

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

CHARLES MOSLEY

Complainant,

v.

DOCKET NO. ER-341-77

AMERICAN MOTORS CORPORATION

Respondent

FINDINGS OF FACT  
CONCLUSIONS OF LAW AND ORDER

I  
PROCEEDINGS

This case came on for hearing on August 25, 1982, at the Capitol Conference Center, Room C, State Capitol Building, Charleston, West Virginia before Hearing Examiner Theodore R. Dues, Jr., and Hearing Commissioner Russell Van Cleve. The Complainant appeared in person and was represented by Assistant Attorney Generals Gail Ferguson and Mary Lou Newberger, who also represented the West Virginia Human Rights Commission. The Respondent appeared by its counsel Theodore G. Brichze.

On the 10th Day of March, 1977 the Complainant filed a verified complaint with the West Virginia Human Rights Commission alleging that the Respondent, American Motors Corporation, had discriminated against him by not rehiring him, as a reprisal for the original race discrimination charge, (Docket No. ER-329-76), in violation of W.Va. Code §5-11-9(a), filed with the West Virginia Human Rights Commission against the Respondent. The Human Rights Commission issued a Letter of Determination finding Probable Cause to believe that the Human Rights Act had been violated on February 9, 1982.

On June 24, 1982, the Human Rights Commission by Howard D. Kenney, Executive Director, served a written notice of public hearing upon the parties pursuant to W.Va Code §5-11-10 setting the date for public hearing for August 25, 1982. On July 14, 1982 the Respondent filed an answer to the complaint.

After full consideration of all the evidence, both testimonial and documentary, the Hearing Examiner recommends that the Commission make the following Findings of Fact and Conclusions of Law.

## II FINDINGS OF FACT

1. The Complainant is a black male.
2. The Respondent is a foreign corporation licensed to do business within the State of West Virginia.
3. All jurisdictional matters prerequisite to bringing this matter on for final hearing have been met.
4. That Complainant alleges reprisal on the part of the Respondent as its reason for not rehiring him.
5. The Complainant had filed a complaint of racial discrimination with the West Virginia Human Rights Commission in February, 1976.
6. The Complainant testified that he worked for Respondent from October 7, 1975 until October 24 of that year; at which time he was hurt in a car accident.
7. The Complainant testified that he attempted on numerous occasions to be rehired in his position with the Respondent, but to no avail. He felt the reason he was not hired was because he was black.

8. The Complainant further testified that the reason his second charge (of reprisal) was filed was because nothing had been done to get his job back on the initial charge and he felt the file may have been closed, (Tr. 28, 30).
9. Complainant's statement that this particular charge of reprisal was filed for reasons other than conduct by the Respondent in retaliation for his filing the initial charge of racial discrimination is dispositive of this claim.
10. There exists no basis in fact, by the evidence of the Complainant himself, to conclude that the Respondent retaliated against the Complainant for his filing charges of racial discrimination in ER-329-76, against it.

II

CONCLUSIONS OF LAW

The Complainant has failed to establish a prima facie case of reprisal. The merits upon the failure to rehire as to ER-329-76 are not at issue here. For the Complainant to prevail upon this matter, he must have established that he was not rehired because of the filing of the initial complaint of racial discrimination. However, the Complainant's motive for the subsequent charge is unequivocally clear in the record; that is, to expedite disposition of his initial charge, or to renew the charge should the original file had been inadvertently closed.

IV

ORDER

Judgment is ORDERED for the Respondent against the Complainant.

This case is ORDERED dismissed.

July 29 1983  
DATE

Enter:

Russell Van Cleve  
Russell Van Cleve  
Chairperson