



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

January 9, 1986

ARCH A. MOORE, JR.
Governor

Brenda H. Cole
Assistant Attorney General
Room W-435, State Capitol
Charleston, WV 25305

Ricklin Brown
Bowles, McDavid, Graff and Love
P.O. Box 1386
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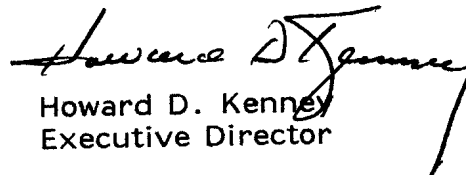
RE: Bradley v Volkswagen of America, Inc., ER-451-80

Dear Ms. Cole and Mr. Brown:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of John W. Bradley v Volkswagen of America, Inc., ER-451-80.

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.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JOHN W. BRADLEY

Complainant,

v.

Docket No. ER-451-80

VOLKSWAGEN OF AMERICA, INC.,
a corporation,

Respondent.

ORDER

On the 10th day of October, 1985, the Commission reviewed Hearing Examiner David G. Hanlon's Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own with the following exceptions:

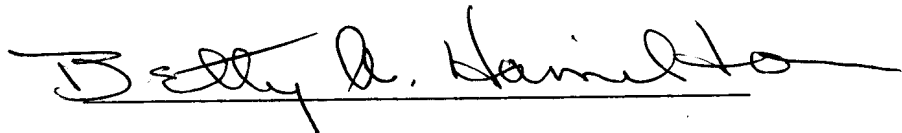
It is hereby ORDERED that paragraphs 8 and 9 be deleted.

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.

By this Order, a copy of which to be sent by certified mail, 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 8th day of Jan, 1986.

RESPECTFULLY SUBMITTED,



✓ CHAIR
WV HUMAN RIGHTS COMMISSION

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS
and THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JOHN W. BRADLEY,

Complainant,

v.

CASE NO. ER-451-80

VOLKSWAGEN OF AMERICA, INC.,
a corporation,

Respondent.

*Reviewed
9/10/85
A.R.S.*

SEP 10 1985
STATE OF WEST VIRGINIA

RECEIVED

SEP 13 1985

DECISION OF HEARING EXAMINER

W.V. HUMAN RIGHTS COMM.

[Handwritten signature]

Pursuant to notice duly-issued to the respondent, this matter came on for hearing on the 19th day of June, 1985, beginning at 9:00 a.m., in Building 7 of the State Capitol Complex, in Charleston, West Virginia. David G. Hanlon, Hearing Examiner, presiding, both parties having waived the presence of a member of the Human Rights Commission. By agreement of counsel and the Hearing Examiner, the case remained open until the 10th day of July, 1985, at which time the deposition was taken of Henry George Schultz, a witness who was unable to attend the June 19, 1985 hearing. The deposition of Henry George Schultz was transcribed and forwarded to the parties on the 24th day of July, 1985.

ISSUE

The issue presented in this cause was whether or not the discharge of the complainant by the respondent was racially motivated.

FINDINGS OF FACT

(1) The complainant, JOHN W. BRADLEY, applied for employment at the South Charleston Plant of VOLKSWAGEN OF AMERICA, INC., on January 29, 1980.

(2) The respondent hired the complainant for the position of medium press operator, a non-skilled classification, on the 19th day of February, 1980.

(3) The respondent treats the first sixty days of employment of its personnel as a probationary period. During this period, employees are not members of the Union.

(4) Employees discharged during this probationary period are not subject to the grievance procedure between the respondent and the labor union.

(5) The respondent discharged the complainant from the position of medium press operator on the 3rd day of April, 1980.

(6) The respondent is an automobile stamping plant, utilizing an assembly system format which entails the use of power presses to stamp sheets of metal into various automobile parts.

(7) The use of the stamping presses is hard, dangerous work. The largest presses have a 1,200 ton capacity and the medium presses have between 600-1,200 ton capacity.

(8) At the time of his application for employment at the respondent's plant, the complainant was receiving a ten percent (10%) disability pension from the Veterans Administration due to a nervous condition he suffered which required the use of the tranquilizer Atarax at regular intervals. Atarax is used for the symptomatic relief of anxiety and tension associated with psychoneurosis and as an adjunct in organic disease states. It is used as a sedative medication. Adverse reactions, side effects are usually mild and transitory in nature. It can cause drowsiness, impair motor activity, tremors.

(9) The complainant did not disclose this medical condition to the respondent on his application for employment. Had he done so, he would not have been hired in 1980 by the respondent due to safety factors involving employees taking tranquilizers.

(10) The immediate supervisor of the complainant, was Bob Dierickx, whose reputation was that he was a hard-driving, tactless, production-oriented supervisor, hard on all employees - black and white.

(11) The work record of the complainant is mixed - some supervisors stated complainant's record was okay, others deemed it unsatisfactory.

(12) The complainant was late reporting for overtime assignments on a number of occasions, late returning from lunch and late returning from breaks.

(13) The discharge of the complainant by the respondent was concurred by his immediate supervisor, Bob Dierickx, A. L. Fizer, General Supervisor of Production, and Henry Schultz, Labor Relations Manager.

(14) After the discharge of the complainant, the respondent continued to seek persons for employment at its South Charleston plant in non-skilled classifications.

CONCLUSIONS OF LAW

The complainant is an employee within the meaning of Chapter 5, Article 11, Section 3(e) of the West Virginia Code.

The respondent is and has been an employer within the meaning of Chapter 5, Article 11, Section 3(d) and Chapter 5, Article 11, Section 9(a) of the West Virginia Code.

The complaint herein was timely filed within ninety (90) days of the alleged act of discrimination.

The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matters contained in the Complaint.

The evidence establishes that (a) the complainant is a member of a protected group under the West Virginia Human Rights Act; (b) the complainant applied for a job with the respondent, was hired as a probationary employee, and was thereafter discharged; and (c) the respondent continued to hire people for such jobs who were not members of the protected class.

The evidence does not establish that the complainant was qualified for such a job. In fact, the respondent would not have hired the complainant had it known his medical condition at the time of his application. Thus, it can be technically said

that the complainant has failed to establish a prima facie case, as required under the standard of McDonald Douglass Corporation v. Green, 411 U.S. 792 (1973), and Shepherdstown V.F.D. v. West Virginia Human Rights Commission, 309 S.E.2d 342 (W.Va. 1983).

Nevertheless, once the complainant was hired by the respondent, his discharge cannot be racially motivated and must, in fact, be for a legitimate non-discriminatory reason. McDonald Douglass v. Green, supra, Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).


The reasons given by the respondent for its discharge of the complainant have legitimate basis and are supported by the evidence. There is no credible evidence that the complainant's discharge was based on anything except the determination by his supervisors of his unsuitability for assembly line work, after observation of his work habits.

It is accordingly recommended that the charge of discrimination be dismissed.

ACTION

Dismissal of this action is recommended.

GIVEN under my hand this 7th day of September, 1985.

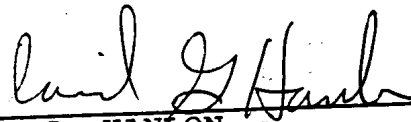


DAVID G. HANLON
HEARING EXAMINER

DAVID G. HANLON, Hearing Examiner, does hereby certify that on the 7th day of September, 1985, a true copy of the foregoing Decision of Hearing Examiner was served upon the complainant and the respondent in that certain action numbered ER-451-80, currently pending before the West Virginia Supreme Court of Appeals for the West Virginia Human Rights Commission, by mailing a true copy of the same by United States Mail, postage prepaid, addressed to the counsel of record for such complainant and respondent:

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HEARING EXAMINER