



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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Cecil H. Underwood
Governor

Ivin B. Lee
Executive Director

**VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED**

September 7, 2000

Tony K. Richardson
134 Boone Ave.
Madison, WV 25130

The Body Shop, Inc.
505 Main St.
Madison, WV 25130

Paul R. Sheridan
Sr. Asst. Attorney General
PO Box 1789
Charleston, WV 25326-1789

Wendle D. Cook, Esq.
Cook & Cook
62 Ave. C
PO Box 190
Madison, WV 25130

**Re: Richardson v. The Body Shop, Inc.
ER-428-97**

Dear Parties:

Enclosed please find the final decision of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon

all parties of their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before an administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before an administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

Tony Richardson
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10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

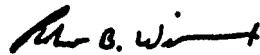
10.8.4. Supported by substantial evidence on the whole record; or

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from an administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact the executive director of the commission at the above address.

Yours truly,



Robert B. Wilson
Administrative Law Judge

RBW/mst

Enclosure

cc: Ivin B. Lee, Executive Director

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

TONY KEITH RICHARDSON,

Complainant,

v.

DOCKET NUMBER: ER-428-97

THE BODY SHOP, INC.,

Respondent.

FINAL DECISION

A public hearing, in the above-captioned matter, was convened on June 8, 2000, in Boone County, in Room 106 in the Boone County Court House Annex at 206 Court Street, in Madison, West Virginia, before Robert B. Wilson, Administrative Law Judge.

The complainant, Tony Keith Richardson, appeared in person and by counsel for the West Virginia Human Rights Commission, Paul R. Sheridan, Senior Assistant Attorney General with the Office of the West Virginia Attorney General, Civil Rights Division. The respondent, The Body Shop, Inc., appeared by its representative, Jim Price, an officer in the corporation at the time of the alleged discrimination, and by its counsel, Wendle D. Cook, with the firm of Cook & Cook.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings, conclusions and legal analysis of the administrative law judge and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent

therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or necessary to a proper decision. To the extent that the testimony of the various witnesses is not in accord with the findings stated herein, it is not credited.

A.

FINDINGS OF FACT

1. The respondent, has not contested that it is an employer and a person within the meaning of the West Virginia Human Rights Act, W.Va. Code § 5-11-3.

2. The Complainant, Tony Richardson, is an African-American male and resident of Boone County, West Virginia. He began working for the respondent, The Body Shop, Inc. in or about, April 1993. Complainant went to work for the respondent as a “detail man”, cleaning and preparing cars for repair and painting. Tr. pages 10 and 11.

3. Complainant was hired by Jimmy Price, his supervisor and the owner of The Body Shop, Inc. at that time, upon the recommendation of his friend, Gary Woodrum, the foreman of respondent’s Madison location. Six to eight months after his hire, Rick Woodrum replaced Gary Woodrum as foreman at the respondent’s Madison location. Tr. pages 12, 13, 44, 45 and 89.

4. Complainant testified credibly that problems started almost immediately with Rick Woodrum in the manner in which he was treated. Rick Woodrum would use the “N” word in complainant’s presence and would use expressions such as “your black ass”. Tr. pages 13 and 14.

5. Rick Woodrum would indicate his disapproval with complainant’s interracial marriage on an ongoing basis. This included making statements to the effect that he didn’t need to be looking at any white woman because she wouldn’t have anything to do with him, on those occasions when the

employees of the respondent would be watching students go into class at the College next door and comment upon the women at whom they were “gawking”. At the time Rick Woodrum was aware complainant was married to a white woman. Rick Woodrum went on to say on another occasion that complainant should not be in that relationship, he should be with his own kind and he would not be having the marital difficulties he was having at the time. Rick Woodrum would often not relay telephone messages from complainant’s wife to him, even when they were of a serious nature. This included a message about his wife being in the hospital on one occasion. When he did tell complainant that his wife called, Rick Woodrum would say, “That fucking bitch called. You need to call her.” Luke Workman testified credibly that Rick Woodrum had said of the Complainant, “That white pussy is driving him crazy.” Tr. pages 17-19, 71, 85 and 86.

6. Rick Woodrum would discriminate against complainant in the way that work was assigned as well. When Rick Woodrum would tell other employees to do something they did not wish to do, they would say no I’m not going to do it because complainant will do it. Rick Woodrum would tell complainant to do it and if he told Rick he didn’t want to do it, Rick would say your going to do it or I’ll get someone else to do it and you’ll be gone. He was told to take vehicles over to Stephen’s Auto Center on his lunch hour when other employees were never required to do so. There were times that there would be other employees taking a break and talking, complainant would go up there and he would be told, “What are you doing up here.” On the other hand, everyone else would be nonchalantly doing what they wanted, without a word said to them. Complainant was the only African-American employee working at the respondent’s Madison location. Tr. pages 13, 14, 15, 23, 38, 39 and 61.

7. Complainant particularly had a problem when it came to cleaning Rick Woodrum’s Blazer, and the way in which that assignment was made. Ninety percent of the time Rick Woodrum

would make complainant clean the vehicle, which was used in the respondent's business, but would generally wait until the end of the day to make the request. Jack Dykes, a white employee was hired after complainant as a detail man as well, he would be told to wash the Blazer and refuse to do so, at which point, complainant would be told that he would do it. Nothing was said to Mr. Dykes when he refused to wash the vehicle. Tr. pages 15 and 84.

8. Respondent's shop foreman created a racially hostile work environment for complainant as a result of the foregoing types of discrimination.

9. Complainant felt demoralized by this treatment, he felt that he could not take it anymore. It affected complainant's work. He could not concentrate and could not do his job efficiently for him riding complainant the way he did and the things he said. Tr. pages 39, 40 and 77.

10. The complainant has suffered humiliation, embarrassment, emotional distress and loss of personal dignity as a result of respondent's unlawful discrimination.

11. On January 23, 1997, complainant had not been given the message about his wife having gone to the hospital. That Friday he made a list of things that he wanted to discuss with Rick Woodrum concerning his treatment by Mr. Woodrum. When Mr. Woodrum had not returned by late in the afternoon from the bank, complainant left the list with a notation that said Attention Rick and signed it. He then left for the weekend. The document did not mention racial discrimination; it did, however, among other complaints, state that: "1) Need to tell Rick to treat wife better 2) Needs to give me more respect . . . 5) Need to find out what personal or non personal vendetta he has out for me 6) No one else in shop is addressed or spoke to in the fashion I am from Rick . . ." Commission's Exhibits Numbers 1 and 2; Tr. pages 20-38.

12. When Rick Woodrum saw the note he became very angry and called the owner, Jim Price. Both Mr. Woodrum and Mr. Price focused upon the portion of the document which states: "4)

I feel I should not be asked to wash his vehicles, when no one but Jack or me are ask [sic]" This was viewed as insubordination by the two and Mr. Price said that he would leave the matter to Rick Woodrum. When complainant arrived for work early Monday morning, Rick Woodrum came to find complainant and told him "You need to get your black ass upstairs. We're going to discuss this." The discussion occurred with Mr. Price present. It did not seem to get beyond Rick Woodrum's questioning of complainant was he going to wash Rick's car. When complainant tried to address the issue of the lack of respect, Mr. Woodrum became agitated about his having left the list without talking to him first and told complainant that he had treated him good. Mr. Woodrum repeatedly got back to the issue of washing his car, telling complainant that "if I ask you to wash it, you'll wash it four times a day, and you'll like it if you want to stay." When complainant said no I won't; and it became clear that he would not, complainant was told to get the "F" out. He was fired. Mr. Price told complainant that he could have his job back if he would just agree to wash Rick Woodrum's vehicle. Complainant declined. At no time during the course of the discussion did Mr. Woodrum or Mr. Price listen to the issues which complainant had tried to discuss, and of which both men were aware, because Mr. Woodrum had faxed a copy of the document to Mr. Price the preceding Friday evening. Instead they focused on what they perceived to be complainant's insubordination for refusing to wash Rick Woodrum's vehicle. Commission's Exhibits Numbers 1 and 2; Tr. pages 30-39, 52-55, 164 and 165.

13. After complainant had been hired he received several raises through the course of his employment with respondent, the last raise coming just prior to his termination. He had also just been sent to a school to learn to paint cars for several days, and had been learning the paint end of the business in addition to his current detail man duties at the time of his termination. Tr. pages 68 and 69.

14. Rick Woodrum considered himself to be friends with complainant. He had on several occasions let him borrow his car to go to the bank and cash his check, and buy some beer on Friday

night. They would stay after work an hour drink a beer and Mr. Woodrum would drop him off at his house. He has loaned money to complainant and bought his dinner. He has invited him to spend a weekend at his camp in Greenbrier County. When he read the document complainant left he was angry because the complainant was his friend, and he felt that it indicated complainant didn't want to work for respondent anymore. Pages 110, 11, 130, 122, 144 and 145.

15. Mr. Price considered himself to be friends with complainant as well. They would go to bars and run around together and had gone to NASCAR races out of state together in the past. Tr. page 166.

16. Complainant was a good employee, did a good job and respondent never had any problems with him. Tr. page 174.

17. Nevertheless, when the respondent received his list of complaints, both Mr. Woodrum and Mr. Price focused on his unwillingness to wash Mr. Woodrum's vehicle which was used in the respondent's business; and neither one ever got into why complainant felt he needed to be treated with more respect. Tr. page 178.

18. Had complainant not tried to bring his concerns about hostile treatment to the attention of his shop foreman, Mr. Woodrum, neither Mr. Woodrum or Mr. Price would have been angered to the point that they felt compelled to discharge complainant. On the other hand, had complainant acknowledged the need to wash Mr. Woodrum's car, which was used in the respondent's business on a regular basis, when asked to do so, he would never have been terminated from his employment.

B.

DISCUSSION

In order to make out a prima facie case of employment discrimination the complainant must offer proof of the following:

- (1) That the plaintiff is a member of a protected class;
- (2) That the employer made an adverse decision concerning the plaintiff; and,
- (3) But for the plaintiff's protected status, the adverse decision would not have been made.

Conaway v. Eastern Associated Coal Corp., 358 S.E.2d 423 (W. Va. 1986); see also Kanawha Valley Regional Transportation Authority v. West Virginia Human Rights Commission, 181 W. Va. 675, 383 S.E.2d 857, at 860 (1989). Criterion number three (3) of this formulation, inappropriately labeled the "but for" test, is only a threshold inquiry, requiring only that a complainant show an inference of discrimination. Barefoot v. Sundale Nursing Home, 193 W. Va. 475, 457 S.E.2d 152, at 161 (1995).

The Human Rights Act, W. Va. Code § 5-11-9(a)(7)(C), provides that it is unlawful for any person or employer to engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under the Act. In order to prove a prima facie case of retaliation, the West Virginia Supreme Court has held that a complainant must prove by a preponderance of the evidence that:

- (1) the complainant engaged in a protected activity;
- (2) that the complainant's employer was aware of the protected activity;
- (3) that the complainant was subsequently discharged and (absent other evidence tending to establish retaliatory motivation);
- (4) that complainant's discharge followed her protected activities within such period of time that the court can infer retaliatory motivation.

Frank's Shoe Store v. West Virginia Human Rights Commission, 179 W. Va. 53, 365 S.E.2d 251, at 259 (1986).

It is now well recognized that the West Virginia Human Rights Act "imposes on employer a duty to ensure, as best they can, that their workplaces are free of [racial] harassment that creates a hostile or offensive working environment." Conrad v. Szabo, 198 W. Va. 362, 370, 480 S.E.2d 801, 809 (1996). Where this duty is breached, it gives rise to "an independent basis for stating a Human Rights Act claim." Conrad, 480 S.E.2d at 809; see also Hanlon v. Chambers, 195 W. Va. 99, 464 S.E.2d 741 (1995).

Fairmont Specialty Services v. West Virginia Human Rights Commission, 206 W. Va. 86, 522 S.E.2d 180 (1999) is the leading case for hostile workplace and harassment based upon other protected class status under the West Virginia Human Rights Act. To establish a hostile environment claim, the Commission must prove:

- (1) that the subject conduct was unwelcome;
- (2) it was based upon the [protected characteristic] of the plaintiff;
- (3) it was sufficiently severe or pervasive to alter his conditions of employment; and
- (4) it was imputable on some factual basis to the employer.

Fairmont Specialty, Syl. pt. 5.

Hostility turns on what effect the conduct would have, cumulatively on a reasonable person. In a hostile environment situation, each discrete incident is to be viewed cumulatively. Conrad, 198 W. Va. at 371, 480 S.E.2d at 810. "Such incidents, however, cannot be viewed in isolation of the mistreatment that did not have an overt [racial] component. Rather, the plaintiff's environment must be considered under all the circumstances, taken as a whole." Conrad, 198 W. Va. at 372.

The complainant may make out a prima facie case of discrimination by the three step inferential proof formula first articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93

S.Ct. 1817, 36 L.Ed2d 668 (1973), and adopted by the West Virginia Supreme Court in Shepardstown Volunteer Fire Dep't. v. West Virginia Human Rights Commission, 172 W.Va. 627, 309 S.E.2d 342 (1983). The complainant must first establish a prima facie case of discrimination. The burden of production then shifts to the respondent to articulate a legitimate non discriminatory reason for its action. Finally, the complainant may show that the proffered reason was not the true reason for the decision but rather pretext for discrimination. Pretext may be shown through direct or circumstantial evidence of falsity or discrimination. Where pretext is shown, discrimination may be inferred. Barefoot v. Sundale Nursing Home, 193 W.Va. 475, 3457 S.E.2d 152, at 160 and 164 n. 19 (1995). Although discrimination need not be found as a matter of law. St. Mary's Honor Society v. Hicks, 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993). The term "pretext" has been held to mean an ostensible reason or motive assigned as a color or cover for the real motive; false appearance, or pretense. West Virginia Institute of Technology v. West Virginia Human Rights Commission, 181 W. Va. 525, 383 S.E.2d 490 (1989). A proffered reason is pretext if it is not the true reason for the decision. Conaway, supra.

There is also the "mixed motive" analysis under which a complainant may proceed to show pretext, as established by the United States Supreme Court in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989); and recognized by the West Virginia Supreme Court in West Virginia Institute of Technology, supra. "Mixed motive" analysis applies where the respondent articulates a legitimate non discriminatory reason for its decision which is not pretextual, but where discriminatory motive plays a part in the adverse decision. Under the "mixed motive" analysis, the complainant needs to show that an unlawful discriminatory motive played some role in the decision, and the employer can avoid liability only by proving that it would have made the same decision even if it had not considered the complainant's protected status. Barefoot, 457 S.E.2d at 162,

n. 16; 457 S.E.2d at 164, n.18.

This is a very difficult case to decide. There is little doubt that from the perspective of complainant, and that of a reasonable person in his position, he was subjected to a hostile environment in terms of the repeated suggestions of Mr. Woodrum that he should be with women of his own kind, in light of Mr. Woodrum's knowledge of complainant's interracial marriage. Telling him that he shouldn't comment about wanting the white coeds because they wouldn't have anything to do with him, is clearly an indication of a particular sort of racial bias. Furthermore, complainant raised issues which had to do with differing treatment in the way job assignments were made to him, particularly the inordinate assigning of the duty to wash Mr. Woodrum's vehicle. Also, he perceived some differences in the way he was treated when he refused to do some assignment, or attempted to take a break and join in discussions upstairs, compared to the white employees, when they would do these things. Based upon these factors, the undersigned finds that complainant was subjected to a hostile work environment. As a result he felt demoralized and unable to take the treatment any longer. He suffered humiliation, embarrassment, emotional distress and loss of personal dignity as a result of the respondent's unlawful racially hostile work place; for which he is entitled the award of \$3,277.45.

On the other hand, the respondent's giving of raises on a consistent basis, and their sending him to paint school for four day training, together with their praise of his work ethic; are not the sort of things which would lead one to suspect an overt racial hostility. Even taking complainant at his word, he did not accuse Mr. Woodrum of ever directing the "N" word in reference to complainant. Although, he did use the term in front of complainant and did use the expression "you need to get your black ass. . ." in talking to complainant. Nevertheless, Mr. Woodrum would lend complainant money on occasion, let him use his car regularly, and took him along for a weekend trip to his camp in Greenbrier County. These are not the actions of a person intent on acting in an overtly racist fashion.

They are instead, consistent with a person who considers himself to be friends with complainant. From Mr. Woodrum's subjective perspective it is quite possible that he does not consider that his actions constitute the creation of a hostile work environment for complainant. He may reasonably believe that his expressions of concern regarding complainant's wife were made out of friendship and in good faith simply as a matter of his belief. However, from an objective standard and from complainant's subjective point of view, such opinions constituted a demeaning point of view, which indicated that he is somehow different from others because they are white and that it was inappropriate to be in a bi-racial marriage. Since Mr. Woodrum is a supervisor of complainant, it does not matter whether he or Mr. Price were aware of complainant's taking offense to this treatment, it is quite simply wrong and demeaning; and thus creates a liability on the part of respondent for unlawful race based hostile workplace discrimination.

Commission's counsel urges the undersigned to find that the discharge of complainant was not undertaken as a result of his refusal to perform required duties of his job, as stated by respondent. He indicates that this is simply pretext for a racially biased supervisor. In this regard he points to the alleged statement that Mr. Woodrum had said of complainant when he left the documents on his desk listing his grievances, that complainant "had shown his true color." He urges that this somehow indicates racial bias on the part of Mr. Woodrum. The undersigned does not agree. Instead, the undersigned finds that if the complainant is to prevail on the issue of discharge, it must be under the retaliatory discharge and mixed-motive analysis; because the undersigned finds that the refusal to wash Mr. Woodrum's vehicle used in the respondent's business was not pretextual, but rather was an actual motivation for the discharge.

Looking to the four factors set forth in Frank's Shoe Store, the first factor is not in dispute. Complainant clearly engaged in protected activity when he left his list of grievances for Mr.

Woodrum. The problematic part of this question is whether the respondent was aware of the protected activity, given the fact that complainant never mentioned racial discrimination in that list of grievances. The undersigned concludes that respondent was clearly aware of the protected nature of the activity and that it was based upon racial issues. The list of grievances included the following: “1) Need to tell Rick to treat wife better 2) Needs to give me more respect . . . 5) Need to find out what personal or non personal vendetta he has out for me 6) No one else in shop is addressed or spoke to in the fashion I am from Rick . . .” Both Mr. Woodrum and Mr. Price were aware that complainant was the only black employee of respondent in Madison. As such the statement that he needs to be given more respect and that no one else in the shop is addressed or spoke to in the fashion I am from Rick, is quite obviously a complaint of racially disparate treatment. Furthermore, since both Mr. Woodrum and Mr. Price were aware of complainant’s bi-racial marriage, the statement that he needs to treat his wife better, and needs to find out what personal or non personal vendetta he has out for him, clearly implicate racial issues as well. The fact that both Mr. Woodrum and Mr. Price understood this to be a complaint of racial discrimination is obvious by the way they reacted. That they had been good to complainant, that they were angry because they were friends with complainant, and that they couldn’t believe that out of complainant. Thus, it was not simply that they were of the opinion that complainant did not wish to work for them anymore, that caused them to discharge the complainant; rather, it was also out of a sense of outrage that complainant would even dare to suggest that he had been treated unfairly because of his race. As Commission’s counsel points out, complainant did not even actually refuse a request that he wash Mr. Woodrum’s vehicle, but rather simply indicated he would not do so in the future; precisely because they refused to discuss the other issues raised by his list of grievances or what lay behind them. Therefore, although it is perfectly reasonable to feel that as a manager, Mr. Woodrum needs complete authority to assign work when and as needed,

without being second guessed, and, that the vehicle that he owned needed to be washed because it was used regularly in the respondent's business; it is not right to fail to discuss complaints of racial harassment by complainant. It is that refusal to discuss which led to complainant's indicating that he would not in the future do certain required duties of his job and ultimately his discharge from employment. That being said, it is extremely inequitable for the respondent to be required to pay back pay when the employer has every right to expect their employee to perform the duties associated with his job. They clearly indicated that all complainant need do is indicate his willingness to perform those duties faithfully to get his job back. Although, they expected complainant to also apologize to Mr. Woodrum in the process. Should complainant have wished to pursue his complaints of discrimination further he could have continued in his employment and pursued his claims without being terminated, the undersigned cannot award back pay under circumstances that would not have risen to the level necessary to meet a constructive discharge standard, when the termination from employment was as much a result of his intransigence as that of the respondent.

C.

CONCLUSIONS OF LAW

1. The complainant, Tony Keith Richardson, is an individual alleging to be aggrieved by an unlawful discriminatory practice, and is a proper complainant under the West Virginia Human Rights Act, W. Va. Code § 5-11-10.
2. The respondent, The Body Shop, Inc., is an employer as defined by W. Va. Code § 5-11-1 et seq., and is subject to the provisions of the West Virginia Human Rights Act.
3. The complaint in this matter was properly and timely filed in accordance with W. Va.

Code § 5-11-10.

4. The Human Rights Commission has proper jurisdiction over the parties and the subject matter of this action pursuant to W. Va. Code § 5-11-9 et seq.

5. The complainant has established a prima facie case of race based hostile workplace discrimination and retaliatory discharge discrimination. The respondent has put forth a defense that no racially hostile work environment existed. Complainant has proven such a racially hostile environment existed by a preponderance of the evidence. Respondent has proven that a valid non discriminatory reason for complainant's termination resulted in his discharge, that being that he refused to perform essential duties associated with his position as detail man consisting of washing the vehicle of Rick Woodrum, which was used in the respondent's business. Complainant has proven by a preponderance of the evidence that he would not have been discharged but for the fact that he raised issues regarding a racially hostile environment with Mr. Woodrum and Mr. Price, which resulted in their extreme anger and outrage at such a suggestion. Had they been willing to discuss the basis of complainant's concerns, they would have quite possibly worked out an agreement that complainant would continue to clean cars when assigned, provided he felt such assignments were being made in a fair and even handed fashion.

6. As a result of respondent's unlawful racially hostile environment, complainant is entitled to an award of \$3,277.45 for humiliation, embarrassment, emotional distress and loss of personal dignity.

7. As a result of the retaliatory discharge under the mixed motive analysis, complainant is entitled to reinstatement in the next available position with respondent as a detail man, and award of front pay at a rate of \$501.43 per month until so reinstated. The equities involved in the case on discharge are such that award of back pay is not appropriate in this case.

D.

RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, it is hereby **ORDERED** that:

1. The respondent named hereinabove shall cease and desist from engaging in unlawful discriminatory practices.

2. Within 31 days of the receipt of the undersigned's order, the respondent shall pay the reasonable costs incurred in the prosecution of this matter, in the amount of \$508.65 to the West Virginia Human Rights Commission for hearing transcript costs and \$22.76 in travel expenses to the Civil Rights Division of the Attorney General's Office.

3. Within 31 days of receipt of the undersigned's order, the respondent shall pay the complainant incidental damages in the amount of \$3,277.45 for humiliation, embarrassment, emotional distress and loss of personal dignity suffered as a result of respondent's unlawful discrimination, plus statutory interest of ten percent.

4. Respondent shall reinstate complainant in the next available position as a detail man with respondent at either its Madison or South Charleston location; and to provide front pay in the amount of \$501.43 per month until such time as complainant is reinstated.

5. In the event of failure of the respondent to perform any of the obligations hereinbefore set forth, complainant is directed to immediately so advise the West Virginia Human Rights Commission, Norman Lindell, Deputy Director, 1321 Plaza East, Room 108-A, Charleston, West Virginia 25301-1400, Telephone: (304) 558-2616.

It is so **ORDERED**.

Entered this 7th day of September, 2000.

WV HUMAN RIGHTS COMMISSION

BY: *Robert B. Wilson*
ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE