



COPY

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

May 23, 1986

ARCH A. MOORE, JR.
Governor

Sharon Mullens, Esq.
Assistant Attorney General
1204 Kanawha Boulevard, E.
Charleston, WV 25301

Lynn Pollard, Esquire
P. O. Drawer AA
Oak Hill, WV 25901

RE: Graves V W. Va. Belt Sales/ES-373-81

Dear Ms. Mullens & Ms. Pollard:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Graves V W. Va. Belt Sales ES-373-81.

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,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SHERRY GRAVES,

Complainant,

vs.

Docket No. ES-373-81

WEST VIRGINIA BELT
SALES AND REPAIR,

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 Michael C. Farber. After consideration of the aforementioned, the Commission does hereby 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 Conclusions of Law in paragraph 3, page 7, by deleting the phrase "compensatory and punitive damages: and substituting therefor the phrase "compensatory damages for out of pocket losses and incidental damages for humiliation and stress."

The Commission further amends the Conclusions of Law in paragraph 7, page 7, by deleting the phrase "punitive damages in the amount of \$2,000.00" and substituting therefor the phrase "incidental damages in the amount of Ten Thousand Dollars (\$10,000.00)."

The Commission further amends the Conclusions of Law by

deleting therefrom, in its entirety, paragraph 8, on page 8.

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, except as amended by this Order.

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 THE RIGHT TO JUDICIAL REVIEW.

Entered this 15 day of May, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

LAW OFFICES
MORTON & MORTON, L.C.
WEBSTER SPRINGS
WEST VIRGINIA

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

SHERRY GRAVES,

Complainant

vs.

WEST VIRGINIA BELT SALES
AND REPAIR,

Respondent

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) *Approved*
) *11/2/86*
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Case No. ES 373-81

FINDINGS OF FACT

1. By the very nature of complaints alleging sexual harassment, the burden of proof placed upon a complainant is typically insurmountable. Consequently, the credibility of witnesses becomes a key factor in determining whether in fact the alleged harassment amounts to an unlawful practice under the West Virginia Human Rights Act. In this particular case, however, there is ample circumstantial evidence to confirm that the allegations of the complainant warrant an award of damages for discrimination on the basis of sex.

2. The complainant was employed by the respondent, West Virginia Belt Sales and Repair, in May of 1979 as an executive secretary and remained in that employment until her dismissal in January of 1981. Complainant was a single parent during the course of her employment with the respondent.

3. The complainant performed general secretarial duties for the respondent including filing, typing correspondence and some light bookkeeping. Complainant was initially paid \$750.00 a month in compensation for her services but at the time of her dismissal she was earning approximately \$940.00 a month.

4. The respondent, West Virginia Belt Sales and Repair, was a wholly owned subsidiary of Ethyl Corporation, a Virginia Corporation, until December 28, 1980, at which time the respondent company was purchased by John Weir, its current President.

5. During the course of her employment with the respondent, complainant experienced a number of episodes of sexual harassment brought on by the advances of John Weir, an employee of the respondent at the time of the harassment and the president of the respondent company at the time of the retaliatory discharge. During the hearing in this matter, the complainant described Mr. Weir's conduct as follows:

It was a daily routine. He kissed me, he touched me, he held me, his hand was up my dress, down my blouse, trying to get my clothes off. He would call me into his office for dictation and lock the door and back me up against the door or get me on the couch, up against his desk. He once got me cornered in the ladies room and locked the door and tried to take my clothes off. And this was just a daily thing. He would get me in my chair, pressed up against the front of my desk and the chair leaned back and he would pry my mouth open with his fingers and stick his tongue in my mouth. And he would

constantly ask me when I am...going to get to...when am I going to get to f... you. (Transcript of Hearing, pp. 74-75).

6. The complainant called Nancy Martin as a witness during the hearing. Ms. Martin had been employed by the respondent during approximately the same period that the complainant was employed there. Ms. Martin and the complainant have maintained a friendly relationship over the years since leaving the employment of the respondent. During the course of her testimony, Ms. Martin described the following eye-witness accounts of contact between the complainant and the respondent:

Q. What did you observe as to his conduct toward Mrs. Graves while she was employed there?

A. Mr. Weir was quite abusive to Ms. Graves. On more than one occasion he had come out to my office and was standing and talking to me and he referred to Ms. Graves as his office slut. He always used this term when he was talking about her. It seemed to be his particular favorite term in reference to Ms. Graves.

On one occasion I had gone back to take some papers to Mr. Weir for his signature and as I came into Ms. Graves' office he had turned her chair backwards and he had his fingers stuck in her mouth. As soon as I came in he immediately jumped back and walked back into his office....

Q. In relation to what you previously testified to, Mrs. Martin, as far as Mr. Weir's conduct, did you observe that conduct from Mr. Weir directed toward any other female in the office?

A. Yes. He was rather abusive to all of his female employees.

Q. When you say "abusive," what do

you mean?

A. Verbally and physically. He was particularly fond of hugging his female employees and kissing them, patting them, touching them in very private places.

Q. In particular as it relates to his relationship working...with Mrs. Graves, were you able to overhear him referring to her in any other manner?

...THE WITNESS: Other than the fact that he indeed did refer to her as his office slut. I did hear him say that....

Q. Did you have occasion to observe her reaction to his conduct?

A. Yes. Sherry was very intimidated by Mr. Weir. She stayed in a constant state of depression because of the circumstances there. She was particularly nervous and somewhat docile. I don't think she quite knew how to handle the situation.

...HEARING EXAMINER FARBER: Not to give it anymore value than it might otherwise have, I need a little more description of this situation when you walked into the office that day. What I gather is some physical contact between the two here.

Would you describe that in a little bit more detail?

...HEARING EXAMINER FARBER: The contact with her on the mouth.

THE WITNESS: Okay. Sherry's secretary chair was on a swivel as most of them are and it could be bent backwards. Mr. Weir had pushed the chair down like this in front of him and he had his fingers stuck in Sherry's mouth....

THE WITNESS: It was a profile, because her desk sat this way and the typewriter faced the wall. When you walked through, her chair would have been a side view to whoever walked into the office. And that was -- she was leaning back, Mr. Weir had

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pushed the chair back and he had his fingers stuck in her mouth. As soon as I walked in, he immediately pulled away from her and went back to his office....

7. Mr Weir, who purchased the respondent Company in December of 1980, also testified at the hearing as to the circumstances that brought about the dismissal of the complainant in January, 1981:

I went back to the office after New Years, January 2, and one of the two times that I talked to Ms. Graves I called her in and talked with her. And I said Sherry, the time has come to make some adjustments here because I now own the company. And I don't want this new ownership to upset anybody. I don't want to mistreat anybody. I don't want to do anything to anybody but we have got to make some adjustments....

So we transferred her to the front office. And as my wife alluded, she moved into -- she cleaned her desk out and moved up and my wife came in. I was more aware of the tension than my wife was because I knew more about, I guess, how Sherry felt although I told my wife how she had fussed for five months....

I don't remember the date. At that point in time, Mr. Frye -- it may have been two days, three days, four days, Mr. Frye came back to my office. And he said Mr. Weir, he said we are going to have to do something about Sherry. Well, Mr. Frye, he didn't realize what he was really saying to me. He said she is unhappy up there....

He came back the next day and he said, "Mr. Weir, we have to do something about Sherry." I said, "Danny, damn it, I'm too busy. What is it this time?" He said, "She has also today told Mark Walker or at least Mark has come to me and said that she had called the Ethel Corporation and charged you with sexual harrassment."...

I don't believe that because Ethel would have been down here. They wouldn't tolerate that kind of a thing." I said, "Don't pay any attention to that." But I said, "Danny, terminate her because we cannot put up with this any longer." (Emphasis added) (Transcript of Hearing, pp. 196-202).

8. The complainant stated during her testimony that "I was a basket case, I started having nightmares and I despised him so and I knew you can't have feelings like that. That is not good. So I went to the mental health center for counseling." (Transcript of Hearing, p. 79). Moreover, the complainant relates that her experience under the employment of Mr. Weir was "totally dehumanizing. My mind will never ever trust men again." (Transcript of Hearing, p. 84).

9. The complainant testified that she received mental health counseling on several occasions during the fall of 1979. (Transcript of Hearing, p. 84).

10. The complainant testified that she was not paid two weeks vacation pay at the time of the termination of her employment. (Transcript of Hearing, p. 84).

11. The complainant testified that following her termination of employment on January 15, 1981, she remained unemployed for approximately ninety days.

CONCLUSIONS OF LAW

1. The complainant is entitled to the protection of the West Virginia Human Rights Act, W.Va. Code 5-11-1, et seq.

2. The respondent is an employer within the meaning of W. Va. Code 5-11-3.

3. There is substantial evidence of record to warrant an award of compensatory and punitive damages.

4. The conduct of the respondent in this matter amounts to an unlawful discriminatory practice under W.Va. Code 5-11-9 in that the respondent, acting through its president, participated in a retaliatory manner in terminating the employment of the complainant.

5. That the respondent, acting through John Weir, an employee, sexually harassed the complainant on repeated occasions without the consent or approval of the victim.

6. That the complainant is entitled to an award of compensatory damages for loss of vacation pay in the amount of \$470.00, that covering a period of two weeks based upon a salary of \$940.00 a month.

7. That the complainant is entitled to an award of punitive damages in the amount of \$2,000.00 against the respondent based upon the vulgar and insulting conduct of Mr. John Weir, an employee of the respondent at the time of the harassment and the president and owner of the respondent

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company at the time of the retaliatory discharge of the complainant.

8. That the complainant is entitled to an award of punitive damages in the amount of \$5,000.00 against John Weir, in his capacity as president of the respondent company, for his act of retaliation in terminating the employment of the complainant and further for his wilful disregard of the complainant's constitutional right of privacy.

Enter this 20th day of January, 1986.



MICHAEL Q. FARBER
Hearing Examiner