



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

September 5, 1985

Roger F. Redmond, Esq.
Redmond & McFarland
P.O. Box 1794
Parkersburg, WV 26102-1794

Bethany R. Boyd, Esq.
Assistant Attorney General
1204 Kanawha Blvd. E
Charleston, WV 25301

RE: ES-215-77

Dear Counsel:

Herewith please find the Order of the WV Human Rights Commission in the case of Robinson v. Statewide Bureau of Security Police.

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 thirty (30) days, the Order is deemed final.

Sincerely yours,

Howard D. Kenney
Howard D. Kenney
Executive Director

HDK/mst
Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

cc: Margaret Robinson
Ted Dues, Esq.
Statewide Bureau of Security Police, Inc.
Charlie Brown, Attorney General

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

Margaret Robinson,
Complainant,

v.

Docket No. ES-215-77

Statewide Bureau of Security Police, Inc.
Respondent.

ORDER

On the 14th day of August 1985, the Commission reviewed Hearing Examiner Theodore R. Dues, Jr.'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.

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.

It is hereby ORDERED that the Respondent pay the Complainant a backpay award of Ten Thousand Eighty-six Dollars and Seventy-two Cents (\$10,086.72).

It is hereby ORDERED that the Respondent pay the Complainant Five Thousand Dollars (\$5,000.00) for mental pain and anguish.

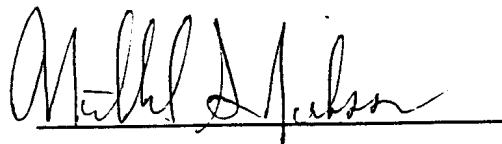
It is hereby ORDERED that the Respondent cease and desist its discriminatory practices with regard to promotion.

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 14th day of August, 1985.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mitchell D. Jackson", is written over a horizontal line.

CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION

approved
July 5, 1985
SRN

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED

MARGARET ROBINSON,

Complainant,

JUL 11 1985

vs.

Case No. W.V. HUMAN RIGHTS COMM.

STATEWIDE BUREAU OF
SECURITY POLICE, INC.

Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSION OF LAW

This case came on for hearing on May 23, 1985. The hearing was held at the Conference Room of the West Virginia Human Rights Commission, 1036 Quarrier Street, Charleston, WV. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner. The presence of a Hearing Commissioner was waived by the parties.

The Complainant appeared in person and by her counsel, Bethany Boyd, Assistant Attorney General. The Respondent appeared by counsel, Roger Redmond and by its representative Robert Dalton.

FINDINGS OF FACT

1. The Complainant, Margaret Robinson, is a female.
2. The Complainant was employed with the Respondent from July of 1976 to December 7, 1976, at which time she was fired.
3. The Complainant's duties while employed with the Respondent were to patrol the Cultural Center located at the State Capitol Complex.

4. During her initial employment period, Randy Polly was her supervisor.

5. On December 7, 1976, the Plaintiff reported off work sick. She had a conversation with Mr. Polly and he indicated to her that she should take the necessary days off.

6. During this period while she was off for sickness, Radonna Thompson made a phone call from the Complainant's home to Mr. Polly.

7. In the phone conversation to Mr. Polly Mrs. Thompson used profane language and disclosed to him that she and the Complainant had filed a charge with the West Virginia Human Rights Commission against the Respondent.

8. Mr. Polly responded in that phone conversation by indicating that those persons, including the Complainant, that Mrs. Thompson had mentioned having filed a charge with the West Virginia Human Rights Commission were terminated immediately; without indicating this as the reason for the firings.

9. That prior to her termination the Complainant had requested on numerous occasions to be promoted and to be provided a raise.

10. The Respondent failed or refused to promote or provide a raise to the Complainant.

11. The Complainant's supervisor Randy Polly was hired approximately five months after the Complainant had been employed by the Respondent.

12. Randy Polly was hired in the same position as the Complainant and was promoted to sargent shortly thereafter.

13. The Complainant performed her duties satisfactorily.

14. The Complainant practiced no work habits that deviated from the general orders which were not practiced by her co-workers and supervisors.

15. Robert Dalton, the President of the Respondent corporation, did not have the opportunity nor did he in fact supervise the Complainant during her employment.

16. The process for promotions were not adequately explained to the Complainant at the times during which she had inquired about promotions.

17. The materials indicated to have been required to be posted on the employee bulletin board were not posted in most instances.

18. The Respondent had no discernible policy for promotions and or raises during the Complainant's tenure of employment.

19. The Respondent had notice of the Complainant's inquiries and desires to be promoted and provided raises, as a result of the Complainant's discussions with its agents employed in Charleston, West Virginia during the relevant times.

20. Robert Dalton was not required to dismiss the Complainant and the other two women.

21. Robert Dalton received no threats from the Manager of the Cultural Center pertaining to losing the security contract should the Respondent fail to discharge the Complainant and the

other two female employees effected.

22. The Complainant reasonably mitigated her damages by seeking employment throughout the year of 1977.

23. The Complainant incurred Ten Thousand Eighty-Six Dollars and Seventy-Two Cents (\$10, 086.72) in lost pay as a result of Respondent's discriminatory actions.

24. The Complainant suffered mental stress and strain as a result of not being promoted.

CONCLUSIONS OF LAW

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

2. As in all cases, the Complainant in this case bears the burden of proving the allegations of her complaint that the Respondent discriminated against her because of her sex in its promotional and/or discharge decision(s).

3. The Complainant made a prima facie case of sex discrimination in the Respondent's promotional decision pertaining to Randy Polly. However, the Complainant failed to make a prima facie showing of sex discrimination in the decision to discharge.

4. The evidence is convincing that the decision to discharge was prompted more likely than not by the fact that the Complainant and the other two female employees affected had filed a complaint with the West Virginia Human Rights Commission than the fact that they were female.

5. In as much as a reprisal claim initially raised at the time of the public hearing would be jurisdictionally untimely, the same will not be addressed in this decision.

6. The Respondent failed to provide a credible non-

discriminatory explanation for its actions as it pertained to the promotion of the Complainant.

7. Accordingly, the Respondent is determined to be in violation of the West Virginia Human Rights Act in its promotional decision surrounding the Randy Polly promotion.

8. The Complainant reasonably mitigated her damages by seeking employment in 1977 and earning sufficient income to file a return in 1977.

9. The Complainant is entitled to a backpay award of Ten Thousand Eighty-Six Dollars and Seventy-Two Cents (\$10,086.72).

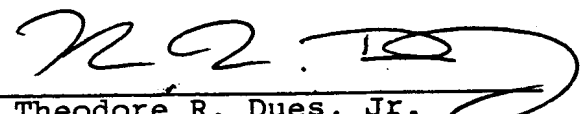
10. The Complainant is entitled to Five Thousand Dollars (\$5,000.00) for mental pain and anguish as a result of the flagrant discriminatory conduct by the Respondent in its decision not to promote her.

RELIEF

Accordingly, it is the recommendation of this Examiner that judgement be entered for the Complainant. That the Complainant receive an amount of Five Thousand Dollars (\$5,000.00) for the mental pain and anguish that she suffered as a result of the flagrant discriminatory conduct of the Respondent. It is further recommended that the Commission issue a cease in desist Order.

DATED: 4-25-85

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner