

DC-23-03520

CAUSE NO. _____

LOGAN KERR,

Plaintiff,

v.

**CITY OF FORNEY
FIRE DEPARTMENT,**

Defendant.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

298th

___ JUDICIAL DISTRICT

JURY TRIAL DEMANDED

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiff, Logan Kerr (hereafter referred to as "Plaintiff" or "Kerr") files this his Original Petition against Defendant City of Forney Fire Department ("Defendant") and would show as follows:

I.

CASE LEVEL

- 1.1 Discovery is intended to be conducted under Level 2 of T.R.C.P. 190.
- 1.2 Plaintiff seeks damages in excess of \$100,000.00, exclusive of attorney's fees.

II.

PARTIES

2.1 Plaintiff is a citizen if Texas and resides at 1145 Garden Grove, Forney, TX 75216 and may be reached though the undersigned counsel.

2.2 Defendant, City of Forney Fire Department is a municipality located at 104 Aimee Street Forney, TX 75216 and may be served through the Office of State Attorney General, General Litigation Division P.O. Box 12548, Austin, Texas 78711.

III.

VENUE

3.1 Venue is proper under Section 15.002(a)(1) or (3) of the Texas Civil Practice & Remedies Code.

IV.

FACTS

4.1 Plaintiff was employed by Defendant from August 22, 2022, as Deputy Chief until his summary dismissal on December 13, 2022.

4.2 Throughout his employment, Plaintiff met or exceeded Defendant's expectations.

4.3 After assuming the position of Deputy Chief with the Forney Fire Department, Plaintiff observed that several members of the Department were trading their scheduled shifts with other non-scheduled firefighters for money.

4.4 Trading time occurs when a firefighter who is scheduled for a specific shift, sells his or her scheduled shift to another firefighter who performs the work. The originally scheduled firefighter is still compensated even though he did not do the work for which he/she was scheduled to perform. This essentially results in wages being paid for work that is not being done and constitutes theft of time.

4.5 Plaintiff first discovered this activity on or about September 13, 2022, while he was researching how much vacation time fire department members still had reserved. This research is normally done to determine who would be off for the remainder of the year.

4.6 During this research Plaintiff discovered a trade ledger that showed that members had been trading time with each other.

4.7 Plaintiff promptly reported his findings to Fire Chief Derek Briggs (Chief Briggs), who told Plaintiff that he was unaware of this practice. Chief Briggs also told Plaintiff that this practice of trading shifts needed to stop and be resolved immediately.

4.8 Plaintiff then sent an email to the membership stating that there would be no more trading of time unless authorized by Plaintiff or Chief Briggs.

4.9 Within minutes of sending this email, Plaintiff received a phone call from Captain Colt Risher (“Captain Risher”) requesting a meet about the recently sent email. Plaintiff agreed to meet Captain Risher at Station No. 2.

4.10 At approximately the same time Fire Driver Randal Morris (“Morris”) Association President, texted Plaintiff and also requested a meeting with Plaintiff. Plaintiff informed Morris that he was headed to Station 2 and would meet with him there.

4.11 Upon his arrival at Station No. 2, Plaintiff met with Capt. Risher and Capt. Brian Leathers (“Captain Leathers”) in the Captains’ Office of Station 2. In that meeting, Capt. Risher admitted to Plaintiff that he had already paid personnel to work for him. Captain Risher then said that he did not know how he could ask that member to give him his money back and come and work for him.

4.12 In the presence of Captain Leather, Plaintiff informed Captain Risher that trading time was illegal and they could not continue this practice. Plaintiff then told him that there would be no paying of personnel under the table to work.

4.13 Capt. Leathers and Capt. Risher then told Plaintiff that Chief Briggs told them in an officers’ meeting at the beginning of the year that they could trade time. When Plaintiff

questioned what they meant, they replied that Chief Briggs told them at the beginning of the year “He knows what they are doing and how they are taking care of trades, just don’t let him find out about it”.

4.14 Plaintiff then requested Fire Driver Morris to join them in his role as Union President and speak with Captain Leather, Captain Risher and Morris on the matter.

4.15 Plaintiff was then told that the prohibition of trading time was not going to go over well because they had been told they could do this (pay each other under the table to work for each other) and now all this sudden they were being told they cannot trade time.

4.16 Plaintiff told Morris to go to the union body and find some ways that the members are willing to resolve the issue and get back to leadership.

4.17 After Plaintiff left the meeting at Station No. 2 and returned to his office, Plaintiff received a call from Morris, who asked to look at his time log and see what it showed. Plaintiff then reviewed the log and noticed that Morris’ ledger was now zeroed out.

4.18 Plaintiff pulled up the log on the computer and concluded that Morris had manually entered zeros on all of his times. Plaintiff immediately notified Chief Briggs of his observations.

4.19 Plaintiff then observed that Fire Driver Morris and Fire Driver McDaniels (Association secretary) had zeroed out their time ledgers to make it look as if they didn’t owe any individual time.

4.20 Captain Elder directed Plaintiff to meet with the personnel at Station 1 about the matter. When Plaintiff arrived at the meeting, he was questioned at length. During this meeting

Fire Driver Damien Miller stated that “people will have to get a loan to pay back all the people that they worked for.” Fire Driver Miller was then corrected by Capt. Elder who stated “hypothetically” they would have to repay the people they worked for. He wasn’t saying that they were really “paying money” as if he was covering up Miller’s statement.

4.21 On September 13, 2022, Plaintiff learned that the members of the Forney Fire Department were illegally paying each other to work for them with cash under the table. Plaintiff further learned that Chief Briggs not only knew about the practice, but also witnessed fire department members altering their time ledgers which is essentially altering their payroll and city records.

4.22 On September 13, 2022, Plaintiff reported his findings and observations to Fire Chief Derek Briggs and Deputy Fire Chief/Emergency Management Coordinator, John Holcomb. Chief Briggs relayed Plaintiff’s report to the city administrator, HR, and City Attorney.

4.23 Chief Briggs admitted to Plaintiff that the City Attorney stated that this practice constituted numerous felony charges that could be brought against the members of the Fire Department and the City Council wanted them terminated immediately with charges brought on them. This demonstrated that the entire city administration and multiple department heads were aware of this illegal activity.

4.24 During that same week on or about Wednesday, September 15, 2022, Defendant’s City Attorney, Jennifer Barnes Smith (“Smith”) and Deputy Fire Chief met with Plaintiff at Ms. Smith’s request. Ms. Smith asked Plaintiff how he had found the information that led him to conclude that the Fire Department members were trading shifts. Plaintiff was fully cooperative

and explained to Ms. Smith everything directly to her and the Deputy Fire Chief (a Commissioned Peace Officer).

4.26 Plaintiff explained the magnitude of his findings and the extent of the illegal activity Specifically. Plaintiff showed the Smith and the Deputy Fire Chief everything in the Crew Sense System that showed the documentation of time ledgers that were out of balance and then the falsified and manually altered by the two Fire Drivers.

4.27 On October 26, 2022 Plaintiff was summoned to the Forney Police Department by Deputy Chief Udey and told that he was being placed on administrative leave due to allegations of:

1. Dishonesty on his job application revolving around his criminal background.
2. Dishonesty about conversations about the trade time ledger situation.

4.28 Deputy Chief Udey then questioned Plaintiff on whether he had a criminal record or if there was anything on Plaintiff's background about a Shreveport Fire Station scandal in 2013. Plaintiff answered that he was never arrested, charged with any charges or even disciplined by the Shreveport Fire Department. Plaintiff volunteered that he 'd only been questioned as a witness at the time.

4.29 Deputy Chief Udey then added a third allegation in the administrative leave investigation:

3. Dishonesty when questioned about discipline received from the Shreveport Fire Department.

4.30 The following week Plaintiff was summoned for further questioning as to whether he received any discipline while employed by the Shreveport Fire Department. Plaintiff denied that he'd been disciplined and volunteered that he was not only cleared of all charges but was commended for his integrity and honesty throughout the investigation processes in Shreveport by multiple personnel involved in the investigation.

4.31 On November 23, 2022, Plaintiff was summoned to City Hall for a meeting. Chief Briggs and the Director of HR Jamie Holbert were also in attendance. Chief Briggs informed Plaintiff that allegations 1 and 3 were found to be unsubstantiated, but allegation 2 was sent back to him as an internal matter that should be handled by command. Briggs then asked Plaintiff if he wanted to resign. Plaintiff stated that he would not resign and wanted to return to work.

4.32 On December 13, 2022, Defendant summarily terminated Plaintiff's employment.

V.

CAUSES OF ACTION

VIOLATION OF TEXAS WHISTLEBLOWER ACT

5.1 The foregoing paragraphs are incorporated herein as though fully set forth.

5.2 The Texas Whistleblower Act ("TWA") protects all Texas governmental employees who report illegal activity of an employee to their governmental employer, and who then subsequently face retaliatory employment action because of that report.

5.3 Specifically, the TWA's whistleblower protection provision located at Section 554.002 of the Texas Government Code states:

"A state or local government entity may not suspend or terminate the employment of or take other adverse personnel actions against a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority."

5.4 At all times relevant herein Plaintiff was a government employee in good faith, reported his observations of Defendant's non-compliance to his supervisor, Chief Briggs a Peace Officer as well as to the Chief of Police of the Forney Police Department.

5.5 In response to Plaintiff's reports of illegal activity, Defendant retaliated against Plaintiff by placing him on leave, falsely accusing him of dishonesty and summarily terminating Plaintiff's employment.

5.6 Plaintiff claims that he was wrongfully terminated in retaliation for making one or more reports of violations of law to his employer and to one or more a law enforcement officer. Plaintiff is entitled to a rebuttable presumption that his employment was terminated and that he was subjected to retaliation, and termination of his employment for making such reports, since such retaliation, and termination occurred in each case within 60 days after the date on which he made his reports made such report.

5.7 Plaintiff is accordingly entitled to recover lost compensation and benefits, other actual damages including compensatory damages, mental anguish, damages to his reputation, punitive damages, prejudgment interest, and costs of court.

VI.

ATTORNEY'S FEES

6.1 Plaintiffs seek to recover attorney's fees.

VII.

JURY TRIAL DEMANDED

7.1 Plaintiffs demand a jury.

WHEREFORE, Plaintiff prays that this Court grant Plaintiff's recovery of all amounts to which he is entitled whether at law or in equity, including but not limited to:

- A. Lost wages in the form of back pay and front pay;
- B. All costs;
- C. Compensatory damages;
- D. Attorney's fees;
- E. Such other and further damage as the court deems fit.

Dated: March 14, 2023.

Respectfully Submitted,

KILGORE & KILGORE, PLLC

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**ATTORNEY FOR PLAINTIFF
LOGAN KERR**