

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

DWIGHT E. NICHOLSON and JULIO
FUNG,

Plaintiffs,

v.

VIRGIN ISLANDS WATER AND
POWER AUTHORITY,

Defendant.

CIVIL NO. St-19-cv-162

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

COMPLAINT

COME NOW Plaintiffs, **DWIGHT E. NICHOLSON and JULIO FUNG**, by and through undersigned counsel, and file their Complaint against Defendant **VIRGIN ISLANDS WATER AND POWER AUTHORITY**, and alleges the following:

1. This Court has jurisdiction over this matter pursuant to 4 V.I.C. § 76.
2. Plaintiff, Dwight Nicholson, is a resident of St. Croix U.S. Virgin Islands and is the St. Croix Results Engineer III for the Water and Power Authority on St. Croix. He is a taxpayer.
3. Plaintiff, Julio Fung, is a resident of St. Thomas, U.S. Virgin Islands and is the St. Thomas Data Acquisition and Controls Coordinator for Water and Power Authority on St. Thomas. He is a taxpayer.
4. Defendant, Virgin Islands Water and Power Authority (WAPA), is a public corporation with the ability to sue and be sued.
5. For years, Plaintiffs have watched as Defendant made economically, incorrect

NICHOLSON, DWIGHT & JULIO FUNG V. VIRGIN ISLANDS WATER AND AUTHORITY, CIVIL NO.

COMPLAINT

Page 2

decisions related to the operation of the Water and Power Authority, that resulted in increased costs and rates to the consumers.

6. Even though Plaintiffs regularly do cost analyses of such decisions, their information is rarely given to Defendant's Board of Directors so informed decisions can be made.
7. Plaintiffs were "invited" to make a presentation to WAPA's Board of Directors on February 5, 2019, and to respond to a letter criticizing decisions as to rental of equipment.
8. Plaintiff, Nicholson, was notified by his Supervisor, Jherome Dias, of the invitation, but did not get much encouragement for Plaintiff to go to the meeting.
9. Nevertheless, Plaintiffs went to the Board of Directors meeting and gave presentations arriving with the letter and showing that the decisions made by WAPA to retire and not repair units, but instead engage in contracts to rent replacements was not economically sound and had increased costs by 20 to 40% year.
10. Plaintiffs' responses to the letter were ridiculed by their supervisors and their opinions were designated as "humorous".
11. At the February 7, 2019, Board of Directors meeting Fung on behalf of Plaintiffs presented financial information that established the economically unsound decisions made as to rental agreements detailing the high costs incurred by WAPA as to those decisions.
12. In response, in retaliation for Plaintiffs showing how management had been making

COMPLAINT

Page 3

economically unsound decisions, Plaintiffs were given numerous task lists and were informed that the policy of compensatory time (a worker being given time off in lieu of overtime) would no longer be extended to Plaintiffs. This statement was made by Dias on the day following the meeting, February 8, 2019.

13. On February 11, 2019, a meeting was called by Chief Operating Officer, Clinton Hedrington. Plaintiff Nicholson was out sick, but Plaintiff Fung attended.
14. In attendance were, Fung, Hedrington, the Generation Planning Manager, Dias, and Director of Human Resources, Sabrina King. Plaintiffs were chastised for insubordination by Dias in an aggressive manner, who falsely accused Plaintiffs of going over their heads by making their presentation to the Board of Directors without their approval and that Plaintiffs had made them "look bad".
15. On February 14, 2019, while Plaintiff Nicholson, was printing some documents, he overheard Kevin Smalls, the Director of Production, stating that Plaintiffs were out of control and that, Dias, needed to get them in control.
16. On February 25, 2019, Dias called a meeting, Plaintiff Nicholson did not attend as he was out doing work assigned by Dias. Mr. Fung attended.
17. At the meeting, Plaintiffs were informed that if the onerous and impossible lists of tasks that had been assigned were not completed by the dates demanded, Plaintiffs would be disciplined for insubordination.
18. Many of the tasks had not been completed because other tasks with higher priorities took precedence, and other tasks assigned were extremely complex and time

consuming without the required specific information being provided to allow the task to be completed. For example, one of the tasks required a new report to be generated to replace a monthly report from 2005 that had taken over a year to generate. This current Production Report had been used ever since 2005 and even if Plaintiffs had been given the parameters, which they weren't, it would have taken over six months to attempt to generate that report.

19. On February 26, 2019, Plaintiff issued a letter to a member of the Board of Directors setting out the escalating harassment, which was circulated to members of the Audit Department.
20. On February 28, 2019, Plaintiff Nicholson received a disciplinary letter from Dias for missing the February 25th meeting, of which he was unaware, and for not completing his tasks, which were impossible to complete.
21. Plaintiff Nicholson notified the Board of Directors of the disciplinary letter which was sent to the Plaintiff without the knowledge of his union representatives out of proper channels keeping the union in the dark.
22. The letter has not been rescinded.
23. The letter sets Plaintiffs up for increased discipline and adverse employment actions against them.
24. As a result, Plaintiffs have suffered loss of compensatory time, threats against job security, mental anguish, physical and emotional suffering and loss of enjoyment of life, all of which will continue into the foreseeable future.

NICHOLSON, DWIGHT & JULIO FUNG V. VIRGIN ISLANDS WATER AND AUTHORITY, CIVIL NO.

COMPLAINT

Page 5

COUNT I

25. Plaintiffs set forth in paragraph 1 through 24 as if as forth herein.
26. The actions of Defendant are in violation of the Virgin Islands Whistleblower Act.
27. As a result, Plaintiffs are entitled to injunctive relief that Defendant be prohibited from further retaliation against Plaintiffs.
28. The Plaintiffs have suffered damages as alleged herein.

COUNT II

29. Plaintiffs set forth in paragraph 1 through 28 as if as set forth herein.
30. The Defendant has negligently hired and retained persons in management that have harassed employees, such as Plaintiffs who act in the best interest of WAPA and the community.
31. Plaintiffs as tax payers and rate payers have been damaged, as a result of such negligent hiring and retention.
32. As a result, those persons should have been terminated from employment.
33. Instead, Defendant has ratified their actions.
34. WAPA has not been truthfully with the PSC, has made unsupportable decisions that have increased the cost of fuel and electricity to the detriment of the rate payers. Those decisions need to be corrected.
35. As a result, Plaintiffs, as individuals, have suffered damages as alleged herein.
36. As a result, Plaintiffs as ratepayers have been strapped with exorbitant rates.

WHEREFORE, Plaintiffs pray for injunctive relief damages, pre and post judgment

NICHOLSON, DWIGHT & JULIO FUNG V. VIRGIN ISLANDS WATER AND AUTHORITY, CIVIL NO.

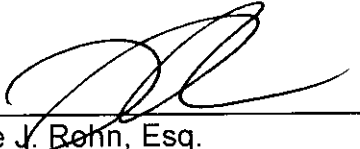
COMPLAINT

Page 6

interest, costs and fees and such other relief as thus court deems fair and just.

LEE J. ROHN AND ASSOCIATES, LLC
Attorneys for Plaintiffs

DATED: April 8, 2019

BY: 

Lee J. Rohn, Esq.

VI Bar No. 52

1101 King Street

Christiansted, St. Croix

U.S. Virgin Islands 00820

Telephone: (340) 778-8855

lee@rohnlaw.com

FILED 4-9-19

FEE PAID \$75

BY SA