevant times, Fowler did not prohibit its male non-Sikh store operators and other male non-Sikh store employees from having long hair or facial hair, and multiple Family Fare male non-Sikh personnel have long hair and facial hair.

36. A policy prohibiting the wearing of head coverings while on duty discriminates not only against Sikhs, but also against persons of other religious faiths that require head coverings, including Jews and Muslims.

37. During the meeting, Mr. Hanson showed Mr. Saund and his daughter pictures of several award-winning Family Fare employees, including two apparently non-Sikh Indians, emphasizing their uncovered heads and shaved faces. While doing so, Mr. Hanson repeatedly made comments and gestures that were insulting and demeaning to Mr. Saund and his practice of wearing a turban.

38. Mr. Saund asked Mr. Hanson whether his daughter could work as a store operator and then hire Mr. Saund to work for her. Mr. Hanson responded that Mr. Saund would not be allowed to work for Fowler if he was wearing a "hat," and that he would be required to shave his beard. Mr. Hanson reiterated his statement that if Mr. Saund cut his hair, shaved his beard and "looked smart" and "looked good," then Mr. Hanson would give him a gas station to operate.

39. Fowler expressly required that Mr. Saund violate fundamental tenets of his religious faith in order to receive a position as a store operator or be otherwise employed in one of its Family Fare Convenience Stores.

40. Fowler denied Mr. Saund the store operator position, which he otherwise would have received, because of his religion (Sikhism).

41. Fowler denied Mr. Saund the store operator position, which he otherwise would have received, because of his race (Sikh).

42. Fowler refused to provide a reasonable accommodation for Mr. Saund's religious practices.

43. After refusing to hire Mr. Saund in April 2008, Fowler continued to advertise openings for the position of store operator in local newspapers and on the internet.

44. When he was interviewed by the EEOC, Mr. Hanson admitted that Fowler denied the store operator position to Mr. Saund because of his turban and beard.

45. The store operator position for which Mr. Saund applied in both January 2008 and April 2008 involves supervising the operation of a convenience store or gas station in accordance with strict policies and procedures established and enforced by Fowler. The educational requirement for store operators is a high school diploma or equivalent. No specialized expertise, entrepreneurial acumen or professional skill is required to operate a Family Fare Convenience Store.

46. Mr. Saund was fully qualified for the store operator position for which he applied in January 2008 and April 2008.

47. At all relevant times, Fowler has exerted and continues to exert significant and rigorous control over both the manner and means by which Family Fare store operators perform their jobs and the operations of the Family Fare store itself.

48. The many ways in which Fowler has exerted and continues to exert its control over its Family Fare stores and store operators include, but are not limited to, the following:

- (a) designating the store location at which the store operator works;

- (b) providing and dictating equipment and fixtures to be used in the store by the store operator and the other store employees;
- (c) dictating the type, including the specific brand, of gasoline and all other non-gasoline merchandise offered for sale at each store;
- (d) dictating the price of all merchandise sold at each store;
- (e) ordering, purchasing and keeping track of all inventory;
- (f) requiring that the store operator regularly submit reports as to sales of gas, inventory and receipts;
- (g) dictating store opening and closing hours;
- (h) dictating the housekeeping schedule for the store and premises;
- (i) issuing regulations governing the appearance of store operators and all other store employees;
- (j) issuing regulations governing the conduct and dress of store operators and all other store employees;
- (k) requiring that store operators and other store employees attend training programs provided by Fowler;
- (l) requiring store operators to submit to drug testing by Fowler or its designee;
- (m) maintaining and exercising veto power over personnel decisions made by store operators;
- (n) prohibiting store operators from engaging in any activity, or offering any good or service, at the store premises that is not authorized by Fowler;
- (o) regulating the persons who are permitted on the store premises;

- (p) requiring that store operators maintain a smoke-free environment on the store premises;
- (q) terminating store operators and other store employees who do not comply with Fowler's policies and regulations;
- (r) requiring that store operators sign a non-compete agreement prohibiting store operators from directly or indirectly working in another convenience store in the same County in which they worked for Fowler for a period of two years after they leave their position with Fowler;
- (s) dictating all details regarding promotional sales;
- (t) maintaining exclusive control over all advertising;
- (u) retaining the right to inspect all books and records, including financial records, records showing the times of store opening and closing, payroll records and employee time records;
- (v) retaining ownership of all property, equipment and merchandise;
- (w) paying all utilities and property taxes on the store and premises;
- (x) performing normal maintenance, improvements and repairs to store, premises, and equipment;
- (y) maintaining ownership over all proceeds arising from the sale of gas and merchandise and requiring that all such proceeds be remitted promptly to Fowler by means of cash deposits into an account controlled exclusively by Fowler;
- (z) requiring that store operators and other store employees attend Fowler corporate meetings; and

(aa) visiting each store several times each week to monitor and strictly enforce the store operators' compliance with each of the policies, requirements and practices set forth above, in addition to any others that may exist.

FIRST CAUSE OF ACTION

*Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2
(Employment Discrimination on the Basis of Religion)*

49. Mr. Saund repeats and realleges each and every allegation set forth in paragraphs 1-48 of the Complaint as if fully set forth herein.

50. In January 2008 and April 2008, Mr. Saund sought employment with Fowler within the meaning of Title VII.

51. Mr. Saund was and is fully qualified for the Family Fare store operator position for which he applied in January 2008, as alleged herein.

52. Mr. Saund was and is fully qualified for the store operator position for which he applied in April 2008, as alleged herein.

53. As a follower of Sikhism, Mr. Saund has a sincerely held religious belief which, among other things, requires him to wear a turban and maintain uncut hair, including facial hair.

54. Mr. Saund's exercise of his religious beliefs by wearing a turban and beard did not pose any legitimate workplace safety or performance issue for Fowler.

55. Fowler refused to hire Mr. Saund.

56. Fowler refused to accommodate Mr. Saund's religious beliefs, as alleged herein, although it was not an undue burden for it to do so.

57. Fowler had actual knowledge of Mr. Saund's religious beliefs at the time that it refused to hire Mr. Saund and refused to accommodate his religious beliefs, as alleged herein.

58. Mr. Saund's religion was a substantial motivating factor in Fowler's decision not to hire Mr. Saund or accommodate his religious beliefs.

59. Fowler discriminated against Mr. Saund because of his religion (Sikhism), in violation of Title VII, by failing and refusing to hire Mr. Saund.

60. Fowler discriminated against Mr. Saund because of his religion (Sikhism), in violation of Title VII, by failing and refusing to accommodate Mr. Saund's religious beliefs.

61. Fowler's policies, practices and adverse conduct toward Mr. Saund have had an unjustified, adverse and disparate impact on Mr. Saund as a member of the Sikh religion, and constitute illegal discrimination in violation of Title VII.

62. As a direct and proximate result of Fowler's conduct, as alleged herein, Mr. Saund has suffered, and continues to suffer, monetary loss including, but not limited to, loss of salary and benefits, together with interest thereon, all in an amount to be proved at trial.

63. As a direct and proximate result of Fowler's conduct, as alleged herein, Mr. Saund has suffered emotional pain, suffering, embarrassment, inconvenience and mental anguish, and is accordingly entitled to recover compensatory damages in an amount to be proved at trial.

64. Fowler acted with malice or reckless indifference to Mr. Saund's civil rights, thereby entitling him to punitive damages, in an amount to be proved at trial.

65. Mr. Saund is also entitled to recover his costs and reasonable attorneys' fees for bringing this action.

SECOND CAUSE OF ACTION
Civil Rights Act of 1866, 42 U.S.C. § 1981
(Discrimination on the Basis of Race)

66. Mr. Saund repeats and realleges each and every allegation set forth in paragraphs 1-65 of the Complaint as if fully set forth herein.

67. Fowler failed and refused to offer Mr. Saund a position as a Family Fare store operator, as alleged herein.

68. Mr. Saund's race (Sikh) was a motivating factor in Fowler's decision not to offer Mr. Saund a position as a store operator.

69. Fowler knowingly and intentionally failed and refused to offer Mr. Saund a position as store operator because of his race (Sikh), in violation of his rights under 42 U.S.C. § 1981.

70. As a direct and proximate result of Fowler's conduct, Mr. Saund has suffered, and continues to suffer, monetary losses including, but not limited to, loss of salary and loss of benefits, together with interest thereon, all in an amount to be proved at trial.

71. As a direct and proximate result of Fowler's conduct, as alleged herein, Mr. Saund has suffered emotional pain, suffering, embarrassment, inconvenience and mental anguish, and he is accordingly entitled to recover compensatory damages in an amount to be proved at trial.

72. Fowler acted with malice or reckless indifference to Mr. Saund's civil rights, thereby entitling him to punitive damages, in an amount to be proved at trial.

73. Mr. Saund is also entitled to recover his costs and reasonable attorneys' fees for bringing this action.

THIRD CAUSE OF ACTION

Wrongful Failure to Hire/Contract in Violation of Public Policy

74. Mr. Saund repeats and realleges each and every allegation set forth in paragraphs 1-73 of the Complaint as if fully set forth herein.

75. Article I, section 13 of the North Carolina Constitution prohibits any person from discriminating against or interfering with another person because of his religious beliefs.

76. North Carolina public policy as set forth in N.C. Gen. Stat. § 143-422.2 protects and safeguards the right and opportunity of all persons to seek, obtain and hold employment without

discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers that regularly employ 15 or more employees.

77. N.C. Gen. Stat. § 75B-2 expresses North Carolina's public policy prohibiting any business from refusing to enter into a contractual relationship or employment with another person because of that person's religion.

78. N.C. Gen. Stat. § 99D-1 expresses North Carolina's public policy prohibiting persons from interfering with the exercise of another person's civil rights, including the free exercise of that person's religion.

79. Fowler intentionally violated North Carolina public policy by refusing to offer Mr. Saund a position as a Family Fare store operator unless he agreed to alter his appearance, in violation of Mr. Saund's religious beliefs (Sikhism).

80. Mr. Saund was injured as a direct and proximate result of Fowler's refusal to hire him as a store operator, as alleged herein.

81. Under North Carolina law, Mr. Saund is entitled to recover his damages including, but not limited to, back wages and benefits (and interest thereon), front wages and benefits and compensatory damages, in an amount to be proved at trial.

82. Fowler's actions, as alleged herein, were willful, wanton and malicious, so that Mr. Saund is entitled to recover punitive damages from Fowler in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Mr. Saund respectfully prays to this Court for the following relief:

1. An award of back wages and benefits, together with pre-judgment interest thereon from January 2008, at the legal rate of 8% per annum;

2. An award of front wages and benefits or, alternatively, an Order requiring Fowler to employ Mr. Saund as a store operator at a Family Fare Convenience Store in Raleigh, North Carolina, and to accommodate Mr. Saund's sincerely held religious beliefs by allowing him to work without first requiring that he remove his turban, cut his hair or shave his beard;

3. An award of compensatory damages against Fowler for religious discrimination in violation of Title VII and North Carolina public policy, in an amount to be proved at trial;

4. An award of compensatory damages against Fowler for racial discrimination in violation of 42 U.S.C. § 1981, in an amount to be proved at trial;

5. An award of punitive damages against Fowler, pursuant to Title VII, in an amount to be proved at trial;

6. An award of punitive damages against Fowler, pursuant to 42 U.S.C. § 1981, in an amount to be proved at trial;

7. An award of punitive damages against Fowler pursuant to N.C. Gen. Stat. § 1D-1, *et seq.*, in an amount to be proved at trial;

8. A permanent injunction enjoining Fowler, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating against store operators and other store employees, or applicants for those positions, because of those persons' race and/or religion, particularly including the person's sincerely held religious beliefs regarding the use of head coverings and/or hair dressing and/or facial hair;

9. An award of his costs and reasonable attorneys' fees incurred in bringing this action, as authorized by 42 U.S.C. § 2000e-5(k) and 42 U.S.C. § 1988; and

10. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, Mr. Saund demands trial by jury on all issues so triable.

This the 21st day of September, 2010.

/s/ Laura J. Wetsch

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