



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

December 12, 1988

Ruthenia Mayo
1730 8th Ave.
Huntington, WV 25701

Southern Community Action Agency, Inc.
1682 11th Ave.
Huntington, WV 25701

Edward M. Kowal, Jr., Esq.
P.O. Box 1835
Huntington, WV 25719

Sharon Mullens
Deputy Attorney General
812 Quarrier St.
L & S Bldg. - 4th Floor
Charleston, WV 25301

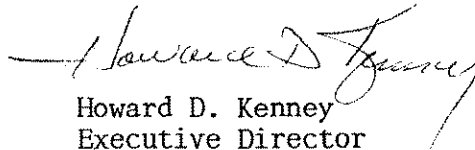
Re: Mayo v. Southwestern Community Action Agency, Inc. d/b/a
Fairfield West Community Center ER-616-84A & ES-617-84A

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

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE
OF STATUTORY RIGHT TO JUDICIAL REVIEW
AMENDED AND EFFECTIVE
AS OF APRIL 1, 1937

Ear. H. B. 2638]

3

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

RUTHENIA MAYO,

Complainant,

vs.

DOCKET NOS.: ER-616-84A
ES-617-84A

SOUTHWESTERN COMMUNITY ACTION,
AGENCY, INC., d/b/a FAIRFIELD
WEST COMMUNITY CENTER,

Respondent.

O R D E R

On the 31st day of October, 1988, the West Virginia Human Rights Commission reviewed the Recommended Findings of Fact and Conclusions of Law and Proposed Order and Decision of Hearing Examiner Theodore R. Dues, Jr. and Complainant Ruthenia Mayo's Exceptions to the Hearing Examiner's Findings of Fact and Conclusions of Law in the above-captioned matter. After consideration of the aforementioned, the Commission does hereby adopt in toto the Recommended Findings of Fact and Conclusions of Law and Proposed Order and Decision as its own.

It is hereby ORDERED that the Hearing Examiner's Recommended Findings of Fact and Conclusions of Law and Proposed Order and Decision 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, the parties are hereby notified that they have ten (10) days within which to request reconsideration of the West Virginia Human Rights Commission's Order, and that they may seek judicial review.

ENTERED this 12th day of Dec, 1988.

Respectfully submitted,

George Ruthford
~~CHAIR/VICE-CHAIR~~
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

RECEIVED

SEP 26 1988

W.V. HUMAN RIGHTS COMM.

RUTHENIA MAYO,

Complainant,

v.

DOCKET NOS.: ER-616-84A
ES-617-84A

SOUTHWESTERN COMMUNITY ACTION,
AGENCY, INC., d/b/a FAIRFIELD
WEST COMMUNITY CENTER,

Respondent.

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

This matter matured for public hearing on the 6th and 7th day of October, 1986. The hearing was held in Judge Egnor's Courtroom, in the Cabell County Courthouse, Huntington, West Virginia. The hearing panel on each day consisted of Theodore R. Dues, Jr., Hearing Examiner. The parties previously waived the presence of a Hearing Commissioner.

The Complainant appeared in person and by her counsel, Sharon Mullens. The Respondent appeared by its counsel, Edward M. Kowal, Jr., and by its representative, Joan Ross.

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 weighting 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 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 actions and inactions of Respondent brought about the constructive discharge of the Complainant?

2. Whether the Respondent engaged in unlawful discriminatory employment practices when Complainant's immediate supervisor continually harassed her and replaced her without just cause?

3. If so, what should the remedy be?

PROPOSED FINDINGS OF FACT

1. Complainant is a forty year (40) old black female who currently resides in Flanders, New Jersey.

2. Southwestern is a community action counsel responsible for a variety of programs in southwestern West Virginia.

3. Complainant was hired by Southwestern in March, 1983. She was hired to provide secretarial services with particular responsibility for compiling and planning information and preparation of documents.

4. Complainant was employed at the "Fairfield West" facility of Southwestern. Fairfield West facility provides community services to low income, handicapped, and elderly residents of Cabell County, particularly the Fairfield West

community.

5. Joan Ross, Executive Director of Southwestern, had absolute responsibility for hiring and firing employees working at Fairfield West during Complainant's employment.

6. Complainant was employed at Fairfield West continuously through March 20, 1984.

7. From January 17, 1984, through March 18, 1984, Complainant did not come to work because of illness. Complainant worked approximately four hours on March 19, 1984, she presented to Jonathan Williams (hereinafter "Williams"), Program Director at Fairfield West, a letter which stated that as of that date she was "totally incapacitated" and, also presented Williams with an executed claim form to be submitted to the West Virginia Workmen's Compensation Board. From and after March 20, 1984, Complainant never returned to work.

8. From and after March 20, 1984, Complainant never offered to return to work. Furthermore, Complainant presented no corroborative evidence of her medical problems whatsoever.

9. From and after March 20, 1984, Complainant never had any contact with Williams, Fairfield West, or Southwestern regarding her return to employment.

10. A careful review of the evidence herein indicates that the only claims of either sex or race discrimination made by Complainant were directed at Williams, a black male, the direct supervisor of Complainant. Complainant testified that she never had any contact with anyone in a supervisory position at Southwestern during the course of her employment at Fairfield

West.

11. A review of the record reveals the following charges of sex discrimination or sexual harassment presented by Complainant at the hearing herein:

a. Complainant complains that on one occasion Williams missed a meeting with local television news crew. Complainant alleges that Williams refused to tell her where he had been during the visit by the news team.

b. Complainant alleges that sometime after missing the meeting with the news crew Williams missed a meeting with a man who was offering employment to black youth. Once again when Complainant pressed Williams for an explanation of where he had been, Williams refused to explain his conduct to her.

c. Complainant alleges that Williams only casually disciplined a van driver who had parked a Fairfield West van in front of a local tavern.

d. Complainant complains that she was compelled to work overtime on five occasions. On two of these occasions she was kept until 4:00 a.m. and on the other three occasions she was kept until 7:00 p.m.

e. Complainant complains of a incident that occurred in January, 1984, when she says that Williams gave her a unreasonable deadline to

complete her work and she thus left her job that day.

f. Complainant alleges that she was forced to retype a letter because she inadvertently placed two period in the letter instead of one period.

12. In reviewing the evidence presented on the charge of harrassment set forth in paragraph 11(a), there is no evidence whatsoever that Williams treated any other member of his secretarial staff differently than Complainant regarding revealing his whereabouts.

13. In reviewing the evidence presented on the charge of harassment set forth in paragraph 11(b), there is no evidence whatsoever that Williams treated any other member of his secretarial staff differently than Complainant regarding revealing his whereabouts.

14. In reviewing the evidence presented on the charge of harassment in paragraph 11(c), Williams denies that he treated males any differently than females.

15. In reviewing the evidence presented on the charge of harassment described in paragraph 11(d), Complainant presented no evidence whatsoever that she was treated differently than males regarding overtime.

16. In reviewing the evidence presented on the charge of harassment describing his version of this incident. From this Exhibit it was clear that Complainant left Fairfield West after having been given a job assignment which she refused to complete.

17. In reviewing the evidence presented on the charge of harassment described in paragraph 11(f), during Complainant's employment, she admits to have typed "thousands of memos" and could only relate one incident of work that was returned by Williams.

18. A review of the record reveals the following charges of race discrimination presented by Complainant at the hearing herein:

a. Many charges that Williams treated white females better than black females in that he did not criticize the work of white females.

b. Williams is alleged to have yelled and screamed at Crystal Myers and Linda Byrd regarding their job performance.

c. Williams is alleged to have had a great deal of difficulty with Barsha Logan.

d. Williams told a sexual joke to a black female.

19. In reviewing the evidence presented on the charge of racial harassment contained in paragraph 18(a), Williams, a black male, denies such conduct.

20. In reviewing the evidence presented on the charge of racial harassment contained in paragraph 16(b), Williams denies such conduct.

21. In reviewing the evidence presented on the charge of harassment contained in paragraph 16(c), in regard to Barsha Logan, Williams explained that Barsha Logan was terminated in

part because she absolutely refused to give Williams, her supervisor, the keys to files which were needed. In fact, it was necessary to call in a locksmith to open the file cabinets.

22. In reviewing the evidence presented on the charge of racial harassment contained in paragraph 16(d), Complainant admits only that she was embarrassed and, in essence, makes no claim whatsoever that the joke constituted either sexual or racial harassment.

23. Complainant admitted that she had given previous testimony in this matter at her deposition under oath which differed materially from her testimony at the hearing herein. During her deposition, Complainant testified that Exhibit 3 was delivered to her employer on March 9, 1984, together with Exhibit 1. She explained the difference in the dates on Exhibit 1 and Exhibit 3 by saying her doctor's secretary made a mistake. Thus, at her deposition, she conveyed the message quite clearly that Exhibit 1 and Exhibit 3 were delivered to her employer simultaneously. She was provided an opportunity at her deposition to make sure her recollection was accurate and correct her deposition which she failed to do. She readily admitted at the hearing that her previous testimony under oath regarding the dates of delivery of Exhibit 3 was false.

24. Based upon the foregoing, the Hearing Examiner finds that the testimony of Complainant is not credible. Furthermore, it should be noted that Williams' deposition was also taken prior to the hearing and his testimony at the hearing was entirely consistent with his testimony at his deposition. As such, the

the Hearing Examiner finds the testimony of Williams credible on the issues presented by Complainant.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter herein.

2. Complainant has failed to present evidence to establish a prima facie case of race or sex discrimination. State ex rel State of West Virginia Human Rights Commission v. Logan-Mingo Area Mental Health Agency, 329 S.E.2d 77 (WV1985).

3. The complaints were properly and timely filed in accordance with the procedures established by the West Virginia Human Rights Act and the administrative regulations of the West Virginia Human Rights Commission.

4. The West Virginia Human Rights Commission has jurisdiction over the parties and the subject matter of the complaints.

5. The record is clear that from and after March 20, 1984, the Complainant did not return to work at Fairfield West nor did she notify anybody at Fairfield West that she was no longer totally incapacitated. Based upon the Complainant's failure to return to work, no back pay of any nature will be awarded in this action.

6. There was no pattern and practice of sex or race discrimination alleged in the complaints filed herein and further the evidence presented did not establish such a pattern or practice. Therefore, any evidence in this action but will merely

be considered for avowal purposes.

7. Dealing specifically with the allegations contained in ER-616-84, the charges contained in 3d, 3b, and 3e were not substantiated at the hearing and as such are dismissed. Furthermore, that portion of paragraph 3d which deals with job assignments is dismissed based upon the failure to provide any evidence on the issue.

8. Dealing specifically with the allegations contained in paragraph 3a of ES-617-684, the charge contained therein is dismissed because of lack of probative evidence on said issue.

9. The only issue left unresolved in complainant's case is whether or not Complainant was the subject of disparate treatment because of her sex or race.

10. Based upon all evidence presented herein it is evident that Complainant has failed to make a case that she was treated any differently than white employees whether they be male or female. Any disparity in treatment by Williams was due to serious personality conflict which the record reflects clearly existed between them during Complainant's tenure. The only instances of race discrimination complained of by Complainant related to charges that other black employees were discriminated against. Out of 278 pages of transcript there is not one single allegation set forth in evidence by the Complainant that she was treated any differently than whites by Williams. She stated that other blacks were treated differently than whites because of their race but she makes no allegations whatsoever that she was treated differently because of her race. McDonnell Douglas Corp.

v. Green, 411 U.S. 792, 36 L.Ed.2d 668, 93 S.Ct. 1817 (1973).

11. With regard to the allegations that Complainant was treated differently than males because of her sex, a careful review of such allegations indicates that Complainant's claims are without merit. The failure of Williams to advise Complainant of his whereabouts on two separate occasions has nothing whatsoever to do with discrimination. The fact that Complainant worked overtime on five occasions without pay means nothing in the absence of testimony that males were not required to work overtime. The Examiner discredits Complainant's testimony that she was required to do so without compensation under the threat of discharge if she refused. A careful review of the transcript indicates that there is no testimony regarding whether males were required to work overtime. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 36 L.Ed.2d 668, 93 S.Ct. 1817 (1973).

12. Jonathan Williams' testimony is credited in this case and based upon his testimony that he did not discriminate against females or blacks, and that he did not harass any employees at Fairfield West, whether they be males or females, I find that there is no evidence of disparate treatment herein.

PROPOSED ORDER

The Examiner recommends that the Commission issue a final Order as follows:

1. Judgment for Respondent.