



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

June 27, 1986

Alice L. Thomas
Box 853
Kimball, WV 24953

Winston Polly, III, Esq.
106 1/2 S. Fayette Street
Beckley, WV 25802

Frank S. Curia
WV Dept. of Highways
1900 Washington Street, E.
Charleston, WV 25301

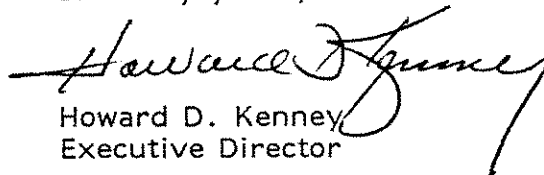
RE: Alice L. Thomas V McDowell County Maintenance
State Road Commission/ER-107-70

Dear Ms. Thomas, Ms. Polly, and Mr. Curia:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Alice L. Thomas V McDowell County Maintenance, State Road Commission/ER-107-70.

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 (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ALICE L. THOMAS,

Complainant,

vs.

Docket No. ER-107-70

McDOWELL COUNTY MAINTENANCE,
STATE ROAD COMMISSION,

Respondent.

O R D E R

On the 11th day of June, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Juliet Walker-Rundle. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own, with the exceptions and amendments set forth below.

The Commission hereby amends the Recommended Decision in paragraph 1, of section "V. DETERMINATION" by deleting the interest figures for the year 1986 and by deleting as the total back pay award the figure \$5,959.65 and substituting therefor the figure \$5,814.29.

The Commission further amends the Recommended Decision in paragraph 2, section V. by deleting the phrase "psychic damages" and substituting therefor the phrase "incidental damages for embarrassment and humiliation."

The Commission further amends the Recommended Decision by adding the following paragraph to section V:

"3. The Respondent shall cease and desist discriminating against its employees because of their race."

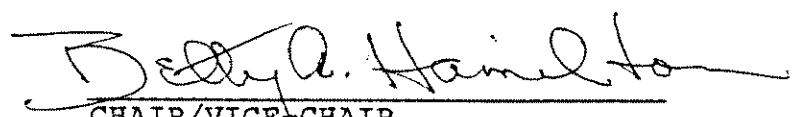
It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order, except as amended by this Order.

The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within thirty-five (35) days of service of said Order by copies of cancelled checks, affidavit or other means calculated to provide such proof.

By this Order, a copu 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 ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 27 day of June, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

ALICE L. THOMAS,
Complainant,

Approved
RRS
5/16/86

COMPLAINANT,

VS.

CASE NO. ER107-70

McDOWELL COUNTY MAINTENANCE,
STATE ROAD COMMISSION,
Respondent.

RESPONDENT.

RECOMMENDED DECISION

I. PROCEDURAL HISTORY

A complaint was filed before the West Virginia Human Rights Commission on the 27th day of February, 1970, wherein Complainant alleged that respondent discriminated against her in regards to her race. A pre-hearing conference was held on April 16, 1985.

A hearing was held on June 5, 1985. The complainant, Alice L. Thomas, appeared in person and by counsel, F. Winston Polly. The respondent, McDowell County Maintenance, appeared by counsel, Frank S. Curia. The testimony of five (5) witnesses was heard. On behalf of the complainant, Alice L. Thomas: Alice L. Thomas and John Thomas testified. On behalf of the respondent: H. G. Sawyer, Marilyn Cochran and Penny Stafford, testified.

II. ISSUE

Whether there was in fact a pattern and practice of illegal discrimination and whether the Complainant was a victim of same.

III. FINDINGS OF FACT

1. Complainant was employed in 1962 by Department of Highways and is a black female.
2. Complainant was terminated March 3, 1969, and again January 30, 1970.
3. That none of the three (3) employees were given written reasons for their dismissal nor did they have to be given written reasons for their dismissal under Department procedures at that time.
4. Complainant was a Clerk until she was re-employed on March 11, 1969.
5. That upon her termination on January 30, 1970, she was replaced by a white female; and Complainant was never employed by Respondent after January 30, 1970;
6. Complainant was Chief Clerk at the time of her discharge and was earning \$410.00 per month.
7. Complainant was the only black female in the district office in McDowell County, West Virginia;
8. H. G. Sawyer was employed in March, 1969, during the strike. At the time of his employment, the office was being picketed and he had few, if any, employees.
9. Shortly after H. G. Sawyer was employed he re-hired the Complainant on March 11, 1969;
10. Marilyn Cochran was employed by H. G. Sawyer as a Clerk shortly after the Complainant was re-employed on March 11, 1969.
11. That Complainant did make reasonably diligent efforts to locate other employment and did in fact become a full time employee

of the Board of Education of McDowell County, in approximately May of 1971. In addition, Complainant worked for approximately one year for Buddy's Discount at \$106.00 per month less what she was making prior to her termination by the Department of Highways.

12. The Respondent inadequately documented the job performance of the Complainant.

IV. CONCLUSIONS OF LAW

In an action to redress unlawful discriminatory practices in employment under the West Virginia Human Rights Act, as amended, W. Va. Code 5-11-1, et seq., the burden is upon the Complainant, to prove by a preponderance of the evidence a prima facie case of discrimination. If the Complainant is successful in creating this rebuttable presumption of discrimination, the burden then shifts to the Respondent to offer some legitimate and nondiscriminatory reason for the rejections. Should the Respondent succeed in rebutting the presumption of discrimination, then the Complainant has the opportunity to prove by a preponderance of the evidence that the reasons offered by the Respondent were merely a pretext for the unlawful discrimination. Syl pt 3, in part, Shepardsstown VFD v. West Virginia Human Rights Commission 309 S.E. 2d 342 (1983).

One who complains of disparate treatment has the initial burden of proving a prima facie case of employment discrimination. Once the Complainant has established his prima facie case the burden of proof shifts to the employer, who must articulate some legitimate nondiscriminatory reason for the Complainant's discharge

or rejection. The Complainant may rebut such evidence by showing that the employer's reasons are merely pretextual. McDonnell Douglas Corp. v. Green, 411 U. S. 791 (1973). The prima facie case must be established by direct proof.

It is the opinion of this examiner that the Complainant has rebutted the evidence of the Respondent by offering credible evidence that she was employed from 1962 to 1969, during which time there were no complaints with the quality of her job performance. The Respondent has kept inadequate records to document a nondiscriminatory basis for termination of the Complainant.

The Respondent has left itself in the almost untenable position of having to rely upon the recollections of two (2) material witnesses to an event that occurred approximately fifteen (15) years ago. With documentation, the outcome of this case may well have been different. With documentation of poor job performance the Respondent's material witnesses may have been provided with sufficient information upon which to refresh their memory of the facts which could have been offered in rebuttal to Complainant's proof.

This examiner finds that the Complainant has met her burden of proof by a preponderance of the evidence; that the Respondent violated the provisions of the West Virginia Human Rights Act; that the Complainant belonged to a racial minority; that she was improperly substituted by a person of racial majority; that she was qualified for the job from which she was dismissed, and, on the basis of the record of this case, that while the Complainant satisfactorily performed her duties, she was dismissed.

V. DETERMINATION


This examiner recommends finding that the Respondent has violated the provisions of Chapter 5, Article 11, Section 9, of the Code of West Virginia pertaining to racial discrimination, and recommends as follows:

1. That Complainant be awarded \$820.00 for back pay for two (2) months of being unemployed in 1970 and \$1,272.00 for twelve (12) months of backpay, at \$106.00 as the difference between the amount she made at Buddy's Discount (\$304.00) and The Department of Highways (\$410.00); plus interest is awarded in the amount of \$3,867.65 and was figured as follows:

1971	6%	of	\$2092.00	=	\$125.52	(	\$2092.00	+	125.52	=	\$2217.52)
1972	6%	of	2217.52	=	133.05	(	2217.52	+	133.05	=	2350.57)
1973	6%	of	2350.57	=	141.03	(	2350.57	+	141.03	=	2491.60)
1974	6%	of	2491.60	=	149.50	(	2491.60	+	149.50	=	2641.10)
1975	6%	of	2641.10	=	158.47	(	2641.10	+	158.47	=	2799.57)
1976	6%	of	2799.57	=	167.97	(	2799.57	+	167.97	=	2967.54)
1977	6%	of	2967.54	=	178.05	(	2967.54	+	178.05	=	3145.59)
1978	6%	of	3145.59	=	188.74	(	3145.59	+	188.74	=	3334.33)
1979	6%	of	3334.33	=	200.06	(	3334.33	+	200.06	=	3534.39)
1980	6%	of	3534.39	=	212.06	(	3534.39	+	212.06	=	3746.45)
1081	6%	of	3746.45	=	224.79	(	3746.45	+	224.79	=	3971.24)
1982	10%	of	3971.24	=	397.12	(	3971.24	+	397.12	=	4368.36)
1983	10%	of	4368.36	=	436.84	(	4368.36	+	436.84	=	4805.20)
1984	10%	of	4805.20	=	480.52	(	4805.20	+	480.52	=	5285.72)
1985	10%	of	5285.72	=	528.57	(	5285.72	+	528.57	=	5814.29)
1986*	10%	of	5814.29	=	145.36	(	5814.29	+	145.36	=	5959.65)

Wherefore, the total back pay award plus interest is \$5,959.65.

2. That Complainant be awarded \$7,000.00 as psychic damages.


 JULIET WALKER-RUNDLE
 HEARING EXAMINER
 P. O. DRAWER 469
 PINEVILLE, WV 24874-0469
 304-732-6411

CERTIFICATE OF SERVICE

I hereby certify that the foregonig Recommended Decision was served upon F. Winston Polly, III, 106½ S. Fayette Street, Beckley, West Virginia, 25801, and Frank S. Curia, Department of Highways, 1900 Washington Street, East, Charleston, West Virginia, 25301, by depositing tue and correct copies of same in the United States Mail, postage prepaid, this 2nd day of May, 1986.

