

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

ROSE MARIE BRADSHER,
Complainant,

vs.

Docket No. ER-26-77

GUYAN VALLEY HOSPITAL,
Respondent.

Findings of Fact and Conclusions of Law

I Proceedings

Pursuant to notice properly served, this case came on for hearing before Mr. George C. Rutherford, Commissioner for the West Virginia Human Rights Commission and Charlotte R. Lane, hearing examiner on December 16, 1977 at the County Courthouse in Logan County, West Virginia.

The Complainant, Rose Marie Bradsher, was present at the hearing in person and represented by counsel, Mr. Carter Zerbe and Ms. Susan A. Settle, Assistant Attorneys General for the State of West Virginia. The Respondent was represented by Mr. Edward D. Eiland and Mr. John W. Bennett Attorneys at Law.

It is upon the testimony of the witnesses, the exhibits and the transcript of the above mentioned hearing that these findings of facts and conclusions of law are based.

II Findings of Fact

In August 1974, the Complainant, Rose Marie Bradsher, a black female with two years of college and two months experience as a nurses aid, applied for employment with Respondent, Guyan Valley Hospital. From the time of her initial application until July 12, 1976, the

Complainant made frequent visits to Respondent's place of business to inquire about job openings, and on each of these visits she was told that there were no openings.

On July 12, 1976, during one of her frequent visits to Respondent hospital, the Complainant was asked to submit a new application for a position that was then open. The Complainant, after having submitted the new application, was told to come back in a few days to learn if she had gotten the job. When the Complainant returned to the hospital, she was told that because of an unfavorable reference from her former employer, the Logan County Day Care Center, she would not be employed at the Respondent hospital. The position for which the Complainant applied had been given to a white female.

Within ninety (90) days from the Respondent's refusal to hire her, the Complainant filed a verified complaint with the West Virginia Human Rights Commission alleging that the Respondent was guilty of discrimination in employment on the basis of race.

It is the Respondent's policy to check the references of prospective employees. The references need not be former employers or persons having knowledge of the applicant's work record. For this reason there were family members employed at the hospital who had given references for other family members also employed at the hospital with no prior work history. In addition job assignments were not made on the basis of the references. One applying for an orderly's job may have references indicating that he is a good salesman. Finally, in some cases, reference checks were made, but upon receiving no response, the Respondent gave the applicant the job. The cases of Rose Marie Wade and Marsha Bryant, both white females, are illustrative. Rose Marie Wade was given the position for which the Complainant applied on July

12, 1978. Miss Wade supplied the hospital with two references, neither of whom returned any relevant information concerning her qualifications for the job. Previously, Marsha Bryant had been hired despite the fact that none of the references she listed on her application gave her a favorable reference. In short, the reference requirement depended upon whether the applicant had friends or family members already employed by the Respondent hospital.

At the time of this hearing, the Respondent employed approximately sixty nine (69) persons. Six (6) of these employees were black and of the six blacks, all but one (1) were classified as unskilled and hold lower level jobs.

The Complainant finally obtained employment as an instructor at the Henlawson Head Start program. But while she was looking for a job during the period from August 1974 to September 1976, the Complainant suffered from feelings of self doubt and depression. Her mental state was such that it required medical attention.

Between the time that Complainant submitted her first job application in August of 1974 and July 12, 1976, the Respondent sought and employed fourteen (14) nurse's aid applicants. Six (6) of the hires had no college credits; four (4) had no high school diploma and only one (1) had prior hospital experience. While two (2) of the fourteen (14) were blacks, the two (2) blacks were actually rehires. They had worked for the hospital before.

III Issues

(1) Whether an employer that maintains a policy of not hiring otherwise qualified applicants because of unfavorable references is guilty of discrimination in employment when it refuses to hire an otherwise qualified black applicant because of an unfavorable reference

even though it employs white persons who have gotten references from friends and family members and others who have gotten unfavorable references not related to the job or none at all.

(2) Whether an employer's policy of refusing to hire otherwise qualified applicants on the basis of unfavorable references has a desperate impact on blacks where the employer employs sixty nine (69) persons six of whom are black and five of whom are classified as unskilled and hold low level jobs.

IV Conclusions of Law

The procedural matters to be addressed in this case are not the subject of serious contention. We therefore find that the Complaint was filed properly and within the time frame as provided by law; that the Complainant is a black female citizen of the State of West Virginia and the Respondent is an employer doing business in the State of West Virginia all within the meaning of Chapter 5, Article 11, Section 3 of the official Code of the State of West Virginia and that the West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of this action.

Turning to the substantive issues as set out above, we find that the law controlling the first issue is now well known and well settled. The United States Supreme Court in pronouncing the law of the land in McDonald Douglas Vs. Green, 411 U.S. 792; 93 Sct. 1817; 36 L. Ed. 2nd 668 (1973) said the following:

"The Complainant in a Title VII trial must carry the initial burden under the statute the following statement:

"The test is whether there exist an overriding business purpose such that the practice is necessary to the safe and efficient operation of the business. Thus the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve..."

Even the most casual examination of the facts of this case reveal that the Complainant has established her prima facie case and the Respondent has failed to rebut it.

A high school graduate with two years of college and nurse's aid experience, the Complainant was obviously qualified for the job for which she applied. Equally obvious is the fact that the Respondent hired fourteen less qualified applicants after Complainant's 1974 application and at least one after her application was submitted.

Rather than coming forth with compelling business reason for its reference policy, the Respondent offers no reason at all as to why the reference policy exists. Indeed, in view of the facts that reference requirements are often overlooked and almost never job related, there appears to be no necessity for the reference check policy. Its only utility appears to be to insure that the friends and family members of hospital employees will be able to obtain employment at the hospital.

One question of disparate impact, statistics speak loudly of the sixty nine people employed by the Respondent only six of them were black and of the six blacks employed all but one held low level unskilled jobs. Given the environment in which the Respondent does business, we would conclude that, in the absence of racial discrimination, the Respondent would employ more than six blacks out of work force of sixty nine and that there would be more than one black employed above the unskilled level. While the Respondent may or may not have other policies that produce this kind of disparate impact, those policies are beyond the scope of our inquiry here. Here we simply find, on the basis of the evidence, that the enforcement of the Respondent's reference check policy in the manner in which it has been historically enforced constitutes racial discrimination in employment.

ORDER

Therefore, pursuant to the above findings of Fact and Conclusions of Law, it is hereby ordered as follows:

(1) That Respondent, Guyan Valley Hospital, and all persons employed by it or acting in concert with it are hereby permanently ordered to Cease and Desist from engaging in any conduct which denies full and equal employment opportunity to any individual on the basis of race with respect to hiring and other terms of employment.

(2) That the Respondent develop and disseminate a clear and direct policy to supervisory personnel and others within Respondent's workforce forbidding discrimination against individuals with respect to hiring and other terms and conditions of employment as provided by Chapter 5, Article 11 of the West Virginia Code.

(3) That the Respondent pay the Complainant, as back pay, the amount of Nine Thousand Five Hundred and Ten Dollars (\$9510.00) plus interest at the rate of eight per cent (8%) per annum for the period extending from August 1974 to September 20, 1976.

(4) That Respondent pay the Complainant the sum of Five Hundred Dollars for the mental stress and anguish she suffered as a result of the Respondent's actions.

Aug 9 1984
DATE

ENTER

Russell Van Cleve

Russell Van Cleve
Chairperson