



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

October 2, 1989

GASTON CAPERTON
GOVERNOR

Sharon Crawford
19 E. McCreight Ave.
Springfield, OH 45504

Fashion Tree
Town Center Mall
Charleston, WV 25311

Deborah Reed
Assistant Attorney General
L & S Bldg. - 6th Floor
812 Quarrier St.
Charleston, WV 25301

Michael R. Cline, Esq.
323 Morrison Bldg.
Charleston, WV 25301-2676

Re: Crawford v. Fashion Tree
ER-44-87

Dear Parties:

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

Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective July 1, 1989, any party adversely affected by this final order may file a petition for review with the WV Supreme Court of Appeals within 30 days of receipt of this final order.

Sincerely,

A handwritten signature in cursive script that reads "Norman Lindell".

Norman Lindell
Acting Executive Director

NL/mst

Enclosures

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal you must file a petition for appeal with the clerk of the West Virginia Supreme Court naming the Human Rights Commission and the adverse party as respondents. The employer or the landlord, etc., against whom a complaint was filed is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, landlord, etc., against whom a complaint was filed. If the appeal is granted to a non-resident of this state, the non-resident may be required to file a bond with the clerk of the supreme court.

In some cases the appeal may be filed in the Circuit Court of Kanawha County, but only in: (1) cases in which the commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this order.

For a more complete description of the appeal process see West Virginia Code Section 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SHARON CRAWFORD,

Complainant,

v.

DOCKET NUMBER: ER-44-87

FASHION TREE LIMITED,

Respondent.

ORDER

On the 21st day of September, 1989, the West Virginia Human Rights Commission reviewed the proposed order and decision of Hearing Examiner, Theodore R. Dues, Jr., in the above-captioned matter. After consideration of the aforementioned, and exceptions thereto, the Commission does hereby adopt said proposed order and decision, encompassing proposed findings of fact and conclusions of law, as its own, with the modification and amendments set forth below.

In the subsection entitled "Conclusions of Law," number six and in the subsection entitled "Proposed Order," number two, the Commission is of the opinion that the complainant should not be awarded incidental damages and therefore deletes these paragraphs from the decision.

It is hereby **ORDERED** that the Hearing Examiner's proposed order and decision, encompassing findings of fact and conclusions of law, be attached hereto and made a part of this final order except as amended by this final order.

By this final 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 final order and that they may seek judicial review.

Entered this 2nd day of October, 1989.

RESPECTFULLY SUBMITTED,

BY George Peterford / r
CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

RECEIVED

FEB - 3 1989

W.V. HUMAN RIGHTS COMM.

SHARON CRAWFORD,

Complainant,

v.

DOCKET NO: ER-44-87

FASHION TREE LIMITED,

Respondent.

**EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

This matter matured for public hearing on the 15th day of December, 1987. The hearing was held in the 4th floor Conference Room in the Daniel Boone Building, Charleston, West Virginia. The Hearing Examiner was Theodore R. Dues, Jr. The Complainant appeared in person and by her counsel, Deborah Reed. The Respondent appeared by its representative William Londeree and its counsel Michael Cline. The presence of a Hearing Commissioner was previously waived by the parties.

After a review of the record, any exhibits admitted in evidence, any stipulations entered into by the parties, any matters for which the Examiner took judicial notice during the proceedings, assessing the credibility of the witnesses and weighing the evidence in consideration of the same, the Examiner makes the following findings of fact and conclusions of law. To the extent that these findings and conclusions are generally consistent to any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Examiner, and conversely, to the extent the same are inconsistent

to the findings and conclusions, the same are rejected.

ISSUES

1. Was the Complainant's discharge motivated by her race?
2. If so, to what relief is the Complainant entitled.

FINDINGS OF FACT

1. The Complainant is a black female.
2. The Complainant was employed with the Respondent from May 1986 to July 7, 1986.
3. During Complainant's tenure, Karen Stover was the store manager of the Respondent's Charleston Town Center location.
4. At the time of her employment, the Complainant did not have to complete an application for employment. Instead, she provided information on a page of notebook paper for Stover's review. The Complainant was hired by Stover three days later.
5. The Complainant was hired as sales person for the Respondent's Charleston, West Virginia, Town Center store. She worked part time earning Three Dollars, Thirty Five Cents (\$3.35) per hour and averaging 29 to 35 hours per week.
6. On the first day of her employment, the Complainant was trained by a co-worker, to operate the cash register and to prepare the daily close-out sheet.
7. The Complainant was never provided a written job description, nor were the Respondent's work rules provided to

her, nor, posted in writing, at the store. The Respondent's policy was if there were more than one person on duty, they shared equally in the responsibility of cleaning the store.

8. The Complainant performed her share of cleaning duties as is reflected both by oral testimony and documentary evidence.

9. During the relevant time period, the Respondent's employees, at the Town Center store, were to take lunch in the rear of the store, when possible, to be interrupted when customers needed assistance.

10. During the Complainant's tenure, the Respondent had a policy that employees could not have visitors in the store. However, this policy was not posted, nor was it generally enforced.

11. The Complainant was singled out by Stover and chastised, on more than one occasion, for allegedly being preoccupied with a friend, on one occasion, and her boyfriend, on other occasions, to the neglect of her customers and her other duties. However, the record reflects that, in comparison to her co-workers, the Complainant was as attentive, or more so, to her duties, during her tenure. Further, on the occasion pertaining to the Complainant's friend being in the store, the Complainant was escorting her friend to various displays of clothing, all of which concluded with her friend purchasing a skirt, during that visit.

12. Notwithstanding the Complainant's admonishment for the same, each of the other employees had visitors, husbands and boyfriends, visiting the store at times they would be on duty.

13. The Complainant was the only black employee at the Respondent's Charleston Town Center store, during her tenure. Additionally, she was the only employee that had a black boyfriend or husband, during her tenure at the Charleston Town Center store.

14. On one occasion, Stover criticized the Complainant for the store being "messy", although the Complainant was on the shift with another employee. That employee was not similarly criticized concerning the condition of the store.

15. On one occasion the key to the store, entrusted to the Complainant at the time of her hire, was not on her person while she was on duty. However, there was a white employee who failed to lock the store, after closing, who was not fired and ultimately was promoted to assistant manager.

16. At no time during the Complainant's tenure, did she have an argument with her boyfriend on the Respondent's premises.

17. The Complainant's conduct as an employee, was, to the extent that it deviated from expected policy and procedure, not unlike the conduct of white co-workers who also deviated from the same policies and procedures, during her tenure.

18. The decision to discharge the Complainant was ultimately Stover's. However, she did confer with the owners of the store before reaching her decision.

19. Upper management and the owners of the store had no first hand knowledge concerning the Complainant's performance. The information for which they were on notice came from Stover.

20. The Complainant incurred a loss of pay as a result of

her discharge from Respondent's employment.

21. The Complainant suffered embarrassment and humiliation as a result of her discharge from Respondent's employment.

DISCUSSION

The Complainant established a prima facie case of race discrimination by establishing that she is: a black female; that she performed her duties in a satisfactory manner; to the extent that she deviated from the employer's policies and procedure, it was no different than that committed by white co-workers; that she was disciplined for deviating from the policies and procedures more severely than similarly situated whites; and that she was terminated for conduct for which similarly situated whites were retained. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); and state ex rel. *Human Rights Commission v. Logan-Mingo Area Mental Health Agency Inc.*, 329 S.E.2d 77, 85 (1985).

The Respondent's conduct toward the Complainant was distinctively different, for similar situations, than that toward the Complainant's white co-workers. A clear, and most vivid example, is the prohibition of the Complainant's boyfriend from visiting the store, during the Complainant's time on duty. It was commonly known to the Respondent's management that all employees had visitors during store hours. Yet, the Complainant, the only black employed at the store, was perceived by her supervisor, Karen Stover, as neglecting her customers as a result

of what she viewed to be excessive visitations from her boyfriend. This even went so far as to Stover's fabricating an argument between the Complainant and her boyfriend, while on the store premises. This evidence was clearly contradicted by the co-workers assigned to work with the Complainant, during her tenure. Other reasons asserted by the Respondent for its perceived poor performance of the Complainant were; failure to comply with proper closing procedures; loss of enthusiasm over a period of time; shyness in approaching customers to make sales; failure to maintain the store properly; failure to comply with the "no eating on the sales floor" policy; and that the Complainant did not accept criticism well. A close review of the record and the source of the evidence supporting or contradicting the existence of these various allegations by the Respondent, leads to only one reasonable conclusion; the Complainant was a victim of targeted disparate treatment by Karen Stover, the store manager, for reasons unrelated to legitimate job criteria. Accordingly, the Examiner finds that the preponderance of the evidence negates the credibility of the Respondent's asserted justification for the Complainant's discharge and does find that the same are pretext for its unlawful discriminatory conduct against the Complainant as a result of her race. *Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission*, 309 S.E.2d 342 (1983); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089 (1981).

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter herein.

2. The Complainant established a prima facie case by showing that she was hired by the Respondent as a sales person, that she performed her duties satisfactorily, and to the extent that she deviated from policy and procedure, it was not unlike that conduct performed by co-workers who were not members of the protected class, and that she was terminated as a result of this conduct; resulting in Complainant being punished more severely than her co-workers who were not members of the protected class.

3. Upon establishing a prima facie case, the Respondent has the burden of articulating legitimate job related reasons which were not pretext in nature.

4. The Respondent's articulated reasons for discharging the Complainant were not credible and are determined to be pretext for unlawful race discrimination against the Complainant.

5. The Complainant is entitled to an award of back pay in the amount of Two Hundred Ninety Seven Dollars and Twenty Eight Cents (\$298.28).

6. The Complainant is entitled to incidental damages for emotional distress and humiliation in the amount of Five Thousand Dollars.

PROPOSED ORDER

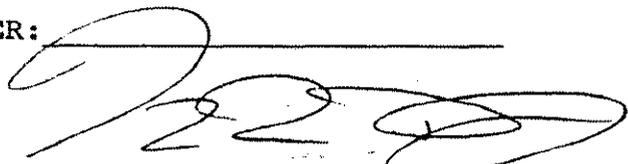
Accordingly, it is the recommendation of this Examiner that this Commission award judgement for the Complainant and

provide the following relief:

1. An award of back pay in the amount of \$297.28.
2. Incidental damages in the amount of \$5000.00 for emotional distress and humiliation.
3. That the Respondent be required to expunge the Complainant's personnel file of any negative documentation relating to her performance and the ultimate disposition of her severance from employment.
4. That a cease and desist Order be entered by the Commission prohibiting the Respondent from conducting itself in a continued discriminatory manner and that a provision be included which will require the Respondent to report the Commission for a period of time in composed of such documentation as is deemed appropriate to assure compliance to the Commission's Order.

DATED: December 19, 1988

ENTER: _____



Theodore R. Dues, Jr.
Hearing Examiner

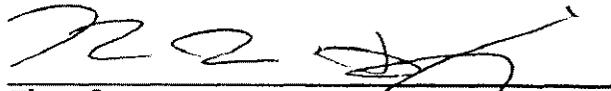
CERTIFICATE OF SERVICE

I, Theodore R. Dues, Jr., Hearing Examiner, do hereby swear and say that I have served a true and exact copy of the foregoing EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW upon the following:

Deborah Reed, Esquire
c/o Sharon Mullens, Esquire
Senior Assistant Attorney General
812 Quarrier Street
L & S Building, 4th Floor
Charleston, WV 25301

Michael Cline, Esquire
Suite 323
Morrison Building
Charleston, WV 25301

by depositing the same in the United States Mail postage prepaid on this 19th day of December, 1988.



Theodore R. Dues, Jr.
Hearing Examiner