

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

Bassey J. Udofot, Complainant vs. General Electric Company, Astro-Space Division, Respondents; 8 U.S.C. § 1324a Proceeding; OCAHO Case No. 90200103.

**ORDER DISMISSING COMPLAINT AS TO NATIONAL ORIGIN DISCRIMINATION,  
DENYING COMPLAINT FOR DEFAULT JUDGMENT AND SCHEDULING TELEPHONE  
CONFERENCE**

Decided: July 25, 1990

Bassey Johnson Udofot, Colorado Springs, CO, the charging party, on August 14, 1989 filed completed charge form alleging discrimination, based upon national origin and citizenship status, in violation of Section 102 of the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. The charge form was filed with the Office of Special Counsel for Immigration Related Employment Practices (OSC).

That completed charge form states that complainant is an alien authorized to work in the United States with alien Registration Number A90321063; that his application for amnesty has been pending since June 1987; and that he filed Form 131, through his wife, for change of status to that of a permanent residency status and that he has gained approval; that on August 14, 1989 he completed a declaration of his intention to become a citizen.

By letter dated January 26, 1990 OSC wrote that the extended 120-day investigative period terminated that day but that the OSC was continuing its investigation and that Mr. Udofot could file his own complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) if he decided to file such against GE.

On March 13, 1990 Mr. Udofot filed such a complaint against GE with OCAHO indicating that he is of Nigerian natural origin; that he is an intending citizen under 8 U.S.C. 1324b(a)(3); that on or about January 18, 1989 he applied for the job of battery engineer trainee, with GE at Princeton, NJ; that he was qualified for the position of battery engineer, in training, for which GE was seeking applicants; that on or about March 2, 1989 GE knowingly and intentionally refused to hire him because of his citizenship status or Nigerian national origin in violation of 8 U.S.C. 1324b. Complainant alleges that after March 2, 1989, although complainant was refused employment, the position remained open and that GE contin-

ued to seek applications from individuals with complainant's qualifications.

Complainant requested that an administrative law judge be assigned to preside at a hearing and require GE to hire and train complainant for the position of Battery Engineer and pay back pay from March 11, 1989 until complainant is hired and pay reasonable attorney's fees.

On March 20, 1990 OCAHO mailed a copy of a Notice of Hearing on the complaint to General Electric Company, Astro-Space Division, c/o Salvatore B. Mucciacciaro, Manager, Spacecraft Power Sources, P.O. Box 800, Princeton, NJ 08543-0800.

On March 29, 1990 I received a letter from Michael F. Fink, Division Counsel, General Electric Company, Box 800, Princeton, NJ 08543-0800, which stated that he had received a copy of a letter from Bruce Friedman of OSC which described the Notice of Hearing in this matter which Mr. Friedman received on the 21st of March but Mr. Fink stated that GE had received no such notice of any hearing and requested timely notice if GE is a party.

I arranged to have a copy of the complaint faxed to Mr. Fink as well as sent by mail. I also determined that the original complaint had been received by someone at GE on March 23, 1990. Mr. Fink received the copy of the complaint I mailed him on April 20, 1990.

GE requested two extensions of time within which to file its answer, the last extension being to April 30, 1990 when its answer was received.

In my transmitted letter dated April 10, 1990 sending Mr. Fink a copy of the Notice of Hearing I wrote that Mr. Udofot had phoned me that he had been unable to hire an attorney and might be willing to settle the case. The parties have engaged in settlement negotiations.

In its answer GE (1) acknowledges that jurisdiction of OCAHO has been invoked but denies that OCAHO has subject matter jurisdiction.

GE (2) notes that complainant applied for work at its East Windsor, NJ facility which uses a Princeton, NJ P.O. box address.

GE (3) states that it lacks sufficient knowledge or information to admit or deny complainant's citizenship, employment, or national origin status and asserts that it will hold complainant to strict proof.

To the extent that complainant alleges national origin discrimination GE (4) denies the subject matter jurisdiction of the OCAHO to consider same.

GE is correct that, as an employer of more than 14 employees, it is subject to the sole, exclusive jurisdiction of the EEOC for charges

alleging national origin discrimination, under Title VII of the Civil Rights Act of 1964. Employers who are covered by Title VII are not covered by the Immigration Reform and Control Act of 1986 (IRCA). The prohibition against national origin discrimination in IRCA, 8 U.S.C. 1324b(a)(1)(A) does not apply if ``the discrimination with respect to that person or entity and that individual is covered'' by Title VII (Section 703 of the Civil Rights Act of 1964) See 8 U.S.C. § 1324b(a)(2)(B). Moreover, 8 U.S.C. § 1324b(b)(2) prohibits any overlap between such a national origin discrimination complaint under IRCA and EEOC based on the same set of facts. GE notes that on or about January 24, 1990 complainant filed a separate charge, No. 170-09-0154, of national origin discrimination with EEOC, 1421 Cherry Street, Philadelphia, PA 19102. IRCA protects a person from discrimination on the basis of national origin only for employers of more than 3 but less than 15 employers and the EEOC retains exclusive, sole subject matter jurisdiction for national origin charges against employers, such as GE, of more than 14 employees. Subsequently complainant agreed that no issue of national origin discrimination can be considered in this proceeding and that portion of the complain will be dismissed.

GE alleges that it lacks sufficient knowledge or information to confirm or deny and will hold complainant to strict proof of his proper status as ``intending citizen'', as defined by 8 U.S.C. 1324(a)(3), 28 CFR 44.101(c)(2), and 28 CFR 44.101(a)(7)(ii); that if complainant had not filed a written, completed declaration of intention, INS Form I-772, ``Declaration of Intending Citizen'', prior to the date of the alleged discriminatory act, then the OCAHO lacks subject matter jurisdiction to consider a charge of citizenship discrimination; and that complainant submitted a Form I-772, dated 14 August 1989, a date subsequent to the date of the alleged discrimination in March 1989.

GE contends that complainant did not apply for, and it did not interview him for, a ``trainee'' battery engineer position; that complainant represented that he had approximately 4 years of prior relevant experience as a battery engineer and interviewed for a position commensurate with that level of experience.

GE contends that complainant was not technically qualified for the position for which he interviewed; that complainant now represents that he was applying for a position of ``Battery Engineering (in Training)'', but that complainant was not interviewed for a ``trainee'' or ``in training'' entry-level position. GE argues that complainant applied for and was interviewed for a position more experienced than an entry-level ``trainee'' or ``in training position'' and that GE, at the time of the interview, had no need for a ``trainee''

or entry-level battery engineer; that GE was interviewing complainant for a battery engineer position for spacecraft; that complainant lacked technical qualifications and experience for a spacecraft battery engineer position. (GE notes that the design of state-of-the-art spacecraft batteries is information subject to the export licensing restrictions of the International Traffic in Arms Regulations (ITAR), 22 CFR Part 120. See 22 CFR 121.1, Category VIII (b) and (f) and Category XI(b).)

GE asserts that it declined to hire complainant (after paying for his expenses from Colorado Springs, Colorado to East Windsor, New Jersey and return) because of his lack of technical qualification and experience for a spacecraft battery engineer position and denies that its refusal to hire was motivated by complainant's citizenship status or national origin.

Of 882 applicants whom GE interviewed and hired at its East Windsor, NJ facility from January 1, 1988 through February 15, 1990, GE asserts that 47 or 5.3 percent of the applicants hired have been non-U.S. citizens.

Because of the nature of GE's on-going business, it points out that it continues to seek applications of experienced spacecraft battery engineers.

GE points out that the Office of Special Counsel, by notice dated March 13, 1990, after investigation, review of documents and interviews of GE's employees, has determined ``that there is no reasonable cause to believe that Mr. Udofot was discriminated against because of his citizenship status'' and, therefore, ``will not bring'' a complaint based on complainant's charge.

GE requests that the complaint and charge be dismissed for lack of subject matter jurisdiction or denied.

GE requests that any hearing be held in Princeton, NJ because it would be burdensome to require GE's Counsel and all of its witnesses to travel from New Jersey to Colorado Springs, Colorado for a hearing instead of requiring complainant, alone, to travel from Colorado Springs, CO to New Jersey. In recognition of complainant's apparent financial situation, GE would be willing to discuss a method of sharing complainant's reasonable travel and living costs for a hearing.

Complainant also filed a motion requesting default judgment against respondent for failure to file its answer within 30 days.

The complaint was filed March 13, 1990 and the notice of hearing on the complaint was mailed March 20, 1990. An answer was due 30 days after receipt of the notice of hearing on the complaint. On March 27, 1990 Michael F. Fink, Division Counsel for GE's Astro Space Division wrote that he had received no notice of the

hearing but only learned about it from a copy of a letter from the Office of Special Counsel.

The complaint indicated that a copy had been served on GE c/o Salvatore B. Mucciacciaro, Manager, Spacecraft Power Sources, P.O. Box 800, Princeton, NJ 08543-0800. A return receipt was obtained indicating that someone at the above address signed on March 23, 1990 for the notice of hearing on the complaint but the signature is illegible. I arranged to have one copy of the notice of hearing on the complaint faxed to Mr. Fink and another one mailed to him.

In the circumstances Mr. Fink requested additional time in which to file the answer. The extensions were granted until April 30, 1990 when the answer was timely filed. Complainant's motion for default judgment will be denied.

The gist of the complaint is that GE did not hire Mr. Udofot because he did not prove that he had a Green Card and because he was a foreigner with a work permit. GE denies this and urges that Mr. Udofot was not hired for reasons other than his citizenship status namely that he was not qualified for the position for which he was interviewed.

I am in receipt of complainant's written interrogatories including a document request dated June 5, 1990 and received June 11, 1990. These refer to earlier document requests attached to a letter dated May 1, 1990 rejecting respondent's earlier offer of settlement. I also have a copy of a letter from GE dated June 26, 1990 renewing its offer of April 26, 1990 and, among other things, suggesting that it is contemplating serving written interrogatories and document requests on Mr. Udofot. I also have a copy of complainant's letter dated July 9, 1990 containing a motion to compel and a request for a speedy trial.

I am scheduling this proceeding for a telephone conference call on August 1 at 10:00 a.m. (Eastern Daylight Savings Time) to resolve some of these matters, set a date for completion of discovery and arrange for a date for a hearing in late August in Denver, CO unless satisfactory financial arrangements can be made for complainant to attend the hearing in New Brunswick, NJ in late August.

It is ordered:

(1) the complaint, insofar as it alleges national origin discrimination, is dismissed;

(2) Complainant's motion for a default judgment is denied;

(3) A telephone conference call is scheduled for August 1, 1990 at 10:00 a.m. (Eastern Daylight Savings Time\_8:00 a.m. Mountain Time)

FREDERICK M. DOLAN  
Administrative Law Judge