



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301**

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.
Governor

November 13, 1985

Barbara Fleischauer, Esq.
258 McGara Street
Morgantown, WV 26505

Brooks E. Smith, Esquire
Room 226
Monongahela Building
Morgantown, WV 26505

RE: Albert L. Jefferson V. O.J. White Moving Company
Docket No.: ER-450-79

Dear Ms. Fleischauer and Mr. Smith:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Albert L. Jefferson V. O.J. White Moving Company/Docket No.: ER-450-79.

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.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

ALBERT L. JEFFERSON,
COMPLAINANT

V.

CASE NO.: ER-450-79
(Monongalia County)

O.J. WHITE MOVING COMPANY,
RESPONDENT.

ORDER

On the 19th day of September, 1985, the West Virginia Human Rights Commission considered the Recommended Decision of Hearing Examiner Michael E. Nogay and the Exceptions filed thereto.

On April 22, 1985, and April 25, 1985, a public hearing was held. The Complainant was present in person and by his Counsel, Barbara Fleischauer, Esq., Special Assistant Attorney General. The respondent was present by Robert Smyth, Jr., one of its officers, and by its Counsel, Brooks Smith, Esq. The hearings were held in Monongalia County, West Virginia.

This case involves an alleged act of discrimination in employment on the basis of race on or about March 20, 1979. A total of fourteen (14) witnesses were called and recalled to testify on behalf of the respective parties. A number of documentary exhibits which are included with the original transcript were admitted into evidence. Five (5) volumes of transcribed testimony form the record in this case. ~~Counsel for both parties submitted post-hearing memoranda supporting~~ what each believes the decision should be in this matter. As well, documentary evidence from the West Virginia Department of Employment Security was received by the hearing examiner post-hearing, on May 7,

1985, over the objection of Complainant. Respondent wishes to admit these documents post-hearing to establish a conspiracy defense. These documents have been admitted as a proffer of evidence, but, given counsel for Complainant's inability to cross-examine those persons who prepared and maintained the same, they were given no probative value by the Examiner in this case.

On the basis of the entire record, the West Virginia Human Rights Commission finds as follows:

1. The Complainant, Albert L. Jefferson, is a black adult male. The Respondent, O. J. White Transfer & Storage Co., Inc., is a domestic corporation which, on March 20, 1979, employed twelve (12) or more persons within the State of West Virginia, not including individuals employed by their parents, spouses, or children.

2. The Respondent is a closely-held, family owned moving and storage business. It transacts business on both a local and out-of-state basis. It employs both full-time and part-time employees depending upon seasonal and business needs. In 1979 the business was primarily run by Robert Smyth, Sr., Helen Smyth, and Robert Smyth, Jr., their son. The company maintains a simple records system with regards to hiring employees. It requires new employees to complete a written application, but does not require former employees who are re-hired to fill out a new application.

3. During mid-January, 1979, the Complainant filled out and filed a written application for employment with Respondent. January is usually a "slow" month for the moving and storage business and there were no job openings available. During January and February, 1979, no new employees were hired by Respondent other than an individual

named Robert Faulk, who was a former employee and was hired on an "emergency" one-time, fill-in basis for 4 1/2 hours on February 14, 1979. The Complainant inquired about the status of his application and the possibility of employment four times after he filed his written application, once on or about March 20, 1979.

4. Richard A. Jefferson, brother of the Complainant and Marcus Smith, another black male, were told that the Respondent was not accepting applications when they went to apply for work on March 20, 1979. They were not given application forms to fill out.

5. During the middle part of March, 1979, Respondent made a decision to fire two (2) white employees, David Daft, and his brother, William Daft, in an unrelated matter. Anticipating these firings, Respondent placed an advertisement in the "Help Wanted" section of the Morgantown Dominion-Post on Sunday, March 18, Monday, March 19, and Tuesday, March 20, 1979. The advertisement stated: "Help wanted - O.J. White Transfer, 180 Clay Street, Morgantown. Apply in person only." There was no racially discriminatory motive in the request that applicants appear "in person only", but finds that the immediate personnel needs of Respondent made telephone or mail inquiries unreasonable.

6. Respondent receives approximately six (6) applications per year when job openings are not advertised. The Respondent's informal policy of cleaning out stale applications every 30-45 days was not believable because so few applications are received.

7. After the advertisement for help wanted was published in the Morgantown Dominion-Post as stated above, Respondent fired the two (2) Daft brothers some time before 8:00 a.m. on Tuesday, March 20,

1979. The day before, on Monday, March 19, 1979, Respondent had hired Donald A. Cutright as a "helper", after he had filed a written application that same day. Mr. Cutright, a white male, did not report to work until Thursday, March 22, 1979, due to personal reasons. He was subsequently terminated on April 2, 1979, and replaced with another "experienced" transfer man on March 29, 1979. His replacement had filed an application at the same time as Mr. Cutright. The other person hired as a result of the "help wanted" advertisement was James Rutter, a white male, who had filed a written application. Rutter was hired the morning of March 20, 1979, and on that same day began.

8. After seeing the "help wanted" advertisement, the Complainant appeared on Tuesday, March 20, 1979, around lunch time. The Complainant was not even considered for the positions filled by Rutter & Cutright.

9. Respondent had not hired a single black person for a full-time job during the entire time they had been in business.

10. Only two black persons had ever been hired on out-of-town jobs for short-term unloading jobs and these individuals were only employed on one and two-day stints.

11. Respondent did not provide complainant with an equal opportunity to prosecute his bid for employment because of his race in violation of the West Virginia Human Rights Act, Section 5-11-9(a).

12. The complainant proved a prima facie case of discrimination and the respondent failed to rebut that prima facie case.

RELIEF

1. It is hereby ORDERED that the Respondent pay the Complainant back-wages in the amount of Forty-Six Thousand Seven Hundred Fifty-One 6/100 Dollars (\$46,751.60).

2. It is hereby ORDERED that the Respondent pay to Complainant the sum of \$1,000.00 for incidental damages for humiliation, embarrassment, and emotional distress as a result of respondent's discriminatory treatment of Complainant.

3. It is hereby ORDERED that Respondent cease and desist from discriminating against individuals on the basis of their race in employment decisions, particularly with regard to hire.

Entered this 8th day of November, 1985.

Nathaniel G. Jackson

CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION