



harmed (including by being subjected to a racially hostile work environment and being denied promotions in favor of less-qualified white employees) because of NES's discriminatory employment practices.

### **PARTIES, JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, § 1343(4), and § 1367.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to this action occurred within this District.

5. Plaintiff is a Black male.

6. Plaintiff is a resident of Tennessee. At all times material to this action, Plaintiff was and is an "employee" of Defendant NES, as that term is defined in 42 U.S.C. § 2000, *et seq.*

7. Defendant NES is a quasi-governmental entity doing business in the state of Tennessee.

8. NES is an "employer," as defined by Title VII and the THRA.

9. Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (the "EEOC") within 300 days of the unlawful employment practices that are the subject of this complaint and has received a Notice of Right to Sue from the EEOC.

10. The original Complaint in this case was timely filed within ninety (90) days of the issuance of Plaintiff's Notice of Right to Sue Letter by EEOC.

### **STATEMENT OF FACTS**

11. Plaintiff has worked for NES for approximately 25 years.

12. During his 25-year tenure with NES, Plaintiff held multiple jobs, including Lineman, Working Foreman in Transmission, and Distribution Section and Safety Supervisor.

13. Prior to working for NES, Plaintiff worked for another utility company. When Plaintiff began working for NES, he was already a certified lineman.

14. Plaintiff is the only Black Safety Supervisor at NES.

15. Plaintiff performed his duties and fulfilled his responsibilities in a competent and satisfactory manner. Despite Plaintiff's long tenure and satisfactory service, he was passed over for promotions on numerous occasions—as were other qualified Black NES employees.

16. Since the first day of his employment, Plaintiff has been subjected to ongoing harassment, retaliation, racial discrimination, and a hostile work environment by his supervisors and other white employees of NES. At all times relevant to this lawsuit, Plaintiff was subjected to racist comments, racist displays, and an overall pervasively racist environment.

17. Plaintiff directly heard and/or is aware of his white NES coworkers and supervisors saying racially inflammatory words such as “NIGGER.” Plaintiff directly heard and/or is aware of white NES coworkers and supervisors calling Black employees (including himself) “NIGGER,” and “BOY.”

18. Use of racist epithets and slurs is a common practice in the NES workplace.

19. Plaintiff is aware that Superintendent Ron Jennings called Black NES employee, William Heath, racial slurs.

20. Plaintiff reported the racist behavior to Human Resources, but no corrective action was taken.

21. During Plaintiff's employment, NES personnel changed tests administered to Black applicants, altered job descriptions in such a way to intentionally exclude Black candidates, denied jobs to Black applicants, removed job postings, and outright gave jobs to less qualified white employees—all to exclude Black candidates.

22. Plaintiff observed NES hold job postings open for close to a year to allow unqualified white employees to “qualify” for a particular position, while NES removed open job postings to prevent qualified Black employees from obtaining such positions.

23. These practices are common at NES.

24. Plaintiff applied to the position of Safety and Employee Development Manager on approximately five occasions, but NES never hired him for that position.

25. Less qualified white employees were given the positions instead of Plaintiff as recently as September 2023.

26. Various tactics were employed to prevent Plaintiff from obtaining the position of Safety and Employee Development Manager, including changing the job description in such a way to hurt Plaintiff and favor less-qualified white employees.

27. For example, the job description and qualifications of Safety and Employee Development Manager were altered to require an engineering degree to prevent Plaintiff from obtaining the job.

28. The alteration of the job qualifications benefited a lesser qualified white employee, Sara Elliott, to the detriment of Plaintiff.

29. Plaintiff was not promoted to Safety and Employee Development Manager because of his race.

30. Of note, Plaintiff was not even deemed to “certify” for the position to apply for it— even though he had performed the additional job duties of the position that was given to Sara Elliott for approximately two years, with no additional compensation.

31. Plaintiff also reported racist and discriminatory behavior committed by NES employees against other Black employees, but no corrective action was taken.

32. Plaintiff also observed discriminatory practices in the way NES rates its Black employees.

33. Plaintiff personally experienced being rated unfairly in comparison to his white peers.

34. At NES, performance evaluations play a role in the certification and promotion process.

35. On a particular performance evaluation, NES rated Plaintiff “Good.” Plaintiff’s supervisor could not explain why he rated Plaintiff, the only African American, with only a “Good.”

36. When the Plaintiff reported the issue to then Vice-President of Human Resources, Herbert DeBerry, his rating was changed to “Very Good,” but NES took no action to uncover why Plaintiff and other Black NES employees, like him, were routinely rated lower than their peers.

37. Plaintiff told NES Human Resources personnel, including Herbert DeBerry and Camille Steward, he felt many Black NES employees would not voice concerns about their performance evaluations due to fear of retaliation from management. No meaningful action was taken by NES.

38. Plaintiff also voiced concerns about the certification process, the overall promotion process, and management altering job qualifications to select white NES employees instead of Black employees.

39. The Plaintiff voiced these concerns to Vaughn Charles, Herbert DeBerry, Camille Steward, Tina Demoss and Decosta Jenkins.

40. Following Plaintiff’s continued mistreatment, Plaintiff learned of additional Black NES employees experiencing similar discriminatory and hostile treatment at NES.

41. Plaintiff spoke with those Black NES employees regarding their experiences and instances of discrimination.

42. Plaintiff reported racist and discriminatory behavior committed against himself and other Black NES employees, including but not limited to William Heath, Thomas Caruthers, Walter Clark, Marvin Sain, Jimmie Hunt, and Tracy Gooch, but no meaningful investigations or corrective action was taken.

43. NES tasked Plaintiff with the disturbing job of addressing racist displays made on NES property.

44. For example, Plaintiff received a report of a noose being displayed on NES property.

45. A noose is one of the most powerful and disturbing symbols of hate for Black Americans and symbolizes both actual violence and threats of violence towards Black Americans.

46. Plaintiff had the undesirable task of removing the noose from NES property.

47. Plaintiff reported the incident to his supervisor, Sara Elliott; the Vice-President of Human Resources, Herbert DeBerry; and Chief Executive Officer, Decosta Jenkins.

48. Knowledge of the display of the noose circulated among NES employees.

49. Many Black NES employees, including Plaintiff, were deeply affected and disturbed, as this was not the first noose displayed on NES property in an employee-only area.

50. Plaintiff gave the noose to Herbert DeBerry.

51. Plaintiff and the NES Human Resources employee reported the incident to NES management, but no corrective action was taken.

52. Plaintiff also observed discriminatory practices in the way that NES disciplines Black employees.

53. Plaintiff observed that NES punished Black employees more often and more harshly than their white counterparts for the same and/or similar behavior.

54. For example, Plaintiff observed an incident involving a Black NES employee, Walter Clark.

55. Plaintiff observed disciplining manager, Stephen Clark, and the white safety supervisors working together to “brainstorm” all the infractions they could use to “write up” Walter Clark.

56. Plaintiff expressed his concerns to those safety supervisors, giving examples of the difference in discipline for white employees with similar infractions.

57. Nonetheless, the white safety supervisors and Stephen Clark proceeded to “over discipline” Walter Clark, while failing to discipline white employees that were involved in the same incident that NES used to justify disciplining Walter Clark.

58. Plaintiff informed his supervisor, Sara Elliott, about the difference in treatment, but no corrective action was taken.

59. Plaintiff’s pleas for help from management and NES Human Resources remain unaddressed as of the drafting of the present Complaint.

60. The hostile environment at NES is continuous and ongoing. Every time Plaintiff suffered racial comments and discrimination during his employment, he filed grievances or reported the incidents to his supervisors and/or managers, but no corrective action has ever been taken to resolve his complaints.

61. On countless occasions, Plaintiff faced racial discrimination at NES, which includes, but is not limited to, racial gestures (*e.g.*, a noose hanging at work); constantly being overlooked for jobs due to his race even though he was more qualified than his fellow white

coworkers; unfair treatment by supervisors as well as manipulation of the performance appraisal system and grades; being graded differently because of his race; and coworkers being disciplined more harshly due to race.

62. Throughout his employment at the NES, Plaintiff has experienced and witnessed Black employees not being given opportunities for promotion and advancement equal to white employees.

63. There is no dearth of examples of NES's discrimination based on race. Most recently, on January 9, 2023, NES Operations Manager Ty Jones changed his email profile to a ≠ ("Not Equal") symbol.

64. According to the Anti-Defamation League, the "Not Equal" symbol is "a white supremacist symbol" that is used to signify the claim "that different races are not equal to each other (and to imply that the White race is superior)."

65. Despite reports of Jones' use of this symbol directly to NES Human Resources and legal counsel, no corrective action has been taken.

66. Plaintiff has been adversely affected by the challenged practice and pattern of racial discrimination detailed in this Complaint, including Defendant NES's subjective selection and discipline policies, practices and procedures, and unequal terms and conditions of employment, which have prevented Plaintiff from advancing into higher and better paying positions for which he was qualified, and have deprived him of the opportunity to work in an integrated environment in which Black employees hold higher-level positions.

67. As a result of Defendant's unlawful acts, Plaintiff has experienced emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.

68. As a result of Defendant's unlawful acts, Plaintiff has been deprived of employment opportunities, which caused Plaintiff to suffer economic losses, including lost wages and benefits.

**COUNT ONE: DENIAL OF EQUAL PROTECTION GUARANTEED BY THE  
FOURTEENTH AMENDMENT IN VIOLATION OF 42 U.S.C. § 1983**

69. Plaintiff incorporates by reference paragraphs 1 through 68 above as if each has been fully restated herein.

70. Plaintiff has been subjected to racial discrimination by NES, including, but not limited to, a pattern and practice of intentional discrimination and subjection to NES's policies, practices, and procedures that have resulted in an unlawful disparate impact on his employment opportunities.

71. Defendant NES follows a policy and practice of restricting the employment opportunities of Black employees—such as Plaintiff—to lower job classifications and compensation levels.

72. The means of accomplishing such racial discrimination include, but are not limited to, NES's selection and promotional procedures, unequal terms and conditions of employment, and a history of tolerating and encouraging a racially hostile working environment.

73. As a protected class member, Plaintiff was discriminated against when he applied for the Field Superintendent position.

74. Plaintiff was subjected to intentional discrimination by NES when he was denied promotions he was qualified for, and when NES promoted white employees instead of Plaintiff.

75. Race is a motivating factor in NES's rejection of Plaintiff for the position.

76. NES treated Plaintiff differently than similarly situated white employees.

77. Defendant, by discriminating against Plaintiff, and acting under color of state law, violated Plaintiff's federal constitutional rights guaranteed by the Equal Protection Clause of the

Fourteenth Amendment to the United States Constitution to be free from discrimination because of his race.

78. NES's violation of Plaintiff's constitutional rights was the direct result of Defendant's longstanding customs and practices described above, which allowed discrimination against Black employees.

79. NES failed to adequately train and supervise its management-level employees regarding prevention of racial discrimination, as evidenced by NES's failure to correct the racial discrimination, despite Plaintiff's many complaints.

80. As a result of these acts and omissions, Defendant violated 42 U.S.C. § 1983.

81. As a result of these discriminatory acts, Plaintiff is entitled to compensatory damages in an amount to be determined at trial, back pay, interest on back pay, front pay, and other equitable relief, and reasonable costs and attorney's fees.

**COUNT TWO: RACIALLY HOSTILE WORK ENVIRONMENT  
IN VIOLATION OF 42 U.S.C. § 1983, TITLE VII OF THE CIVIL RIGHTS  
ACT OF 1964, 42 U.S.C. § 2000e, *et seq.*, and THE TENNESSEE HUMAN RIGHTS ACT,  
TENN. CODE ANN. § 4-21-101, *et seq.***

82. Plaintiff incorporates by reference paragraphs 1 through 81 above as if each has been fully restated herein.

83. As a Black man, Plaintiff is a member of a protected class.

84. Throughout his employment, Plaintiff was subjected to unwelcome harassment based on his race by NES employees in administration, managerial positions, and coworkers.

85. The harassment was humiliating and intimidating and was sufficiently severe or pervasive to alter the conditions of Plaintiff's employment and create an abusive working environment.

86. Specifically, Plaintiff was subjected to racially offensive, severe, or pervasive jokes, insults, and slurs on various occasions by NES management and other white employees.

87. Plaintiff was the victim of constant bullying and racial slurs, such as being called “Nigger” by white NES employee(s).

88. Plaintiff was a victim of racially intimidating acts at NES, including being subjected to displays of hate symbols (such as a noose and the “Not Equal” sign).

89. NES knew about the harassment and failed to take prompt remedial action to stop the harassment.

90. NES failed to adequately train and supervise its management-level employees regarding prevention of race-based harassment, as evidenced by NES’s failure to correct the harassment, despite its pervasiveness and Plaintiff’s many complaints.

91. NES had a custom of tolerance or acquiescence of race-based harassment against its Black employees.

92. As a result of these acts and omissions, Defendant violated 42 U.S.C. § 1983, Title VII of the Civil Rights Act, and the Tennessee Human Rights Act.

93. As a result of these discriminatory acts, Plaintiff is entitled to compensatory damages in an amount to be determined at trial, back pay, interest on back pay, front pay, and other equitable relief, and reasonable costs and attorney’s fees.

**COUNT THREE: RACE DISCRIMINATION IN VIOLATION OF  
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq., and  
THE TENNESSEE HUMAN RIGHTS ACT, TENN. CODE ANN. § 4-21-101, et seq.**

94. Plaintiff incorporates by reference paragraphs 1 through 93 above as if each has been fully restated herein.

95. Plaintiff is a Black male and is therefore a member of a protected class under Title VII and the THRA.

96. Plaintiff was subjected to adverse employment actions by Defendant when it failed to promote him into jobs he was qualified for, and instead promoted less-qualified white employees.

97. As a result of these acts and omissions, Defendant violated Title VII of the Civil Rights Act, and the Tennessee Human Rights Act.

98. As a result of these discriminatory acts, Plaintiff is entitled to compensatory damages in an amount to be determined at trial, back pay, interest on back pay, front pay, and other equitable relief, and reasonable costs and attorney's fees.

#### **RELIEF REQUESTED**

1. A jury to try his claims.
2. Entry of judgment in favor of Plaintiff, and against Defendant, for compensatory damages in an amount to be proven at trial.
3. Entry of judgment in favor of Plaintiff for back pay, front pay, and other equitable relief.
4. An award of Plaintiff's costs, reasonable attorney's fees, and pre- and post-judgment interest.
5. Any other legal or equitable relief to which Plaintiff may be entitled.

Respectfully submitted,

**HUNTER LAW FIRM, PLC**

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