

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CARLOS J. MERCADO RUIZ

Plaintiff

v.

HONORABLE DR. CARLOS CARAZO,
Acting Deputy Secretary of
Environmental Health, of the Department
of Health of Puerto Rico, in his personal
capacity and official capacity; EDUARDO
PADILLA ZAPATA, in his personal
capacity; HERMES RIVERA POLANCO,
in his personal capacity;
HONORABLE DR. ANA RIUS, in her
official capacity as Secretary of Department
of Health of the Commonwealth of Puerto
Rico; HONORABLE CESAR MIRANDA,
Secretary of Justice of the
COMMONWEALTH OF PUERTO RICO;
COMMONWEALTH OF P. R.

Defendants

CASE NO. 14-01372-GAG

PLAINTIFFS DEMAND
TRIAL BY JURY

AMENDED COMPLAINT

TO THE HONORABLE COURT:

NOW COMES, CARLOS J. MERCADO RUIZ, plaintiff herein by the undersigned attorney for his complaint and causes of action against defendants, states and very respectfully alleges and prays as follows:

JURISDICTION

1. This is a civil action where the jurisdiction of this Court is involved pursuant to 28 U.S.C. §§ 1331 and 1343(a), for the causes of action that arise under the First (I) and Fourteenth (XIV) amendments of the Constitution of the United States of America.
2. This is an action in equity seeking relief under title 42 U.S.C. § 1983.
3. Plaintiff seeks a judgment or decree that the practices complained of herein are in violation of the laws, regulations, customs and usage of the Constitution of the United States of America in that defendants discriminated against Plaintiff because of his political affiliation and belief.
4. The Plaintiff also seeks Pendent Jurisdiction with respect to claims arising under Puerto Rico Personnel Law, Anti-Discrimination Statute, Act No. 100 of June 30, 1959 (“Act 100-1959”) and Article 1802 of the civil Code of Puerto Rico; Declaratory relief is available pursuant to 28 U.S.C. §§2201 and 2202 and Federal Rule of Civil Procedure 57.
5. The amount in controversy exceeds *Seventy Five* Thousand Dollars (\$75,000.00) excluding interest and cost.

INTRODUCTION

6. Plaintiff is a member of the NEW PROGRESSIVE PARTY (known in Spanish as PARTIDO NUEVO PROGRESISTA, from hereon in this complaint known as the NPP).
7. The defendants who’s names are stated below are members of the POPULAR DEMOCRATIC PARTY, (known in Spanish as PARTIDO POPULAR DEMOCRATICO DE PUERTO RICO, from hereon in this complaint known as the PDP).

8. The plaintiff moves this court since he has been intentionally discrimination by the defendants, in as much as he, 1) was a member of a protected class; 2) was qualified to hold his position; 3) suffered an adverse employment action; and 4) that action occurred under circumstances supporting an inference of discriminatory intent.

PARTIES

9. Plaintiff, **Carlos J. Mercado Ruiz**, is and has been at all times a citizen of the United States with residence in the Municipality of Añasco, Puerto Rico.
10. The plaintiff is married to Lydia M. Miro Mercado, has minor children and holds a Master Degree in Environmental Health.
11. Plaintiff has been employed by the Department of Health of Puerto Rico for the last twenty three (23) years, in a permanent career position, presently as Regional Supervisor of Environmental Health, in the Mayaguez-Aguadilla Region.
12. Plaintiff is a public employee who secures a property interest in his job and a protected liberty interest.
13. Defendant, Dr. Carlos Carazo, in his personal capacity and at the time of the events complained of herein was the Acting Deputy Secretary of Environmental Health, of the Department of Health of the Commonwealth of Puerto Rico, an active member of the Popular Democratic Party; a citizen of the United States of America and resident in the Commonwealth of Puerto Rico.
14. Defendant, EDUARDO PADILLA ZAPATA, Regional Sub-Deputy Director Mayaguez office , in his personal capacity and at the time of the events complained of herein is an employee of the Department of Health of Puerto Rico, was the subordinate

employee of the Plaintiff, in the Mayaguez Regional Office, an active member of the Popular Democratic Party; a citizen of the United States of America and resident in the Commonwealth of Puerto Rico.

15. Defendant, Hermes Rivera Polanco, Deputy Secretary of Human Resources of the Department of Health of Puerto Rico, in his personal capacity, an active member of the Popular Democratic Party of Puerto Rico, a citizen of the United States of America and resident in the Commonwealth of Puerto Rico.
16. Defendant, Honorable Dr. Ana Ríus, at the time of the events complained of herein is the Secretary of the Department of Health of the Commonwealth of Puerto Rico, is included in her official capacity as the Secretary, with respect to the State claims of the Plaintiff; a citizen of the United States of America and resident in the Commonwealth of Puerto Rico.
17. Honorable Cesar Miranda, at the time of the events complained of herein is the Secretary of the Department of Justice of the Commonwealth of Puerto Rico, is included in his official capacity as the Secretary of Justice, with respect to the State claims of the Plaintiff; a citizen of the United States of America and resident in the Commonwealth of Puerto Rico.
18. At all times pertinent to this complaint the defendants in doing the acts and things herein after set forth, were acting in their personal capacity as stated, under color of law, regulations, policies, costumes and usage vested in them.

CAUSES OF ACTION

19. The Regional Offices of Mayaguez and Aguadilla of the Department of Health,

Environmental Health division, were consolidated back in February 14, 2011, for cost effectiveness, economy and efficiency, pursuant to Public Law 7, of March 9, 2009, that declared a state of Fiscal Emergency and Established an Integral Plan.

20. The plaintiff was at said time the Regional Supervisor of the Aguadilla office of the Environmental Health division, occupying career position 5-04869, scale 14, with specific duties and his original job description is contained in a document called Description of Positions, (*"Descripción del Puesto"*).
21. The plaintiff was appointed to occupy the consolidated position of Regional Supervisor of Mayaguez-Aguadilla and the change of position was approved on April 27, 2011, by form "Informe de Cambios a Puestos Regulares AP-21", Change of Regular Position. The change approved that the position of held by the Plaintiff, career position 5-04869 be reclassified to include supervisor of the Mayaguez-Aguadilla regions as one.
22. The Plaintiff since, April 2011 occupied the position of Regional Supervisor of the Mayaguez-Aguadilla Regions and on July 11, 2012, the plaintiff was awarded a pay raise for merit of seven percent (7%) and a differential pay raise.
23. The Plaintiff has never received the pay raise nor the differential awarded to him. Moneys that he is entitled to, sum which is unknown at this time but can be calculated.
24. In November 2013, the Popular Democratic Party, won the general elections in Puerto Rico, and the Honorable Alejandro Garcia Padilla was elected to office. In turn he named the Secretary of the Department of Health, a member of the Popular Democratic Party, Dr. Ana Ríus, and other staff members to the deputy secretaries were named.
25. On or about April 2013, defendant Dr. Carlos Carazo, along with the Deputy Director

Eduardo Padilla Zapata, and Hermes Rivera Polanco, clouted and started acts of political discrimination against the herein Plaintiff up to this date.

26. On or about early May 2013, the Plaintiff met with defendant Dr. Carlos Carazo, who outright informed the Plaintiff that he would change his job status being that the mayors of the region of Mayaguez wanted a person of the Popular Democratic Party to occupy the plaintiff's position.
27. On or about May 10, 2013, defendant Dr. Carlos Carazo, informed the Plaintiff that he was summons to a meeting with Mr. Hermes Rivera Polanco, Deputy Secretary of Human Resources. Plaintiff emailed, Mr. Hermes Rivera Polanco, requesting to know the reason for the meeting and informed him that in May 1, 2013, defendant Dr. Carlos Carazo, stated his intention to transfer him out of his position for political motivations.
28. The day before the meeting on May 15, 2013, plaintiff contacted Mr. Hermes Rivera Polanco, to confirm the meeting for the next day and to learn of the reason for the meeting. Plaintiff was informed that the meeting was instructed to be held by Dr. Carlos Carazo to deal with matter between Plaintiff and defendant Eduardo Padilla Zapata.
29. The meeting was held on May 16, 2013. Defendant Dr. Carlos Carazo was accompanied by defendant Eduardo Padilla Zapata, with the only intent for Plaintiff to leave his position so that defendant Eduardo Padilla Zapata, could occupy the same.
30. That all official communications between the office of Dr. Carlos Carazo with the Mayaguez office were officiated directly to the defendant Eduardo Padilla Zapata, deputy supervisor, including directing him to instruct personnel of the office on specific task and how to by pass the Plaintiff as the official supervisor.

31. On or about June 25, 2013 the defendant Dr. Carlos Carazo approved office matters directed to him by defendant Eduardo Padilla Zapata, without the knowledge of the Plaintiff who is the official supervisor of the region.
32. On June 27, 2013 defendant summons two subordinated of the defendant to a meeting of supervisors without the knowledge of the Plaintiff. Upon arrival to the meeting he was surprised that the only regional supervisor with subordinate personnel present was himself. The rumors and outright indications was that plaintiff would be transferred out of his job.
33. In view of this situation in which the Plaintiff was being cornered to leave his position, was striped of his daily chores, he filed an internal grievance with the Department of Human Resources, and the Secretary Dr. Francisco Joglar, on or about July 7, 2013. No action was taken on the complaint.
34. The Plaintiff is an active member of the New Progressive Party of Puerto Rico, has participated publicly in the electoral process for precinct 36, of Añasco, in rallies, official meetings of the party etc., and the defendants have knowledge of this.
35. The defendants are all members and politically affiliated to the Popular Democratic Party of Puerto Rico, that controls the central government.
36. The defendant Dr. Carlos Carazo, acting with Eduardo Padilla Zapata and Hermes Rivera Polanco, did everything to humiliate the Plaintiff in front of the persons he supervised, humiliated him publicly in as much, that at public events of the Department he would not be mention and all merits were given to defendant Eduardo Padilla Zapata, with the only intention that the Plaintiff resign from his position.

37. The defendants continued a scheme to deprive the plaintiff of his career position because of political affiliation that is not a policy-making position where the criteria of political affiliation is appropriate.
38. Defendants Dr. Carlos Carazo and Hermes Rivera Polanco, tailored and targeted an investigation against the plaintiff only as a disguise and pretext to dismiss the plaintiff without prior notification to him in violation of his due process rights and the equal protection of the law which he was entitled to. The Plaintiff was even summons to the Police Department on September 4, 2013 for no good reason.
39. On or about February 5, 2014, Plaintiff send a letter to the Secretary of Health, stating that defendant Dr. Carlos Carazo, had transferred him to the region of Aguadilla in violation of the Civil Servants Acts and procedures.
40. The officer Mr. Roberto Guzman Cortes of Human Resources Department, informed in a written communication that the matter of the transfer was not legal and that due process was not followed.
41. As such the plaintiff was subjected to intolerable working conditions, humiliation, embarrassment, different from other employees in the same position since, plaintiff was subject to covert procedures ordered by the defendants that others were not subject to, due to his political affiliation in outright and flagrant violation of the Laws, Regulations and Constitution of the United States.
42. The plaintiff has been deprived by the defendants to enjoy generally those privileges long recognized as essential to the *orderly* pursuit of happiness by free men due to defendants outrageous conduct because of political discrimination against him.

43. The Plaintiff was subjected to discriminatory conduct that severely affected his well being and had to go to the State Insurance Fund for treatment. The plaintiff has suffered harassment, emotional duress, humiliation and was deprived of his basic right to be free of all kind of discrimination because of his political affiliation.
44. That while under treatment at the State Insurance Fund, the Plaintiff was the object of an illegal transfer from his job position as Supervisor of the Mayaguez-Aguadilla Region and interference with his job conditions. That upon being released from the treatment at the State Insurance Fund the Plaintiff returned to his work site and was informed of the transfer and sitting at his desk as Supervisor was Defendant Eduardo Padilla Zapata.
45. The co-defendants schemed together and conspired to deprive the plaintiff of his constitutional rights in violation of his Civil Rights and First Amendment Rights, base on plaintiff's political affiliation with the New Progressive Party of Puerto Rico, for which the defendants are liable in money damages to the plaintiff in the amount of one million (\$1,000,000.00) dollars jointly and severely.
46. The plaintiff has been subjected to an unorthodox procedure not warranted by *law* in reckless disregard of his procedural due process in violation of the Fourteenth Amendment of the United States caused by the defendants for concealing information from him for which they are liable in money damages to the plaintiff in the amount of one million (\$1,000,000.00) dollars.

SECOND CAUSE OF ACTION

47. The defendants acted to deprive the Plaintiff of his protected rights pursuant to the Anti-Discrimination Statute, Act No. 100 of June 30, 1959 (“Act 100-1959”) and Article

1802 of the civil Code of Puerto Rico; for their actions to be free of political discrimination in the work place and are liable for money damages in the amount of \$ 500,000.00 plus doble the amount for intentional discriminatory practice and reinstatement to his position.

THIRD CAUSE OF ACTION

48. The defendants acted to deprive the Plaintiff of his protected rights pursuant to the ART 5(A) STATE INSURANCE FUND LAW, 11 L.P.R.A. sec. 7., to the reinstatement to the position held by the Plaintiff at the time of the accident.
49. That upon returning to the work place the defendant was not allow to take his position since, his job had been given to his subordinate a member of the Popular Democratic Party.
50. That the Plaintiff be awarded money damages in the amount of \$ 500,000.00 plus reinstatement to his position.

WHEREFORE, Plaintiff **Carlos J Mercado Ruiz**, respectfully prays that this Honorable Court grant judgment for him against the Defendants jointly or severally as follows:

PRAYER FOR RELIEF FOR EACH CAUSE OF ACTIO

- a) Award plaintiff monetary damages against Defendant in the Amount of one Million Dollars (\$1,000,000.00) for the deprivation of the civil rights, First Amendment Right to exercise ones political belief and be free of all persecution and discrimination occasioned by the actions of the Defendants.
- b) Award plaintiff punitive damages against defendant in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) *for* the reckless disregard of plaintiff's civil rights, for scheming the defendants against the plaintiff to deprive him of his career

position for which he was well qualified for because of political discrimination.

- c) Award plaintiff damages for the violation of plaintiff's civil rights against the defendants for scheming to deprive the plaintiff of his constitutional rights in the amount of \$ 1,000,000.00.
- d) Award plaintiff damages for the unequal treatment that he was subjected to by defendant Dr. Carlos Carazo in violation of the Laws and Constitution of the United States in the amount of \$ 1,000,000.00.
- e) Grant plaintiff an order requiring the Defendant Hon. Ana Ríus, to accord plaintiff his career position he held had it not been for the discriminatory practices of the Defendants.
- f) Grant Plaintiff the sum of \$ 500,000.00 plus doble damages for violations of Public Law 100 and tort action; plus reinstatement to his career position.
- g) Enter an order effecting such action and further relief in the premises as shall be agreeable to equity and good conscience.
- h) Enter an order granting plaintiff back pay the sums of money that he is entitled to pursuant to the merit raise of 7% plus the differential wage amount to be calculated.
- i) Enter an order granting pursuant to the ART 5(A) STATE INSURANCE FUND LAW, 11 L.P.R.A. sec. 7., to the reinstatement to the position held by the Plaintiff at the time of the accident and money damages in the amount of \$ 500,000.00
- j) Grant Plaintiff the costs of this action, and reasonable attorneys' fees to be paid by the Defendants.
- k) Declare unlawful the policies, practices, Customs and usages herein

challenged, as being violated of Tittle 42 U.S.C. § 1983.

RESPECTFULLY SUBMITTED

Dated this 27th day of May of 2014.

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