



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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ARCH A. MOORE, JR.
Governor

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November 19, 1985

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U. S. Steel Mining
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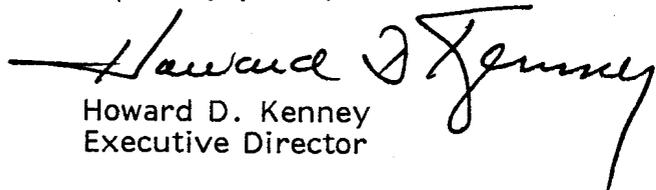
RE: Ford v. U.S. Steel Mining Co., Inc.
Docket No.: ER-492-83

Dear Ms. Symons and Mr. Auvil:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Florence B. Ford v. U.S. Steel Mining Co., Inc./Docket No.: ER-492-83.

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 (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

FLORENCE B. FORD,
COMPLAINANT

V. CASE NO.: ER-492-83

U.S. STEEL MINING CO., INC.
RESPONDENT

ORDER

Pursuant to proper notice, this matter came on for hearing on the 11th day of April, 1985, beginning at 9:30 a.m. in Conference Room C, Building 7, State Capitol Complex, Charleston, West Virginia. Robert R. Harpold, Jr., Hearing Examiner presided, the parties having specifically waived the presence of a hearing commissioner.

The complainant, Florence B. Ford, appeared in person and by her counsel Walt Auvil, and the respondent, U. S. Steel Mining Co., appeared in person by its representative, Clyde Lundgren, and by its counsel, Louise Q. Symons.

Notice as required by law, setting forth the time and place of the hearing and the matters to be heard, were regularly served upon the respective parties hereto and that the same appeared by their respective representatives and counsel.

Under the provisions of West Virginia Code Section 5-11-9(a), it is an unlawful discriminatory practice "for any employer to discriminate against an individual with respect to compensation, hire, tenure, terms,

conditions or privileges of employment if the individual is able and competent to perform the services required." U.S. 792, (1973) set forth the necessary steps of proof for establishing whether or not in disparate treatment cases, a discriminatory motivation exists.

The West Virginia Human Rights Commission hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The complainant is a black female, 34 years of age and had previous experience as a key punch operator, having worked previously with Columbia Gas, Preiser Scientific, Carbon Fuel, and National Bank of Commerce prior to working for U.S. Steel Mining Co.

2. The respondent, U.S. Steel Mining Co. is a corporation licensed to do business in the State of West Virginia and is primarily engaged in the business of mining metallurgical metal.

3. Prior to June, 1982, the complainant had a long work history in the data entry field. Her previous employers were Preiser Scientific, Carbon Fuel, National Bank of Commerce. Her positions ranged from a clerical position to manager of the data entry of Preiser Scientific. She held the position of night supervisor of the Data Entry Department at Carbon Fuel.

4. In June, 1981, respondent, U. S. Steel Mining Co., acquired certain mining operations of Carbon Fuel Co. and consequently became a successor employer of certain of the individuals previously employed by Carbon Fuel in its operations. Acquisition by U. S. Steel Mining Co. of mining operations of carbon fuel included associated accounting operations. The terms of the agreement between Carbon Fuel and U.S. Steel Mining Co. required that a certain number of Carbon Fuel employees

be hired by U.S. Steel Mining.

5. Pursuant to terms of the agreement between U.S. Steel Mining Co. and Carbon Fuel, the date of initial employment with Carbon Fuel would be adopted as the date of employment with U. S. Steel Mining Co. for all employees of Carbon Fuel Co. hired by U. S. Steel Mining Co. insofar as their benefits were concerned (i.e. pensions, vacations, etc.).

6. Twenty-five (25) employees (including complainant) were made available for an interview to the respondent as possible employees. Of these, fourteen employees of Carbon Fuel Co. were hired by U. S. Steel Mining Co. as part of respondent's creation of a new accounting department which was established in Chesapeake, West Virginia, and which served as the accounting division for the Dakota District of U. S. Steel Mining Co. The entire work force of the Chesapeake Accounting Department came from Carbon Fuel.

7. Complainant was one of two blacks offered jobs by respondent and was one of the individuals hired by respondent to work in the Accounting Department at Chesapeake, West Virginia. She began working at the respondent's place of employment in June, 1982. Her job title was teleprinter operator whose primary function was the entry of data on a key punch machine. The important factors in this job were accuracy and timeliness.

8. Clyde E. Lundgren was the manager of the accounting department at the Chesapeake office of respondent at all times relevant to this case. John Zorn was a senior cost analyst for the Dakota District of U. S. Steel Mining Co. who worked at the Chesapeake Accounting Division at all times relevant to this case. Julian Jordan was a Supervisor of Cost

and General Accounting for U. S. Steel Mining Co. and worked at the Dakota Division's Chesapeake Accounting Offices from August, 1981, until the date of the final hearing in this matter.

9. Complainant was the only black employed in the Accounting Department of the Dakota Division of the Respondent.

10. Complainant and a co-worker, Anita Sue Thompson, a white female, shared both an office and a teleprinter machine on which data was input by both employees. Various types of financial data were required to be input. Generally, the work of inputting data was shared by Anita Sue Thompson and complainant in that both would input particular batches of material, taking turns using the machine which they shared.

11. During times when both individuals, complainant and Anita Sue Thompson, were present and working, it would be very difficult for any review of the data input to accurately determine which operator made more errors. The work of the two operators was mixed into one work product for work performed during normal working hours.

12. During overtime or weekend work, some determination of the speed and/or quality of the work of Anita Sue Thompson and complainant was possible. The employee with the most direct knowledge of the relative error rates of complainant and Thompson was Mary Beth Spaulding. Mrs. Spaulding's judgment was that the complainant made fewer errors than Thompson and that complainant worked as quickly or more quickly than Anita Sue Thompson. Mrs. Thompson herself stated that she would have been surprised if a supervisor had told her she worked more efficiently than complainant. Julian Jordan and John Zorn both supervised the complainant and Anita Sue Thompson equally.

13. The respondent provided very little training or supervision of the complainant or her co-worker on the data entry machines.

14. Complainant had approximately one year more seniority than Anita Sue Thompson when Carbon Fuel employment was considered together with employment by the respondent.

15. At no time from June, 1981, until December, 1982, was any job performance evaluation of complainant made known to complainant, nor were any written or oral evaluations of complainant's performance shared with her during this period of time. At no time were suggestions for improvement of the complainant's work habits made to her by respondent or any agent of respondent.

16. The times in which the complainant was made aware of any error she had made, she immediately and without argument corrected the error. Complainant volunteered to help individuals in the accounting department with jobs and tasks other than those for which she was directly responsible. Complainant also voluntarily worked overtime, including evening and weekend hours to accomplish the necessary tasks for respondent in the accounting department.

17. Prior to October, 1982, no written job performance evaluation of the complainant had been made by the respondent.

18. In October, 1982, Clyde Lundgren, Julian Jordan, John Zorn and Jean Blanchard had a meeting at which Lundgren announced that there would have to be two layoffs because of economic conditions and that the three direct supervisors would be responsible for evaluating employees for layoff by use of the "non-exempt appraisal record" forms which were furnished by Clyde Lundgren.

19. At the meeting, Clyde Lundgren assigned each supervisor a group of employees to evaluate. Fourteen (14) employees in all were evaluated, with the complainant being assigned to be evaluated twice, once by John Zorn and once by Julian Jordan. No other employee among the fourteen evaluated had two evaluations for the purpose of determining layoffs.

20. The complainant was never shown the evaluations which she received by John Zorn and Julian Jordan. She was never counseled as to ways of improving any conceived deficiencies in her job performance, nor was she given any opportunity to improve her job performance. Complainant was summarily laid off.

21. On December 17, 1982, the date immediately after the date appearing on the "non-exempt job appraisal" evaluation forms, complainant and Mary Beth Spaulding were called into the offices of Clyde Lundgren and told that they were being laid off due to economic necessity. No mention of job performance or error rates was made in response to complainant's direct question as to why she was chosen for lay-off. The only reason given for the layoff was economic necessity at the December 17, 1982, meeting.

22. On Monday, December 20, 1982, the complainant returned to the Accounting Department of respondent at Chesapeake, West Virginia, to inquire as to the reasons she had been chosen to be one of the individuals to be laid off. She was told by Mr. Clyde E. Lundgren that her quality and quantity of work was not comparable to the others.

23. At the time of her dismissal the complainant had been receiving approximately Eight Hundred Seventy-Five Dollars (\$875) per month gross income from her position with respondent.

In June, 1982, complainant took a job with Kelly temporary agency. This part-time job paid Four Dollars Seventy-Five Cents (\$4.75) per hour and did not include health, vacation, sick leave, savings plan or any other employee benefits which had been offered by respondent.

24. Complainant, as a result of her layoff, became upset and irritable with her family members.

CONCLUSIONS OF LAW

The West Virginia Human Rights Commission hereby makes the following conclusions of law:

1. The complainant, being a black female, is a member of a protected class.

2. The respondent is a covered employer as defined by the West Virginia Human Rights Act [5-11-3(d)].

3. The parties are within the jurisdiction of the West Virginia Human Rights Commission.

4. The Complainant was, in fact, discriminated against because of her race within the meaning of the provisions of the West Virginia Human Rights Act when she was laid off.

RELIEF

1. The respondent U. S. Steel Mining Co., Inc. is hereby ORDERED to cease and desist from engaging in any actions which deny full and equal rights to any individual or otherwise to discriminate against such

individuals on the basis of race, sex, religion, color, national origin or blindness.

2. It is ORDERED that respondent shall pay the complainant compensation for loss of back wages suffered by complainant as a result of respondent's unlawful discriminatory practices in the amount of Six Thousand Three Hundred (\$6,383.35) together with interest from her termination date.

3. It is further ordered that Seven Thousand Five Hundred Dollars (\$7,500.00) be awarded to the complainant for damages as compensation for humiliation, pain, suffering and embarrassment that she received as a result of the discriminatory conduct of the respondent.

Entered this 13th day of November, 1985.



CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION