



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

WV HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 104/106

Charleston, WV 25301-1400

TELEPHONE 304-348-2616

1 June 1990

GASTON CAPERTON
GOVERNOR

Quewanncoii C. Stephens
Executive Director

Doretha A. Womack
275 Eureka Road
Charleston, WV 25314

Hastings S. Trigg, Jr., Esq.
E. I. DuPont DeNemours & Company
Legal Department
Wilmington, Delaware 19898

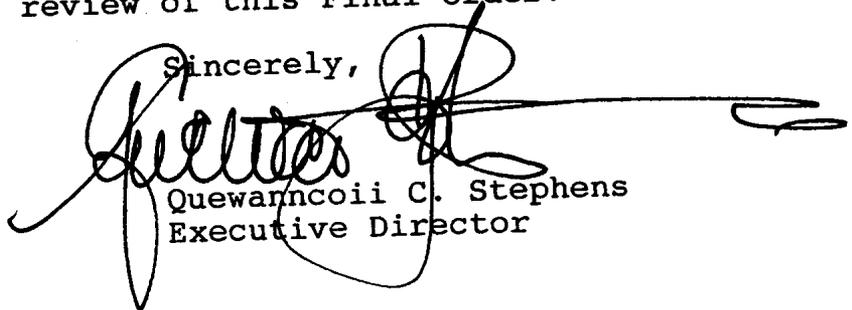
Mike Kelly
Deputy Attorney General
L & S Building, 5th Floor
812 Quarrier Street
Charleston, WV 25301

Re: Womack v. E. I. DuPont DeNemours & Company, Belle Works
Docket No. ER-89-87

Dear Parties and Counsel:

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 July 1, 1989, any party adversely affected by this Final Order may file a petition for review. Please refer to the attached "Notice of Right to Appeal" for more information regarding your right to petition a court for a review of this Final Order.

Sincerely,



Quewanncoii C. Stephens
Executive Director

Enclosures

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

cc: Secretary of State

NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal, you must file a petition for appeal with the clerk of the West Virginia Supreme Court naming the Human Rights Commission and the adverse party as respondents. The employer or the landlord, etc., against whom a complaint was filed, is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, landlord, etc., against whom a complaint was filed. If the appeal is granted to a nonresident of this state, the nonresident may be required to file a bond with the clerk of the supreme court.

IN SOME CASES THE APPEAL MAY BE FILED IN THE CIRCUIT COURT OF KANAWHA COUNTY, but only in: (1) cases in which the commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this order.

For a more complete description of the appeal process see West Virginia Code § 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

DORETHA A. WOMACK,

Complainant,

v.

DOCKET NO. ER-89-87

E. I. du PONT de NEMOURS
& COMPANY,

Respondent.

FINAL ORDER

On 11 April 1990 the West Virginia Human Rights Commission reviewed the recommended findings of fact and conclusions of law filed in the above-styled matter by hearing examiner Theodore R. Dues, Jr. After consideration of the aforementioned, and all exceptions filed in response thereto, as well as the transcript of record and arguments and briefs of counsel, the Commission decided to, and does hereby, adopt said recommended findings of fact and conclusions of law as its own.

While ruling in favor of respondent, the Commission notes that the evidence revealed a disturbing discrepancy between DuPont's interpretation of its seniority policy and the policy's actual wording. Viewing the evidence as a whole, however, such discrepancy did not convince the Commission that

DuPont's decision regarding Ms. Womack was more likely than not motivated by a discriminatory intent.

The Commission also notes that Ms. Womack did, in fact, establish a prima facie case of discrimination. This error of the hearing examiner does not, however, constitute grounds for rejection of his recommended findings or for remand. Once a case has been fully tried on the merits, as it was here, a reviewing administrative body or court should focus on "the ultimate question of discrimination vel non." U. S. Postal Service Board of Governors v. Aikens, 467 U.S. 711, 714 (1983). The time to determine whether complainant made out a prima facie case is not after all evidence has been submitted, but is at the conclusion of complainant's case-in-chief. Here, fortunately, the hearing examiner, though mistakenly ruling that complainant failed to establish a prima facie case, preserved the record by allowing the respondent an opportunity to articulate a legitimate non-discriminatory reason for its action regarding Ms. Womack, and for Ms. Womack to show that this reason was pretextual. Thus, the Commission had before it on review all of the evidence necessary to decide the ultimate issue: whether the respondent did or did not unlawfully discriminate against Ms. Womack. We find that it did not.

Accordingly, it is hereby ADJUDGED, ORDERED and DECREED that the complaint filed in this matter by Doretha A. Womack

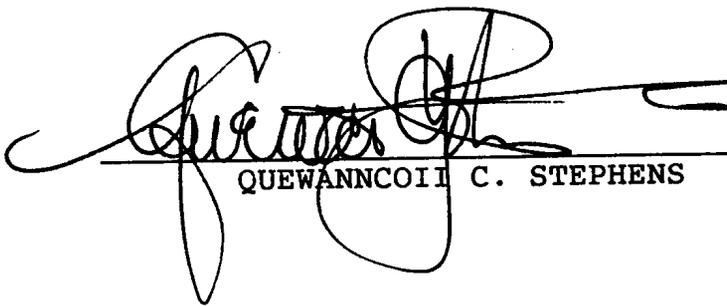
against E. I. du Pont de Nemours & Company be, and the same is hereby, dismissed with prejudice. The examiner's recommended findings of fact and conclusions of law are to be attached hereto and made a part of this final order.

By this final order, a copy of which shall be sent by certified mail to the parties and their counsel, and by first class mail to the Secretary of State of the State of West Virginia, the parties are hereby notified that they have ten (10) days to request that the Human Rights Commission reconsider this final order or they may seek judicial review as outlined in the "Notice of Right to Appeal attached hereto.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 31st day of May, 1990 in Charleston, Kanawha County, West Virginia.



QUEWANNCOII C. STEPHENS

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

DORETHA A. WOMACK,
Complainant,

v.

E. I. DUPONT DEMOURS COMPANY,
Respondent.

DOCKET NO: ER-89-87

RECEIVED

MAR 10 1989

WV HUMAN RIGHTS COMM.
Answered _____

**EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

This matter matured for public hearing on October 27, 1987. The hearing was held at the 4th floor Conference Room in the Daniel Boone Building, Charleston, West Virginia. The hearing panel consisted of Theodore R. Dues, Jr., Hearing Examiner and Russell VanCleve, Hearing Commissioner. The Complainant appeared in person and by her Counsel, Ann Spaner. The Respondent appeared by its representative, Elbert Price, and by its Counsel Hastings S. Trigg, Jr.

After a review of the record, any exhibits admitted in evidence, any stipulations entered into by the parties, any matters for which the Examiner took judicial notice during the proceedings, assessing the credibility of the witnesses and weighing the evidence in consideration of the same, the Examiner makes the following findings of fact and conclusions of law. To the extent that these findings and conclusions are generally consistent to any proposed findings of fact and conclusions of law submitted by the

parties, the same are adopted by the Examiner, and conversely, to the extent the same are inconsistent to the findings and conclusions, the same are rejected.

ISSUES

1. Whether the Respondent discriminated against the Complainant, on the basis of her race, in its separation of her employment due to a declared excess in the work group.
2. If so, to what relief is the Complainant entitled.

FINDINGS OF FACT

1. The Complainant was employed at the Respondent's Belle Plant since August 8, 1977. Her initial position was stenographer class C.
2. In February 1978, the Complainant transferred to the training division which was a class B job. This position was under the employees relations department.
3. In July 1986 the Respondent experienced a reduction in force. On or about July 8, 1986 the Complainant was notified that her job was excessed; meaning that she would be laid off.
4. The Complainant felt that these matters were to be determined by group seniority and accordingly felt aggrieved by her separation of employment.
5. At the time her position was excessed, the Complainant's group consisted of three A class and one other

B class individual. The Complainant had been employed in this position, as was previously indicated, since February 1978. The other B class employee in the employee relations clerical group had been employed since 1982. By the end of 1986, all Belle employees had completed the training available at the Belle Plant.

6. in July 1986, all supervisor training began to be performed in Wilmington, Delaware.

7. Subsequently, the Respondent implemented the voluntary termination incentive to prevent layoffs of employees. The Complainant acknowledged that she was eligible for this program.

8. Subsequent to July 1986, the Complainant had numerous opportunities to elevate herself to an A class position. In fact, the Complainant applied on two such occasions.

9. The Complainant declined a couple of A class positions, on which she had bid and which her seniority would have enabled her to obtain the position.

10. Other jobs were available in class A positions which Complainant's seniority would also have resulted in her obtaining the position, but she did not apply because she preferred to work at a position where she interfaced directly with people.

11. During her tenure, the term "seniority" as used by the respondent, meant specific group seniority and not plantwide seniority.

12. The Complainant does not question the decision to declare her position excess but only the effect of the decision.

DISCUSSION

The Complainant failed to establish a prima facie case of race discrimination, in as much as, she failed to establish she was treated differently in the terms and conditions of her employment, than those persons who were not in the protected group. Specifically, the evidence clearly establishes that the respondent was on a unit seniority basis, as opposed to, a plantwide seniority basis. Even the Complainant acknowledges that she was not challenging the fact that the Respondent exceeded her position, but instead the impact that the excess had on her. The evidence further establishes that the Complainant was provided opportunities and sought several, which would elevate her to an A class position. On at least two occasions, she chose not to apply for these positions due to the fact that she preferred to work with people. Nonetheless, the evidence clearly establishes that the respondent's conduct was not motivated by the Complainant's race and further that she in fact did not suffer from racial discrimination as a result of her position being exceeded or the impact of the same on her employment. McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed. 2d 668 (1973); Texas Department of Community Affairs v.

Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed. 2d 207 (1981); state ex rel. State of West Virginia Human Rights Commission v. Logan-Mingo Area Mental Health Agency, Inc., 329 S.E. 2d. 77 (1985).

CONCLUSIONS OF LAW

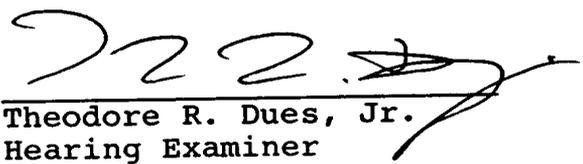
1. The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter herein.
2. The Complainant failed to establish a prima facie case of race discrimination.
3. Accordingly, the Complainant failed to establish by a preponderance of the evidence that her position being exccessed, and, the impact of the same upon her, was motivated by her race.

PROPOSED ORDER

Accordingly, the Examiner hereby recommends to the Commission that judgment be awarded to the Respondent.

DATED: February 10, 1989

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner