



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
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CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE 304-348-2616

September 11, 1986

Carl L. Dayhoff
2351 E. Mall Dr., #506
Ft. Myers, FL 33901

Wood Co. Board of Education
1210 13th St.
Parkersburg, WV 26101

George W. Hill, Jr., Esq.
P.O. Box 1198
Parkersburg, WV 26101

Sharon Mullens
Assistant Attorney General
1204 Kanawha Blvd.
Charleston, WV 25301

RE: Dayhoff v. Wood County Board of Education
EREL-19-76

Dear Parties:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the county wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within thirty (30) days, the Order is deemed final.

Sincerely yours,

Handwritten signature of Howard D. Kenney in black ink.

Howard D. Kenney
Executive Director

HDK/mst
Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

CARL L. DAYHOFF,

Complainant,

vs.

Docket No. EREL-19-76

WOOD COUNTY BOARD
OF EDUCATION,

Respondent.

O R D E R

On the 9th day of April, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Cathrynn A. Nogay. After consideration of the aforementioned, the Commission does hereby not adopt the ultimate conclusion of the Hearing Examiner that complainant did not meet his burden of proof. The Commission, however, does adopt the Findings of Fact and Conclusions of Law as its own, with the exceptions and amendments set forth below.

The Commission hereby amends the Findings of Fact and Conclusions of Law by deleting therefrom paragraph 9 of the Conclusions of Law, page 4, and the recommendation following that paragraph, and substituting therefor, the following Conclusions of Law.

"9. The complainant met his burden of proving a prima facie case by showing he was discharged after requesting to be off for certain religious holidays."

"10. The respondent articulated a legitimate non-

discriminatory reason for the complainant's discharge by stating that the attempt to develop a string orchestra was not successful and the complainant's position was therefore not continued."

"11. The reasons articulated by respondent were a pre-text in that after complainant's discharge the same position was re-advertised by the respondent and because complainant was specifically told by his superior Simon (as admitted by Simon) that taking more than three days off would jeopardize his tenure. Since the reason for requesting more than three days off was due to his sincere religious belief, it is clear that he was discharged, at least in significant measure, because of his religious beliefs."

"12. Although the complainant is entitled to recover compensatory damages for loss of earnings from the respondent, such damages must be proven with specificity. The evidence is not sufficiently specific to allow for an award for loss of earnings in this case."

"13. The complainant is entitled to recover from the respondent incidental damages for humiliation and stress suffered as a result of respondent's discrimination in the amount of Five Thousand Dollars (\$5,000.00)."

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order, as amended by this Order.

It is further ORDERED that respondent cease and desist from

further acts of discrimination in the conditions of employment on the basis of religion against the complainant and any other employees or applicants for employment.

The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within thirty-five (35) days of service of said Order by copies of cancelled checks, affidavit or other means calculated to provide such proof.

By this Order, a copy of which shall be sent by Certified Mail to the parties, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE A RIGHT TO JUDICIAL REVIEW.

Entered this 21 day of April, 1986.

Respectfully Submitted,


Betty Hamilton
CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

Carl L. Dayhoff,

Complainant,

v.

Wood County Board of Education,

Respondent.

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PROPOSED FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

I.

Pursuant to notice issued to the parties this matter came on for public hearing on August 28, 1985, at 9:45 a.m. and was concluded on September 4, 1985, at 10:00 a.m. in the County Commission Courtroom, Wood County Courthouse, Parkersburg, West Virginia. Cathryn A. Nogay, Hearing Examiner, presiding.

The Complainant, Carl L. Dayhoff, appeared in person and by his counsel, Sharon M. Mullens, on August 28, 1985, and by his counsel only, on September 4, 1985. The Respondent, Wood County Board of Education, appeared in person by its assistant superintendant, Jack Simon, and by its counsel, George Hill.

At the close of the Complainant's case, the Respondent argued that the Complainant had not proven a prima facie case and moved for an order dismissing the complaint. Decision on that motion was reserved.

FINDINGS OF FACT

1. The Complainant is a music teacher, specializing in stringed instruments.
2. The Complainant is a sincere, practicing member of the World Wide Church of God. The tenets of his religion require that he observe the Sabbath from sundown on Friday to sundown on Saturday, and that he observe several mandatory holy days.
3. The Complainant was employed by the Respondent, Wood County Board of Education, from the fall of 1972 through the close of the school year 1975, under a series of three probationary contracts. The Complainant was employed to develop a string orchestra program within the South-side Parkersburg schools.
4. During his employment by the Respondent, the Complainant missed 6-9 school days each school year for observance of his religion's holy days.
5. During the 1974-75 school year, it was decided that the string orchestra program that the Complainant was attempting to develop was unsuccessful, and would not be continued. The Complainant, therefore, was not rehired.
6. The Complainant did not apply for any other positions with the Respondent after he was notified that he would not be rehired for the string instrument position.
7. On July 16, 1975, the Complainant filed a complaint with the West Virginia Human Rights Commission against the Respondent, alleging that he had not been rehired by the Respondent because of his insistence on observing his religious holy days.

CONCLUSIONS OF LAW

1. The Complainant is a covered person within the meaning of the West Virginia Human Rights Act (W.V. Code §5-11-1 et seq.).
2. The Respondent is an employer within the meaning of the West Virginia Human Rights Act.
3. On July 16, 1975, the Complainant filed a verified complaint against the Respondent alleging unlawful religious discrimination as prohibited by the West Virginia Human Rights Act.
4. The complaint, filed July 16, 1975, was timely filed within 90 days of the alleged act of discrimination.
5. In an action to redress unlawful discriminatory practices in employment, the burden is upon the Complainant to prove by a preponderance of the evidence a prima facie case of discrimination. Shepherdstown V.F.D. v. W.V. Human Rights Commission, 309 S.E. 2d 342, (W.V. 1983).
6. In order to establish a prima facie case of religious discrimination in employment, an employee must prove by a preponderance of the evidence that he was discharged on account of his religious beliefs. Young v. Southwestern Savings and Loan Association, 509 F. 2d 140, (5th Cir. 1975). Redmond v. G.A.F. Corporation, 574 F. 2d 897, (7th Cir. 1978).
7. The Complainant proved by a preponderance of the evidence that he was a sincere, practicing member of the World Wide Church.
8. The Complainant proved by a preponderance of the evidence that he was not rehired by the Respondent at the close of the 1975-76 school year.

9. However, the Complainant did not prove that he was not rehired by the Respondent because of his religious beliefs or practices and he, therefore, did not meet his burden of proving a *prima facie* case.

THEREFORE, it is hereby recommended that the Respondent's Motion to Dismiss be granted and the complaint filed herein be dismissed with prejudice.

Date: October 30, 1985

Cathryn A. Nogay
Hearing Examiner

CERTIFICATE OF SERVICE

Service of the foregoing Proposed Findings of Fact and Conclusions of Law was had upon the parties by mailing a true copy thereof, postage prepaid, by United States Mail to their counsel of record, on this 30th day of October, 1985, addressed as follows:

Sharon M. Mullens, Esq.
Assistant Attorney General
West Virginia Attorney General's Office
Charleston, WV 25305

George Hill, Esq.
P.O. Box 1198
Parkersburg, WV 26102

Cathryn A. Nogay
Hearing Examiner