



# A Terminated Employee's Failure To Seek Additional Education Is Not Required To Mitigate Damages Regardless Of What Your Expert May Say

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## Equal Employment Opportunity Commission vs. Dresser Rand Company, Case No. 04-CV-6300, W.D.N.Y (August 10, 2011)

Is an employee terminated for a discriminatory reason required to seek retraining or additional education in order to mitigate his damages? The District Court of the Western District of New York in *Equal Employment Opportunity Commission vs. Dresser Rand Company*, Case No. 04-CV-6300 (Siragusa, J.), answered no.

When Harry Davis, a Jehovah's Witness and a manual machine tool operator at Dresser-Rand's upstate New York location, refused to work on a machine part intended for use in a submarine, he was terminated. Davis worked for Dresser-Rand from 1974 until his termination in 2002. During that time his employer was made aware that his religious beliefs prevented him from working on "implements of war." However, Dresser-Rand often manufactured products for the United States Navy. While previously given other projects to work on when he objected to a Navy assignment, there were no other reasonable accommodations for Davis in 2002 when he refused to work on a submarine. He ultimately was terminated for insubordination. The court determined that there were triable issues of fact as to whether an alternate reasonable accommodation was available for Davis.

Significantly, the court also found that Davis's damages would not be limited, as proffered by Dresser-Rand's expert, because Davis did not go to school for retraining. In his report, Dresser-Rand's expert opined on the "best method" in which Davis could have engaged to mitigate his damages. Without regard to Davis's academic abilities, and the job outlook in or about the time, Davis remained unemployed post-termination, Dresser-Rand's expert suggested that if Davis had attended a local community college and engaged in certain training for machinists, he would have had "no problem finding a job."

In keeping with established case law on mitigation, the court found that Davis was under no mitigation obligation to pursue such training. Since the expert only offered his opinion on the best method in which he thought Davis could have mitigated his damages, he was precluded from testifying at trial. Thus, whether the failure-to-mitigate damages defense will succeed at trial will be up to the jury and the jury will not be guided by this expert's report that would suggest that Davis was required to seek vocational training.