

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

NOLAN SMITH,

COMPLAINANT

v.

Docket No: ER-161-75

CARBON FUEL COMPANY,

RESPONDENT.

FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

This cause came on for hearing on the 13th and 14th days of December, 1978, in Council Chambers, City Hall, Charleston, West Virginia. Present were the Complainant, Nolan Smith, in person; for the Commission, Carter Zerbe, Esquire, Elwood Edwards, Esquire; Mr. Phillip Davis, Intern, Carbon Fuel Company, in the person of Teddy Hendricks, James R. Reynolds and by their counsel, Forrest R. Roles, Esquire. Witnesses for the Complainant were James T. Shelton, Clark D. Dillon, Junior, and Joseph H. Tuemler. The hearing was reported by Janet T. Surface, Reporter, and presided over by Honorable Iris Bressler, Commissioner of the State of West Virginia Human Rights Commission and Honorable James E. Williams, Esquire, Hearing Examiner for the West Virginia Human Rights Commission. The West Virginia Human Rights Commission, after considering the testimony of all witnesses, all exhibits presented, all motions presented, all briefs filed, all arguments of counsel and the recommendations of the Hearing Examiner, makes the following findings of fact and conclusions of law:

1

FINDINGS OF FACT

1. The Complainant in this proceeding, Nolan Smith, is a black male.

2. At all times referred to herein, the Respondent, Carbon Fuel Company, was the owner and operator of coal mines in West Virginia, including the mine designated Number 31, within the company's Winifred Division.

3. In October, 1970, Respondents hired the Complainant as a mine trainee on the day shift at mine Number 31. (TR 71, 76, 77) He remained as a trainee for approximately eight months, after which he was transferred to the midnight shift as a general laborer.

4. After four months as a general laborer the Complainant successfully bid for one of two newly created positions on the maintenance crew. (TR 85, 86)

5. Under the collective bargaining agreement all job vacancies are required to be filled by the following procedure; when a vacancy occurs the position is posted for bidding. The company is then required to award the job to the senior most qualified man who bids for it. If no one bids on the job the company may "draft" a man into the position. (TR 152, 153, Commission's Exhibit 7&8)

6. As a greaser the Complainant was responsible for washing, cleaning and greasing the equipment. (TR 87)

7. The Complainant remained on the maintenance crew as a greaser for approximately four years. During that period he worked for approximately a year with James Shelton, a white male, who was

classified as a general inside repairman and who was hired by the Respondent in that category on April 30, 1973. The Complainant also worked with Earl Fitzgerald, another Caucasian who entered the maintenance crew in the same category as Shelton, but who later was apparently paid at first class welder rates. Fitzgerald was hired by the company in May of 1971. Another man with whom the Complainant worked was Clark Dillon, an electrician. Dillon was employed by the company from 1970 through 1973. He became an electrician in 1972. (TR 41, 227, 229, 274)

8. During his tenure on the maintenance crew the complainant was supervised, either directly or indirectly, by the following individuals; Bill Davis, Foreman; Willard Johnson, Foreman; Ted Hendricks, Foreman; Bob Murphy Chief Electrician; John Armentrout, Chief Electrician, later Division Maintenance Superintendent; Tony Carson and Robert Bennett, Mine Foreman. The personnel Manager during this period was Dan Toney and the Superintendent of the Winifred Division was Maynard Kessler. (TR 76, 86, 91, 97, 337, 338, 445)

9. The Complainant had been on the maintenance crew for a few months when the company instituted a training program to upgrade the skills of the relatively inexperienced personnel on the maintenance force. Even though the other greaser, Daniel Perdue, was selected for training the Complainant was not. When he protested to his Foreman, Bill Davis, Davis told the Complainant that "the company picked who they wanted to pick". (TR 87, 88, 89; 93)

10. The maintenance crew consisted of an electrician, general repair welder, and a greaser. In the absence of the electrician or the general repair welder the greaser would fill in. Thus, during the four year he worked as a greaser the Complainant was able to acquire considerable experience as an electrician and repairman.

(TR 94, 207) However, if the maintenance crew was complete the Complainant would be discouraged by his supervisors from gaining maintenance experience, even if he had finished his greaser responsibilities. (TR 101, 102, 103)

11. During the period he worked as a greaser, the Complainant was called "Lightning" or "Rastus" by employees and supervisory personnel, including Bill Davis, Willard Johnson and Robert Murphy. (TR 97, 98) Despite his protests, this name calling did not cease until the Complainant announced at the lamp house to the present workforce that he was going to consider it a "personal vendetta" if they ever called him those nicknames again. (TR 160, 162) On another occasion he came to work and found a note affixed to a piece of equipment he was getting ready to wash which stated, "do not throw switch nigger washing machine". When he showed the note to Teddy Hendricks, his foreman, Hendricks laughed because he thought the note was funny. After "investigating" the incident, Hendricks told the Complainant that "nigger" referred to a white guy. The Complainant was not aware of any white guy named "nigger" and the specific individual to which Hendricks referred was nicknamed "hot rod". (TR 99, 100, 411, 412)

12. The Complainant who aspired to be an electrician responded to a notice posted at the mine which stated that those with at least one years experience on the maintenance force were eligible to attend training school for certifying individuals as electricians. He attended the school along with Earl Fitzgerald and James Shelton. (TR 110, 111) After he completed the course he started another maintenance course which designed to teach blueprint reading among other things. However, the instructor was called away and the Complainant was unable to complete the course. (TR 112) In April, 1974, he and

the other two men took the state electrician's certification test. The Complainant and Shelton passed the exam, both receiving identical scores. Fitzgerald failed the test the first time but passed it on his second try. Thus all three men were certified by the state to be electricians, (TR 48-59, 112, 113, Commission's Exhibits 11, 11a)

13. At the time the men were certified there existed a permanent unposted vacancy for an electrician on the midnight shift. As a result of his certification Fitzgerald was able to fill that vacancy. There was testimony to the effect that his duties and pay did not change from what they had been prior to certification, however, after certification he could perform electrical work without supervision, something he could not have lawfully done before. Shelton was also advanced to electrician's pay at this time and subsequently drafted to the evening shift to replace a man who had been on temporary assignment as an electrician for three years. Neither the Complainant's classification nor pay changed. (TR 113-115, 230-232, 394, 419, 438, Commission's Exhibit 9)

14. Neither Joseph Tuelmer, union representative and chairman of the mine committee who had been employed at Mine 31 since 1968, nor the Complainant were aware of any other individuals who had been certified as an electrician and then not granted electricians pay. (TR 352)

15. The Complainant was qualified for an electrician's position. Qualifications for the job required state certification, one year's experience on the maintenance force, and a demonstrated ability to do the job. The Complainant had 4 years experience on the maintenance force and state certification. His mine foreman certified that the Complainant had two years of electrician's experience. The Electricians with whom he worked attested to his ability to perform electrical work, several describing his work as "excellent". (TR48-59, 64, 227,

228, 280, 350, 351, Commission's Exhibit 11)

16. At the time of their certification Fitzgerald had been on the maintenance crew for approximately three years, Shelton for one. Both Fitzgerald and Shelton could weld and apparently Fitzgerald had been performing as a first class welder even though he never bid into that classification. Before entering Respondent's workforce Shelton had received maintenance training at Carver Career Center and was maintenance supervisor there for two years. He had no experience on mining equipment. (TR 226, 227, 242, 252)

17. If two or more individuals who varied in their qualifications bid for a particular job and all met the minimum qualifications for the positions, under the collective bargaining agreement the individual with the most seniority would be awarded the job. (TR 104, 105, 256, 438)

18. In May of 1974, the Complainant filed a grievance alleging that Respondent had failed to post an electrician's position and had raised Shelton and Fitzgerald to electrician's rate without raising him. (TR 168, Commissions Exhibit 4)

19. The Complainant's grievance was submitted to arbitration. A hearing was conducted on June 13, 1974 with various representatives of the Company and the Union testifying, in the presence of a reporter. The record was then submitted to the arbitrator, Paul Selby. (Commissions Exhibit 9)

20. Selby's decision was rendered on December 27, 1974. He found that Respondent had discriminated against the Complainant in violation of the job bidding seniority rights under Article XIII of the collective bargaining agreement and ordered the company to award the Complainant back-pay and to up-grade his rate of pay to electrician's rate. (Respondent's Exhibit 1)

21. Joseph Tuelmer participated in a meeting with company officials, including John Armentrout, Tony Carson, and Maynard Kessler, after Selby's decision was handed down. Tuelmer testified that these men assured him that the Complainant would be given his proper position and that if he needed help, he would be given help. (TR 337, 338) Between the time Smith filed his grievance and the time the arbitrator's decision was implemented, a period of approximately eight months, the company would not allow the Complainant to do any electrical or maintenance work. (TR 128, 129, 189)

22. The Complainant began to work as an electrician on January 28, 1975. According to Respondent's witnesses he incorrectly performed a task on that day which caused a delay in getting a piece of equipment back in operation. The next day, the Complainant and a mechanic, Gilbert Wriston were assigned to change the wires in a loader. The Complainant was directed to take the leads out of the resister box while Wriston was told to take leads out of the panel. After the panel lead were removed, Hendricks ordered Wriston to begin his lunch break and instructed the Complainant to Hook back up the leads taken out by the mechanic. The Complainant ran into difficulty and Hendricks handed him a newly printed schematic of the loader. Unable to fully "read" the schematic the Complainant asked Hendricks if a particular wire went on a certian contact. Hendricks, responded that, "you're an electrician, you're supposed to know this". The Complainant completed the job as well as he could and left in an agitated state because he felt he was being "set up". Immediately thereafter he was given a "suspension, subject to discharge" slip signed by Hendricks for "unsatisfactory and insufficient work" (TR 134-139, 182, Commission's Exhinit 3)

23. The Complainant testified that normally he would have had no problem changing the leads, that he and Wriston would have communicated back and forth, but because of the atmosphere created by the presence of Hendricks, he and Wriston were unable to communicate. Schematics which are kept outside the mines, if they are available at all, are rarely available on the job or even around the mine site, and are seldom used by electricians. (TR 136, 239, 342) Many of the electricians could not even read blueprints. (TR 237) The Complainant testified that he had previously told Hendricks he couldn't read blueprints but Hendricks denied this. (TR ;36)

24. Company records failed to disclose even one example of an electrician being suspended or discharged for poor work performance between December 30, 1965 and January 1, 1977. (TR 41, 235-237, 291-293, 423)

25. Normally electricians who are new at their jobs receive help and assistance from their supervisors and are not put into a position which requires them to perform work by themselves. (TR 235, 287, 288, 341, 342, 423)

26. The Complainant requested a hearing on his discharge and the hearing was convened on January 31, 1975. After the hearing, Respondent retained the Complainant as an electrician, subject to a three month probationary period, and to reimburse him for the two days he had been suspended. (TR 187-189, 208, 209)

27. After working with other electricians on the midnight shift for a while he was drafted into a production shift as a "trouble shooter" which required more skill and knowledge than the electrical work on the midnight shift. (TR 209, 210, 350, 351, 433, 434)

28. At the time of the Complainant's certification and prior thereto Respondent faced a chronic shortage of electricians. (TR 230, 254, 288, 306) The company generally encouraged its maintenance

personnel to seek electrician status and gave them the fullest opportunity to acquire the requisite skills and experience. (TR 228, 229, 256, 257) For instance, Clark Dillon, who was employed with Respondent from 1970 to 1973, was made an electrician trainee in 1972, without having had any previous electrical or maintenance experience and within three months was performing electrical work by himself at top pay. (TR 274, 281, 284, 286, 288)

29. There were about five other blacks working at Mine 31 at the time the Complainant was hired. They had been working there for a considerable period of time and were quite a bit older than the Complainant. The Complainant was the first Black on the maintenance crew and he remained the only Black on the crew throughout his employment at Carbon Fuel. (TR 81-83, 344)

30. The individuals involved in the decision to upgrade Shelton and Fitzgerald, and not the Complainant were Ted Hendricks, Robert Murphy and Robert Bennett. Tony Carson, John Armentrout and Maynard Kessler may have been involved as well. (TR 445, 446, Commission's Exhibit 9)

31. The Complainant testified that he was humiliated, upset and embarrassed by his attempted discharge and the company's resistance and opposition to his attempts to acquire electrician's status. (RE 140, 141, 203, 212)

II

CONCLUSIONS OF LAW

Based on the heretofore stated facts, the Commission finds as follows:

1. The Complaint in this case was filed timely, properly and in accordance with the procedures established by the West Virginia Human Rights Commission and states facts sufficient upon which to support a charge of a violation of the West Virginia Human Rights Act West Virginia Code, Ch. 5 Art. 11 Sec 9 (a) And Ch. 5 Art. 11 Sec. 10.

2. The West Virginia Human Rights Commission has at all times referred to herein, had and continued to have jurisdiction over the Respondent and the subject matter of this complaint.

3. At all times referred to herein, the Respondent herein, was an "employer" as defined in West Virginia Code Ch. 5 Art. 11 Sec. 3(a) and used in West Virginia Code Ch. 5 Art. 11 Sec. 9 (a).

4. At all times referred to herein, the Complainant has been and continued to be, a citizen and resident of West Virginia within the meaning of West Virginia Code, Ch. 5 Art. 11 Sec. 2.

Applicable provisions of the West Virginia Human Rights Act states that :

"It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required. .
"(W. Va. Code §5 - 11- 9)

Section eleven of Article five defines discrimination to mean:

"to exclude from, or fail or refuse to extend to,

a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age or blindness and includes to separate or segregate". (W. Va. Code § 5-11-3 (h))

The Commission further finds from the facts and the Law, that there are three issues to be resolved namely:

1. Whether the Respondent's failure to raise Nolan Smith to electrician's rate after he obtained his electrician's certificate constituted an unlawful discriminatory practice.

2. Whether the Respondent's attempted discharge of the Complainant constituted an unlawful discriminatory practice.

3. Whether the Respondent's conduct toward the Complainant created a pattern of discriminatory Treatment.

A scarcity of judicial decisions interpreting the applicable statutes and the similarity between the said Act and Title VII of the 1964 Civil Rights Act, forces the Commission to be guided in its decision by those decisions of the Federal Judiciary.

The burden of establishing a prima facie case of racial discrimination in employment is on the moving party. McDonnell Douglas Corporation v. Green, 411 v.s. 792 (1973). The Court in McDonnell, Supra ruled a prima facie case of racial discrimination in employment exists when the Complainant can prove (1) that he is black, (2) that he applied and was qualified for an opening in Respondent's workforce, (3) that despite his qualifications he was rejected and (4) that another or others with qualifications similar to the Complainant were selected for the position. The Court in McDonnell, Supra, recognized that hiring promotion procedures may vary, and that the above four criteria may have to be modified in order to allow for these differences. Hence,

it was concluded that all four of that criteria need not be applicable in all cases. McDonnell, Supra at N. 13.

The facts of this case show that Complainant is black and was prevented from bidding on the electrician's job because of the Respondent's failure to post said job even though Respondent had a duty to do so under the collective bargaining agreement. It is axiomatic that given the opportunity, Complainant would have bid on the said job and by virtue of being more senior in time than the White successful candidate, would have been the successful candidate. Thus the Complainant has met his initial burden by showing that he is a minority, that he was qualified, and that another individual with lesser qualifications, ie less seniority, was selected to fill the position. O'Connell v Ford Motor Co., 11 EPD ¶ 10, 753 at P. 7162 (E. C. Mich. 1975)

Further, the disputed facts show that Complainant, Shelton and Fitzgerald were certified upon passing the state-administered electrician's test. However, only Complainant was not elevated to the status of electrician. The Courts have consistently held that inconsistent treatment between similarly situated employees is sufficient to establish discrimination in the absence of a legitimate non-discriminatory reason for the practice. McDonnell V Santa Fe Trail Transportation Co., 49L. Ed 2d 493 (1976); Kinsey V First Regional Securities, Inc., 557 F. 2d 830 (D.C. Cir. 1977); Gates v Georgia Pacific Corp., (2 EPD ¶ 10, 305) 326 F. Supp. 397, 399 (D. Ore. 1970); Affd. 492 F. 2d 292 (9th Cir. 1974)

Therefore, as to issue number one, the Commission holds that the Respondent's failure to raise the Complainant to electrician's rate

after he obtained his electrician's certificate, constituted an unlawful discriminatory practice.

As to Issue Number Two, the facts show that immediately after Complainant was placed in an electrician's position, by virtue of a favorable Umpire's decision on Complainant's grievance, that he was given a "suspension, with intent to discharge" slip. The reason given by Respondent supporting its action was that Complainant performed "unsatisfactory". This action was taken by Respondent the second day after Umpire Selby's decision was effected. The Complainant testified that he felt he had been "set up" and indeed the facts support his position. Mr. Hendricks, Complainant's foreman, testified that he had received instructions to "evaluate" the Complainant's work. (TR 404) Further, Mr. Hendricks had in his possession that day a schematic drawing of the electrical system of the machine the Complainant was working on, even though he was aware of the Complainant's inability to "read" such drawing. Further, evidence adduced at the hearing showed it was indeed a rare occurrence when such drawings were even brought into the mine; normally such drawings remained outside the mine, free of the damaging humidity. Further, Complainant and others testified that the job Complainant and another contract employee were assigned to that day, ie "changing leads" was always done by two men working closely in harmony and communicating frequently. Further, that Foreman Hendricks, without rationale, pulled the other contract employee off the job and then proceeded to evaluate Complainant's progress. Further, when Complainant sought Mr. Hendricks' help, Mr. Hendricks refused, saying, "if I was going to show him how to do the job, how was I going to evaluate what he was capable of doing", TR 405-406, even though

this same Mr. Hendricks admitted that the normal procedure is to give help and aid to a new man working as an electrician, if they run into problems. (TR 423) Further, Mr. Hendricks himself admitted that "changing leads" was a "pretty tough job". Bear in mind, that this "suspension, with intent to discharge" slip was given to the Complainant on his second day working as an electrician.

Therefore, as to Issue Number Two, the Commission holds that the Respondent's attempted discharge of the Complainant constituted an unlawful discriminatory practice.

As to Issue Number Three, the transcript is filed with evidence showing that Respondent treated and allowed Complainant to be treated in a racially discriminatory manner. The Chief Electrician, Mr. John Armentrout, in response to the statement that the Complainant got a bid on a greaser's job, was paraphrased as saying, "it was beyond his control because he had seniority". An analysis of that remark reveals that if Mr. Armentrout had control over the matter, the Complainant would not have received the bid. Many behavior incidents were cited in evidence including the use of such racially despised terms of "Nigger", "rastus" and "Lightning" which served no useful purpose at all, except to humiliate, embarrass and denigrate the person of the Complainant. TR 93, 96, 98, 100, 103, 130, 137, 155, 156, 200, 208, 287, 288, 290, 294, 295, 296, 341, 352, 404, 405, 413, 422. And this despicable practice was not limited solely to contract employees; but included management personnel as well. TR 97, 158, 289. It is evident that Respondent was against the inclusion of Complainant in the maintenance force and that opposition alone can and does form an independent ground for finding the Respondent's conduct discriminatory.

Jackson V. City of Akron, 11 EPD 9, 873 (H. D. Ohio 1976); Long V. Ford Motor Co., 496 F. 2d 500 (6th Cir. 1974); Potter V. Goodwill Industries, 518 F. 2d 864 (6th Cir. 1974).

Therefore, as to Issue Number Three, the Commission holds that the Respondent's conduct toward the Complainant created a pattern of discriminatory treatment.

ORDER

Therefore, pursuant to the above and foregoing Findings of Facts and Conclusions of Law, it is hereby ORDERED as follows:

1. The Respondent, Carbon Fuel Coal Company, its agents, employees, successors and assigns, shall permanently CEASE and DESIST from the unlawful practice of discrimination against persons because of their race, color, religion, age, ancestry, national origin, sex or blindness.

Respondent shall refrain from:

- A. Refusing to hire, train, promote, or otherwise deny or withhold any employment opportunities either directly or indirectly from any person because of the race, religion, color, national origin, ancestry, sex, age or blindness of any prospective employee of such employment opportunities.
- B. Representing to any person that an employment, training or promotion opportunity is not available when in fact it is so available.

C. Discriminating against any person in the terms or conditions of employment or in furnishing facilities, services, training or privileges in the connection with employment, promotion or training, or use of any employment services, because of the race, color, religion, ancestry, sex, age, national origin or blindness of any present or prospective employee, contractor, sub-contractor or user of such employment facilities.

D. Intentionally influencing or attempting to influence any prospective employee's, contractors, or sub-contractors locational choice of employment training or promotion on account of race, color, religion, age, ancestry, national origin, sex, or blindness of such person.

E. Making or causing to be made statements, policies, quotas, or percentages with respect to employment, training or promotion opportunities which indicate a preference, discrimination on the basis of race, color, religion, national origin, ancestry, sex, age or blindness.

2. It is further ORDERED that the Respondent, Carbon Fuel Coal Co., shall forthwith adopt and implement the following affirmative action program to eliminate the effects of any discriminatory practices and to ensure that in the future all employment, training and promotion opportunities in all areas and fields in which they do business will be made available to Black persons on the same basis that they are made available to White persons.

A. Within 30 days of the effective date of this ORDER, Respondent shall prepare and distribute a copy of this ORDER and a written statement of non-discriminatory policies to all of its present full-time and part-time employees and agents, such

statement to include, but not necessarily be limited to, a specific statement that neither Respondent nor its agents or employees shall deny or withhold employment, training or promotion opportunities, advantages, facilities, privileges or services to or from any person or otherwise discriminate against him or her, except for reasons applicable alike to all persons, regardless of race, color, religion, national origin, ancestry, sex, age or blindness, as provided in Chapter 5, Article 11, West Virginia Code; further, that no employees, hourly or management, shall address any Black person by words that are racially denigrating or insulting, and that no direct or indirect means may be utilized to contravene such policy;

- B. In the event that a firm, association, company corporation or other person or legal entity is engaged by Respondents to act as an employment agency or otherwise to manage or operate any business activity of or under control of Respondent, such firm, Association, company, corporation of person or other legal entity shall be notified in writing within five days of its engagement, of the contents of the statement of non-discriminatory policies prepared in accordance with paragraph 2 (a) of this ORDER, supplied with a copy thereof and shall further be notified that all employment, training and promotion opportunities are to be given without regard to race, color, religion, national origin, ancestry, age, sex or blindness, and that no direct or indirect means may be utilized to contravene such policy.

- C. The Respondent shall post and maintain in all their offices, in a prominent place where it is clearly visible, a sign reading substantially as follows:

UNDER THE WEST VIRGINIA HUMAN RIGHTS ACT, ALL EMPLOYMENT, TRAINING AND PROMOTION OPPORTUNITIES AVAILABLE THROUGH THIS OFFICE SHALL BE AVAILABLE WITHOUT REGARD TO RACE, COLOR, RELIGION, ANCESTRY, NATIONAL ORIGIN, SEX, AGE OR BLINDNESS.

- D. All future advertising by the Respondent, through whatever medium, shall contain the phrase "Equal Opportunity Employer". The Respondent shall not reduce, diminish or change the character of its advertising to avoid compliance with this requirement.
- E. In developing and implementing this affirmative action program the Respondent may call upon the Commission's technical assistance.
3. It is further ordered that within 30 days of the effective date of this ORDER and for a two year period thereafter, the Respondent Carbon Fuel Co., shall keep and maintain a record of all persons who file an application for employment, and Training sessions offered and any promotional opportunities available through the Respondent, its agent, employees, successors or assigns. Such record shall include:
- A. The race of the applicant as the race of the applicant appears to the Respondent based on its Common experience.
- B. The disposition of the applicant.

C. In the event the applicant is Black and not hired, trained or promoted, the reason or reasons for so doing.

4. It is further ORDERED that within 90 days of the effective date of the ORDER and thereafter at 6 months intervals for a period of two years, the president or other responsible officer or representative of the Respondent Carbon Fuel Company, shall file with the Commission a sworn statement affirming that Respondent has fully and completely complied with this ORDER. Such sworn statements shall be accompanied by a report which includes the following:

A. Copies of all statements or correspondence as are required in paragraphs 2 (A) and B of this ORDER.

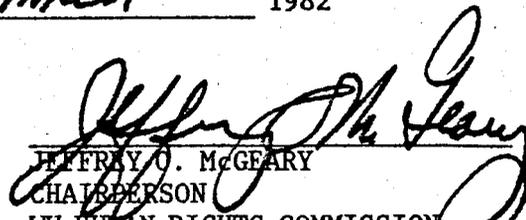
B. Copies of reports made in accordance with paragraph 3 of this ORDER.

C. Copies of all advertising made through any media and the date or dates of its appearance.

5. It is further ORDERED that the Respondent, Carbon Fuel Co., shall forthwith pay to Complainant, Nolan Smith, five hundred dollars (\$500.00) by certified or cashiers check, such amount representing Compensation and damages for the humiliation, embarrassment, emotional distress and loss of personal dignity resulting from Respondent's discrimination against the Complainant. It is the finding of the Commission that grievances filed by the Complainant under the labor agreement fully satisfied the Complainant as to issues Number 1 and 2.

Such check shall be tendered to the office of the WV Human Rights Commission, 215 Professional Building, 1036 Quarrier Street, Charleston, WV 25301, for delivery to the Complainant no later than two weeks after receipt of this Order.

ENTERED, this 11th day of March 1982


JEFFREY O. McGEARY
CHAIRPERSON
WV HUMAN RIGHTS COMMISSION