

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

AMY FITZGERALD,

*Plaintiff,*

vs.

TYSON FOODS, INC.

*Defendant.*

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO.

\_\_\_\_\_

**PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND**

The plaintiff, Amy Fitzgerald, (“Plaintiff” or “Fitzgerald”), complains of Tyson Foods, Inc. (“Defendant” or “Tyson Foods”), as follows:

**VENUE AND JURISDICTION**

1. Fitzgerald is a citizen of the United States and a resident of the State of Texas.
2. Fitzgerald was a Regional Sales Manager for Tyson Foods and venue is proper because she has been subjected to unlawful employment practices committed in the State of Texas, Northern District, Dallas Division.
3. Tyson Foods is primarily involved in the business of processing and marketing chicken, beef, and pork.
4. Tyson Foods is a Delaware corporation, conducting business in Texas at 4114 Mint Way, Dallas, Texas, in the Northern District, and elsewhere, and this action accrued in whole or in part in the Northern District.
5. Tyson Foods may be served with process by serving its registered agent in Texas: CT Corporation System, 1995 Bryan Street, Suite 900, Dallas, Texas 75201.

6. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343(a)(4), and 28 U.S.C. §1337. The complaint seeks declaratory relief pursuant to 28 U.S.C. §§ 2201, 2202. This suit is authorized and instituted pursuant to the Age Discrimination in Employment Act of 1967 (“ADEA”), 29 U.S.C. §621, *et seq.*
7. This is a proceeding for compensatory and punitive damages, injunctive and other legal and equitable available to secure the rights of Fitzgerald under the ADEA. It is brought to prevent Tyson Foods from maintaining policies, practices, customs or usages of discriminating against Fitzgerald in regard to terms, conditions, and privileges of employment in violation of these statutes.
8. This matter in controversy exceeds, exclusive of interest and costs, the minimum jurisdictional limits of this Court.

#### **STATEMENT OF FACTS**

9. Amy Fitzgerald is a female and currently age fifty.
10. Fitzgerald first became employed by Advance Food Company as an Operator Specialist in September 1994, a predecessor company of Tyson Foods. Advance Food Company merged with Pierre Foods in approximately 2010 and it became AdvancePierre Foods. In 2017, AdvancePierre Foods was acquired by Tyson Foods.
11. Fitzgerald was promoted to Regional Sales Manager in 1995, and to Brand Manager in 1996. In 2000, due to restructuring Fitzgerald returned to her position as Regional Sales Manager. Fitzgerald held the title of Regional Sales Manager when the company was acquired by Tyson Foods in 2017. Fitzgerald performed her job successfully, regularly receiving meets or exceeds performance review ratings throughout her employment until the review she received in October 2019.

12. Fitzgerald worked remotely for Tyson from her home office in Dallas, Texas. On approximately October 1, 2018, Tyson did some restructuring and Fitzgerald began reporting to Jed Wells (“Wells”), Director of Sales, approximate age 47. Wells reports to Bill Shearin (“Shearin”), Senior Director of Sales, Food Service.
13. Fitzgerald worked in the SW division, consisting of Texas, New Mexico, Oklahoma, Arizona, and Las Vegas. As Regional Sales Manager, Fitzgerald was responsible for calling on distributors and operators in the North Texas region, which includes West Texas. There were six total Regional Sales Managers in the SW division. Additionally, there were three salespersons that handled operator accounts.
14. In March 2019, Fitzgerald received a mid-year review from Wells that indicated she was meeting expectations. At times after Wells became her manager, Fitzgerald asked him to travel with her to visit clients relating to marketing programs or conversions, but he rarely went on client visits with her. During the time she reported to Wells, he went to only two or three meetings with her at BEK DFW only. He never went to any other distributor to make a call. He had lunch with Fitzgerald two times and went to a few other broker meetings at Waypoint in Dallas only. He never went to Lubbock or Amarillo despite Fitzgerald asking him for help in Amarillo. Throughout the time Fitzgerald worked with Wells, she received little support from him in performing her job duties.
15. On October 17, 2019, Fitzgerald received her year-end performance review from Wells. For the first time in approximately 25 years of employment, Fitzgerald received an “inconsistent” performance rating on her annual performance review. In the review, Wells stated that Fitzgerald was distracted and spending too much time with her family. Fitzgerald was dumbfounded because she had no idea why he would make such statements. Wells had not previously told Fitzgerald that he thought her job performance was

inadequate. Wells requested that she sign the review and return it by the next day. The next day Fitzgerald texted Wells and said she did not agree with the performance review, but she indicated that she would sign it and return it due to his request that she do so.

16. Before the 2019 performance review, Wells had never discussed with Fitzgerald any perception that she was distracted due to family issues. Fitzgerald had taken two separate Fridays off to visit colleges with her daughter, but she used accrued paid time off.
17. In 2019, Tyson did a SAP transition that joined Tyson, Sara Lee and AdvancePierre into one system. This transition caused massive chaos for six months to a year because employees often could not see inventory levels or get trucks to get orders to customers. Additionally, sometimes it appeared there was product in the freezer but there would not be any there. Fitzgerald believes that none of the salespersons in her division made their quotas in 2019 and 2020 because there were major shortages to customers.
18. On October 31, 2019, Wells held a mandatory conference call for the Southwest Division. On that call, without any warning ahead of time, Wells took away eighty percent of Fitzgerald's accounts and gave the largest of her accounts, BEK DFW, to Luis Fuerte, approximate age 40.
19. Fitzgerald had spent over twenty years building the North Texas territory. After her termination, Fitzgerald learned that BEK DFW had repeatedly asked for her to be put back on the account after Wells had assigned it to Fuerte, but it was not returned to her.
20. From October 2019 to February 2020, Fitzgerald repeatedly asked Wells for more operators as there was no way Fitzgerald could meet her sales goals with the distributions and operators that she had left. Wells did not provide Fitzgerald any operators despite her requests.

21. In November 2019, Fitzgerald attended the national sales meeting. At that meeting they acknowledged employees who had reached milestone years at the company. Fitzgerald did not receive any acknowledgement despite having met the 25 year milestone of service.
22. At the time Fitzgerald received her performance review, Wells had not told her how negatively it would affect her year-end bonus. In January or February 2020, due to the negative performance rating on her 2019 year-end review, Fitzgerald received a substantially lower bonus than her counterparts.
23. On February 28, 2020, Wells placed Fitzgerald on a performance improvement plan (“PIP”). In the PIP, Fitzgerald was criticized for ineffective CRM usage. However, many salespersons at the company struggled with working with the CRM system. Indeed, at the national sales meeting, Fitzgerald became aware that some salespersons in other regions did not even know how to get into the CRM system.
24. Fitzgerald was aware at the time she was put on a PIP that substantially younger and/or male counterparts who had difficulty making quota and who were not effectively using the CRM tool, were not counseled or disciplined. On March 14, 2020, all salespersons at Tyson Foods were grounded from travel, and as a result Fitzgerald’s PIP was suspended because of the inability to call on clients.
25. At the end of June 2020, Luis Fuerte, who had been given Fitzgerald’s largest account when Wells took most of her accounts away, resigned from Tyson Foods. After he resigned, Wells divided the accounts that Fuerte had, giving the BEK account to Corr and all the operators to Keaton Hicks, approximate age late 20s, a salesperson who sold to operators in the Dallas area. Fitzgerald questioned Wells about why she was not getting any of the accounts and he said it was because all of the accounts could be called on from home due

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.