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Anita Robinson, et al., v. Boeing Company, d/b/a Boeing Defense & Space Group

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Anita Robinson, et al., v. Boeing Company, d/b/a Boeing Defense & Space Group

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FILED

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

sub

ENTERED

NOV 24 1997

ANITA ROBINSON, et al.,

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Plaintiffs,

v.

Civil Action No.
CV-92-C-2004-S

BOEING COMPANY, d/b/a/ BOEING
DEFENSE & SPACE GROUP,

Defendant.

CONSENT DECREE

Article I

General

1. This Consent Decree is made and entered into between The Boeing Company (hereinafter "Boeing"); Anita Robinson, Mary K. Dupree, Cynethia L. Evans, Myra Garth-Swoope, Christine Williams and Gale Rena Musing (hereinafter "Class Representative Plaintiffs"), Patrick Harris and all members of the class described herein (hereinafter the "Class"); Robert F. Childs, Jr., and Byron Perkins, of the law firm of Gordon, Silberman, Wiggins & Childs, P.C. (hereinafter "Plaintiffs' attorneys"); and Frank McRight of the law firm of Lanier, Ford, Shaver & Payne, P.C. and Chris Mitchell of the law firm of Constangy, Brooks & Smith, L.L.C. (hereinafter "Boeing's attorneys").

2. Plaintiff Anita Robinson initially filed this action on August 24, 1992 in the United States District Court for the Northern District of Alabama, alleging individual claims of race and sex discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended by the Civil Rights Act of 1991 (hereinafter "Title VII"), and 42 U.S.C. § 1981. On August 27, 1992, Ms. Robinson filed an amended complaint adding claims of four additional plaintiffs: Mary K. Dupree, Cynethia L. Evans, Ernestine M. Owens, and Myra Garth-Swoope. In December 1992, the Court granted an additional motion to amend the complaint to allege class claims of race and sex discrimination with respect to compensation, hiring, discipline, discharge, promotion, transfer, job assignments, and any and all other terms and conditions of employment. Angela B. Taylor, Christine Williams, Patrick Harris and Gale Rena Musing were allowed to intervene as Plaintiffs by the Court in February of 1993. The Class Representative Plaintiffs and Patrick Harris have settled their claims against Boeing.

3. The Court has certified the plaintiff class to include all African American employees in Pay Codes 2, 4, and 6 at the Missiles & Space Division facility of The Boeing Company in Huntsville, Alabama, who claim that they have been discriminated against because of their race in regard to compensation, totem rankings, retention ratings, layoffs and other terms and conditions of employment at any time since February 19, 1991. For all purposes of this Decree, any African American employee of Boeing meeting this definition (except Ronald Banks, Sherrye Alexander and Toni Fleming, whose claims against Boeing have been foreclosed in other litigation, and Ernestine M. Owens and Angela B. Taylor, who are being allowed to opt out of this Consent Decree in order to pursue their individual claims) shall hereinafter be referred to as a "Class Member."

4. Discovery has been exhaustively conducted by the parties. As a result of that discovery, which consisted of numerous depositions, the production and inspection of voluminous records and data, and the exchange of expert witness statistical analyses, the parties have developed a clear understanding concerning the facts and issues involved in this litigation.

5. The parties are now desirous of implementing a negotiated resolution of the issues raised in this litigation and of entering into a settlement, final and binding upon the parties and the class of persons which the Class Representative Plaintiffs represent. All the parties and their counsel consent to the entry of this Consent Decree as a final and binding settlement. Pursuant to this Court's Order, notice of this Consent Decree and of this compromise and settlement has been given to the Plaintiffs and Class Members, and a hearing has been held on the fairness and adequacy of the proposed compromise and settlement. At that fairness hearing the Court heard from Class Members who objected to the proposed Consent Decree and allowed those who desired to opt out to do so. Only Cinda E. Feagan elected to opt out, and she will be excluded from this Consent Decree.

6. Boeing has denied and continues to deny that it has discriminated in any way against African Americans, either as individuals or members of a class. Notwithstanding this Consent Decree, Boeing continues to deny any liability under 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981, or any other statute or common law principle, and enters into this Consent Decree, despite the existence of doubtful and disputed claims, to avoid the risks, burdens and expenses of protracted litigation and to put to rest all matters in controversy between the parties. Boeing's acceptance of this settlement is not and should not be construed as an admission of any violation or wrongdoing by Boeing.

7. This Court has considered the pleadings in this case, the extensive discovery conducted and various briefs submitted by the parties, the evidence submitted by the parties, and the terms of this Consent Decree, as well as the settlement generally, and finds that jurisdiction of this Court over this case and this Consent Decree is proper; that the rights of the Class Representative Plaintiffs, the Class, each Class Member, and such other persons that may be affected thereby, are fully protected by this Consent Decree; that this Consent Decree is in no way a deprivation of any rights, privileges, or terms and conditions of employment of any person; that this Consent Decree is in conformity with the Federal Rules of Civil Procedure; that this Consent Decree is fair, reasonable, and just; and that the relief provided to the Class Members by this Consent Decree is adequate and sufficient. Upon due consideration of the terms and provisions of this Consent Decree, and of all the records and proceedings in this case, it is, therefore, ORDERED, ADJUDGED, and DECREED as follows:

Article II

General Relief

8. As prohibited by 42 U.S.C. §2000e-3, Boeing will not retaliate or take any action against any person for his or her actions in this proceeding. The parties have agreed, and the Court orders, that any such claim of retaliation shall be addressed through the procedures established under Title VII, including but not limited to the requirements of 42 U.S.C. § 2000e5(e)(1) with respect to the timely satisfaction of administrative prerequisites to suit, and that this Court will have no continuing jurisdiction with respect to such claims of retaliation or any other claims by the Class Representative Plaintiffs or Class Members.

9. This Consent Decree shall not apply to, or affect in any way, any alleged violations of Title VII or 42 U.S.C. § 1981 occurring after the date of the final approval of this Consent Decree. Any alleged violations of Title VII or 42 U.S.C. § 1981 occurring between the date of the preliminary approval and the date of final approval of this Consent Decree shall be deemed to have occurred on the date of final approval of the Consent Decree for purposes of coverage and treatment under this Consent Decree.

Article III

Relief for Class Representative Plaintiffs and Class

10. Thirty-one (31) days after the final and non-appealable approval and entry of this Consent Decree and the execution of general releases as provided below, Boeing will make the following disbursements:

a. **Class Backpay.**

Subject to subparagraph 10b, Boeing will disburse the sum of \$700,000, less applicable state and federal withholding taxes, to the Class Representative Plaintiffs and Class as a class backpay fund. Plaintiffs' attorneys have determined that this class backpay fund shall be distributed to Class Representative Plaintiffs and Class Members as follows:

(1) Each of the Class Representative Plaintiffs (Anita Robinson, Mary Dupree, Cynethia Evans, Myra Garth-Swoope, Christine Williams Harris and Rena Gale Musing) will be paid \$10,000, less applicable state and federal withholding taxes, for their time and efforts in serving as class representatives.

(2) Each member of the Class will be paid a minimum of \$500, less applicable state and federal withholding taxes.

(3) The balance of the backpay fund, \$632,235 (\$700,000 less \$60,000 to be paid to the Class Representative Plaintiffs and \$7,765 to provide a minimum of \$500 to each Class Member), will be paid to members of the Class, including the Class Representative Plaintiffs, less applicable state and federal withholding taxes, prorated among them according to the following calculations:

(i) Separate multiple regression equations have been estimated for pay codes 2, 4 and 6 using data for the period of 1991 and 1996 with the dependent variable being year-end salary and the independent variables being level of education, years of Boeing service, years of Boeing service squared, age at hire, salary at hire, year of salary, and race (black). The race coefficients provide a measure of the pay codes' average black/white pay differentials over the relevant period 1991 through 1996.

(ii) Using the calculations described in subparagraph (i) above, an average black/white pay differential weight for each pay code has been calculated by dividing the number of standard deviations of each pay code's race coefficient by the number of standard deviations for the pay code with the smallest number of standard deviations, resulting in calculated weights of 1.536 for pay code 2, 1.466 for pay code 4, and 1.000 for pay code 6.

(iii) The salary payments to each class member during the period 1991 through 1996 will be multiplied by the differential weights, as stated in subparagraph (ii) above, for the pay code to which the Class Member was assigned at the time of payment and totaled to determine the total weighted salary paid to that Class Member.

(iv) The \$632,235 will be prorated among Class Members in the same proportion that their respective total weighted salary, as determined in subparagraph (iii) above, bears

to the total weighted salary payments made to all Class Members during the period 1991 through 1996.

As a condition to the receipt of any such monetary sums, the Class Representative Plaintiffs and Class Members must execute and deliver to Boeing's attorneys general releases in the form attached as Exhibit A.

The total amount of class backpay as provided in subparagraph 10.a., above, shall be reduced by the amount that would have been paid to Cinda E. Feagan, who has opted out as stated in paragraph 5.

In the event that less than all of the Class Members can be located and/or execute releases within sixty (60) days following entry of this Consent Decree, the parties will notify the Court of the amount of undistributed class backpay and the Court will issue directions concerning disposition of such funds.

b. **Disbursement to Opt Out**

Class member Cinda E. Feagan has been allowed to opt out of this settlement and shall not be entitled to her share of the class backpay calculated in accordance with the provisions of paragraph 10.a., above, which sum (\$4,269.00) shall revert to Boeing.

c. **Disbursements to Class Representative Plaintiffs.**

In addition to the payments specified in Paragraph 10.a., above, Boeing has made the following distributions to the Class Representative Plaintiffs, less applicable state and federal withholding taxes, in settlement of Class Representative Plaintiffs' individual claims against Boeing:

Anita Robinson	-	\$25,000
Mary K. Dupree	-	\$25,000
Cynethia L. Evans	-	\$25,000

Myra Garth-Swoope	-	\$25,000
Christine Williams	-	\$30,000
Gale Rena Musing	-	\$15,000

d. **Disbursement to Patrick Harris.**

Boeing has paid Patrick Harris the sum of \$20,000, less applicable state and federal withholding taxes, in settlement of his individual claims against Boeing.

e. **Attorneys' Fees, Expenses and Costs**

Thirty-one (31) days after the final and non-appealable approval and entry of this Consent Decree, Boeing will disburse the sum of \$600,000 to Plaintiffs' attorneys in full and final payment of all attorneys' fees, expert fees, expenses, and costs incurred and to be incurred by Plaintiffs' attorneys to date and through the end of the mediation of the individual Plaintiffs' claims, and for obtaining the approval of the Consent Decree, including those applicable to a fairness hearing or hearings related to this Consent Decree. In the event of an appeal by any Class Member, and if Plaintiffs' attorneys are called upon by Boeing to work on such appeal, Plaintiffs' attorneys will be paid for their work by Boeing at rates to be agreed upon by the parties at the time the work is commenced. Plaintiffs' attorneys will not be responsible for paying the costs associated with any class notices in addition to the notice contemplated by this Consent Decree.

Article IV

Miscellaneous Provisions

11. The language of this Consent Decree shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

12. As used in this Consent Decree, the singular or plural shall be deemed to include the other whenever the context so indicates or requires.

13. This Consent Decree supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof.

14. If any term, covenant, or condition of this Consent Decree, or the application thereof to any person or circumstance shall, to any extent, be invalidated or otherwise rendered unenforceable, the remainder of this Consent Decree, and the application of such term, covenant, or condition of this Consent Decree shall remain valid and be enforced to the fullest extent permitted by law.

15. The parties and their counsel may discuss the terms of this Consent Decree, including amounts payable hereunder, only with their respective spouses, immediate family members, attorneys, accountants, and Internal Revenue Service officials, as necessary. Other than as set forth in this paragraph, the parties and their counsel agree to respond to any inquiries or requests for data of any kind by persons not a party to this litigation as follows: "The parties have amicably resolved this case in order to avoid the cost and expense of litigation and have agreed to a Court Order providing the terms of that settlement."

16. Even though the Court may consider and issue directions concerning the disposition of undistributed Class backpay pursuant to Paragraph 10(a) above, the Court finds pursuant to Federal Rule 54(b) that there is no just reason for delay and directs the entry of this Consent Decree as this Court's final judgment in this civil action.

Article V

Plaintiffs' Return of Boeing Documents

17. Within thirty-one (31) days after the final and non-appealable approval and entry of this Consent Decree, Plaintiffs and Plaintiffs' attorneys shall provide to Boeing's attorneys all documents and copies of documents obtained from Boeing relating to or arising from this action. Plaintiffs and Plaintiff's

attorneys shall not discuss or use any document or information obtained from Boeing during the course of this action for any cause or reason whatsoever.

EXECUTED this 24th day of November, 1997.

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The Boeing Company

It is ORDERED this 24th day of November, 1997, that the above and foregoing Consent Decree as offered and accepted in the above cause is hereby **FINALLY APPROVED**.

John Klema
United States District Judge

ENTERED

NOV 24 1997 *QW*

RELEASE

The undersigned, for and in consideration of the sum of _____ Dollars (\$ _____) paid to me by The Boeing Company ("Boeing"), the receipt and sufficiency of which is hereby acknowledged, does release and forever discharge, Boeing and its employees, agents, representatives, successors, and assigns, from any and all claims, demands, duties, actions, violations, causes, damages, or expenses of any kind whatsoever, whether known or unknown, which the undersigned has, or can have, or could have maintained, regarding his or her compensation, totem ranking, retention rating, lay-off, and any and all other terms and conditions of employment, or by reason of or arising out of allegations set forth in the Complaint and Amended Complaints in the litigation styled "Anita Robinson, et al. v. Boeing Company d/b/a Boeing Defense & Space Group," Civil Action No. CV-92-C-2004-S, in the United States District Court for the Northern District of Alabama.

The undersigned acknowledges that Boeing has denied that it has violated any law, order, or regulation, or any duty or obligation to the undersigned, and the undersigned agrees that Boeing's payment of the consideration for this Release is for the compromise of doubtful and disputed claims to avoid the risks, burdens, and expense of continued litigation and to put to rest all matters in controversy between the parties.

If any part of this Release is adjudged to be unlawful, void or unenforceable, such part shall be deemed deleted, but such shall not affect any other part of this Release, and all other provisions shall continue in effect.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this ____ day of _____, 199_.

WITNESSES:

EXHIBIT A