



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
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CHARLESTON, WEST VIRGINIA 25301

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ARCH A. MOORE, JR.
Governor

October 4, 1988

Kenneth M. Smith
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Clerk, Kanawha County Circuit Court
ATTN: Judge Andrew MacQueen
P.O. Drawer 2351
Charleston, WV 25328

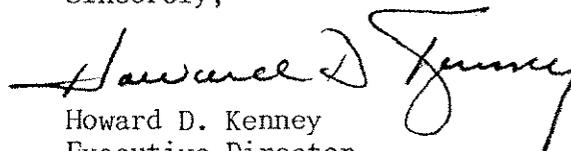
Re: Smith v. Monongahela Power Company, Docket Numbers: EH-302-84,
REP-303-84 & REP-141-82 | Civil Action Number: 96-C-AP-96

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 April 1, 1987, any party adversely affected by this final order may file a petition for review with the supreme court of appeals within 30 days of receipt of this final order.

Sincerely,



Howard D. Kenney
Executive Director

HDK/mst
Attachments

NOTICE
OF STATUTORY RIGHT TO JUDICIAL REVIEW

AMENDED AND EFFECTIVE
AS OF APRIL 1, 1987

Enr. H. B. 2628]

8

116 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same, or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

KENNETH MARSHALL SMITH,

Complainant,

v.

MONONGAHELA POWER COMPANY,

Respondent.

DOCKET NUMBER: EH-302-84
REP-303-84 &
REP-141-82

ORDER

On the 16th day of May, 1988, the West Virginia Human Rights Commission reviewed the proposed order of the hearing examiner, Gail Ferguson, in the above-captioned matter. After consideration of the aforementioned, the Commission does hereby adopt said proposed order as its own.

It is therefore ORDERED that the hearing examiner's proposed order and the stipulations of the parties regarding backpay and interest be attached hereto and made a part of this order.

By this 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 4th day of October, 1988.

WV HUMAN RIGHTS COMMISSION

BY

George Rutherford
GEORGE RUTHERFORD
CHAIR

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

KENNETH MARSHALL SMITH,

COMPLAINANT,

v

Docket No: EH 302-84
REP-303-84 &
REP-141-82

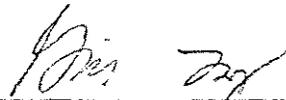
MONONGAHELA POWER COMPANY,

RESPONDENT.

ORDER

This day came the Hearing Examiner, Gail Ferguson, newly assigned to the above-captioned matter, and recommends to the WV Human Rights Commission that the appended stipulation of the parties regarding backpay and interest be adopted and incorporated as part of the final Order of the Commission in the above-styled action.

Enter this 4th day of May, 1988.



GAIL FERGUSON
HEARING EXAMINER

BEFORE THE WEST VIRGINIA
HUMAN RIGHT COMMISSION

KENNETH MARSHALL SMITH)
)
 Complainant)
)
 v.)
)
MONONGAHELA POWER CO.,)
)
)
 Respondent)

Case No. EH-302-84

STIPULATION OF THE
PARTIES
REGARDING BACK PAY AND INTEREST

On October 20, 1987, Judge Andrew A. MacQueen issued an Order in Civil Action No. 96-C-AP-96 granting a temporary stay of an appeal of the above-captioned discrimination case until such time as a final order had been entered by the West Virginia Human Rights Commission determining the amount of back pay to be awarded Ken Smith.

Attachment A includes a calculation of Mr. Smith's estimated annual salary (including estimated overtime) minus interim earnings plus interest calculated at a rate of 10% per annum during the time period between his discharge (November 18, 1983) up until September 27, 1986.

The parties are in agreement that \$90,894 is the proper amount of back pay owed Mr. Smith for the stated time period.

By agreeing to this figure, the complainant does not intend in any way to abandon his claim to back pay and interest which he contends continues to accrue after September; 27, 1986 in accordance with Rule 9.01(2) of the West Virginia Human Rights Commission Rules of Practice and Procedure. Pursuant to that rule, should Mr. Smith eventually prevail in the appeal(s) of this case, his back pay and interest would continue to accumulate until such time as the back pay is actually tendered.

Similarly, by agreeing to the above-stated back pay figure, the respondent, Monongahela Power Company, does not in any way intend to ratify the Commission's decision on the merits in EH-302-84. In conformity with its' appeal of that decision, the respondent contends that the Commission's finding of discrimination and order of relief to Mr. Smith were in error.

KENNETH MARSHALL SMITH,
By Counsel

6-22-87

Date

Barbara J. Fleischauer
Barbara J. Fleischauer

MONONGAHELA POWER COMPANY
By Counsel

6/29/87

Date

Edward G. Kennedy
Edward G. Kennedy