

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Martinsburg Division

EUGENE C. BURRESS,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: 3:09cv76 JPB
)	
MASTEC ADVANCED TECHNOLOGIES,)	
)	
Defendant.)	

CONSENT DECREE

This matter is before the Court for entry of judgment by consent of the parties to effectuate a compromise and settlement of all claims in the above-captioned case.

1. Plaintiff, Eugene C. Burress ("Burress"), commenced the above-captioned action in the United States District Court for the Northern District of West Virginia, alleging that Defendant, MasTec Advanced Technologies ("MasTec"), willfully violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by denying Burress a promotion to site manager because of his membership in and/or obligation to perform service in the uniformed services, and by failing to reemploy Burress upon his return from active duty in the position he would have held had his employment not been interrupted by his military service or in a position of like seniority, status, and pay.

2. MasTec denies each and every allegation of a violation of USERRA made against it by Burress in this lawsuit.

3. Nevertheless, Burress and MasTec (collectively referred to as the "Parties"), as a result of settlement discussions, have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree (the "Decree"). It is the intent of the Parties that this Decree be a final and binding settlement in full disposition of any and all claims alleged in the Complaint filed in this case.

STIPULATIONS

4. Pursuant to USERRA, the Parties acknowledge the jurisdiction of the United States District Court for the Northern District of West Virginia over the subject matter of this action and the Parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.

5. Venue is proper in this district for purposes of this Decree and any proceedings related only to this Decree. MasTec agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

6. Having examined the terms and provisions of the Decree, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the Parties to this action.
- b. The terms and provisions of this Decree are fair, reasonable, and just. The rights of the Parties are protected adequately by this Decree.
- c. This Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Decree will further the objectives of USERRA and other applicable laws and will be in the best interests of the Parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
AS FOLLOWS:**

NON-ADMISSION

7. This Decree is being entered with the consent of the Parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by MasTec of any violations of USERRA, or any other law, rule, or regulation dealing with, or in connection with, equal employment opportunities.

COMPLIANCE WITH USERRA

8. MasTec shall comply with all of the provisions of USERRA and shall not take any action against any person, including but not limited to Burress, that constitutes retaliation or interference with the exercise of such person's rights under USERRA, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding.

REMEDIAL REQUIREMENTS

9. Without admitting the allegations set forth in the Complaint, and in settlement of the claims raised in this case, MasTec shall, within thirty (30) days from the date of entry of this Decree, pay Burress a total amount of Five Thousand Seven Hundred and Sixty Dollars (\$5,760.00) to satisfy all of Burress's claims for relief, monetary and nonmonetary, legal and equitable, which shall be constituted as follows:

- a. Five Thousand Seven Hundred and Twenty Dollars (\$5,720.00) in back pay from which appropriate income tax withholdings and other statutory deductions shall be made by MasTec. MasTec shall pay its portion of any Social Security tax on the back pay portion of the amount

separately and shall not deduct its portion of such tax from the amount paid to Burress.

- b. **Forty Dollars (\$40.00)** in accumulated interest on the back pay.

MasTec shall pay the required amount to Burress by mailing a check addressed as follows:

Eugene C. Burress
239 Ford Circle
Inwood, West Virginia 25428

MasTec shall provide documentary evidence of having paid Burress by mailing a photocopy of the check evidencing payment together with proof of payment to the following address within ten (10) days of payment to Burress:

Hilary J. Funk
United States Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Employment Litigation Section, PHB, Room 4015
Washington, DC 20530

10. MasTec shall respond to any reference requests regarding Burress's employment by providing only Burress's position and dates of employment.
11. For and in consideration of the relief being provided to him as described in paragraphs 9 and 10 of this Decree, Burress, by his signature to the release attached as Appendix A, releases and discharges MasTec from the claims identified in the Complaint filed in this case and the complaint Burress filed with the Department of Labor, complaint number WV-2009-00005-10-R. This release and discharge of claims is subject only to MasTec's compliance with the terms of this Decree.

MISCELLANEOUS

12. All Parties shall bear their own costs and expenses of litigation, including attorneys' fees.

13. This Decree constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in this action. The Court retains jurisdiction over this matter, however, for the purpose of entering appropriate orders enforcing this Decree.

14. The terms of this Decree shall be binding upon the present and future directors, employees, agents, administrators, successors, representatives, and assigns of MasTec and upon the heirs, successors, and assigns of Burress.

15. This Decree constitutes the entire agreement and commitments of the Parties. Any modifications to this Decree must be mutually agreed upon and memorialized in writing signed by all Parties.


EFFECTIVE DATE

16. The effective date of this Decree shall be the date upon which it is entered by the Court.

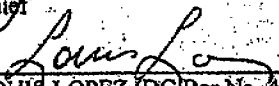
17. This Decree shall expire, and this action shall be dismissed, without further order of this Court, six (6) months after entry of this Decree, provided that MasTec has provided Burress with the remedial relief called for herein.


APPROVED and ORDERED this 19th day of February, 2010.

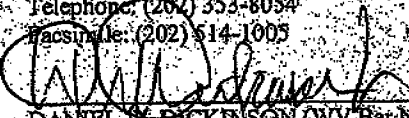

UNITED STATES DISTRICT JUDGE


JOHN M. GADZICHOWSKI (WI Bar No. 1014294)
Chief



EUGENE C. BURRESS


LOUIS LOPEZ (DC Bar No. 461662)
Deputy Chief


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On behalf of Plaintiff Eugene C. Burress


VIRGINIA PAGLIERI
MasTec, Inc., Legal Department
800 Douglas Road, Twelfth Floor
Coral Gables, FL 33134
Telephone: (305) 406-1875
Facsimile: (305) 406-1907

On behalf of Defendant MasTec Advanced Technologies

APPENDIX A

RELEASE

I, Eugene C. Burress, for and in consideration of accepting the relief to be provided to me pursuant to the provisions of the Consent Decree entered in *Eugene C. Burress v. MasTec Advanced Technologies*, release and discharge MasTec Advanced Technologies, its current, former, and future officials, employees, and agents from all legal and equitable claims arising out of the complaint filed in that case occurring prior to the date of this Release.

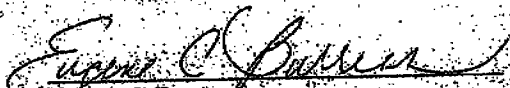
I understand that the relief to be given to me does not constitute an admission by MasTec Advanced Technologies of the validity of any claim raised by me, or on my behalf.

This Release constitutes the entire agreement between MasTec Advanced Technologies and me, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action was provided to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF,
AND I EXECUTE THE RELEASE OF MY OWN FREE ACT AND DEED.

Signed this 03 day of FEBRUARY 2010.


Eugene C. Burress