

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

HENRY G. BAYNES, :
 :
 Complainant :
 :
 vs. : DOCKET NO. E-16424
 :
 :
 CATERPILLAR TRACTOR :
 COMPANY, :
 Respondent :
 :

FINDINGS OF FACT

1. Complainant is an adult male named Henry G. Baynes who resides at 532 Cedar Village Drive, York, Pennsylvania 17402. (S.F. #1)
2. The Respondent herein is Caterpillar Tractor Company, P.O. Box 787, York, Pennsylvania 17405. The Respondent is an employer within the meaning of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, 43 P.S. §955(a). (S.F. #2)
3. The Complainant, on or about August 8, 1979, filed a notarized Complaint with the Pennsylvania Human Relations Commission ("Commission") at Docket No. E-16424. (S.F. #3)

Explanation of Abbreviations:

S.F. (Stipulations of Fact)
N.T. (Notes of Testimony)
C.E. (Complainant's Exhibit)
R.E. (Respondent's Exhibit)
p. (page) pp. (pages)

4. In correspondence dated August 29, 1980, the Commission notified the Respondent that probable cause existed to credit the allegations contained in the above-captioned complaint.

(S.F. #6)

5. Subsequent to the determination of probable cause, the Commission and the Respondent attempted to eliminate the alleged unlawful discriminatory practice through conference, conciliation and persuasion, but were unable to do so. (S.F. #7)

6. In May of 1979, the Complainant held the position of Production Foreman. This position was a first level supervisory or management position. (S.F. #10; N.T. 16)

7. On May 18, 1979, the Complainant ordered two subordinate bargaining unit production employees on his shift to "bank" or falsely report their production counts, and both employees followed the Complainant's orders resulting in the false reporting of nine-tenths (9/10) of a production hour.

(S.F. #11)

8. During the period of time that Complainant ordered the incorrect reporting, he was suffering seriously with hemorrhoids which eventually resulted in surgery and an extensive period of recovery. (N.T. 16, 21, 22)

9. On June 1, 1979, the Complainant admitted to Ronald G. Brunson, General Foreman, that he had ordered the "banking" or false reporting of production counts on May 18, 1979.

(S.F. #12)

10. The Respondent demoted the Complainant from the position of Machine Shop Foreman (a management position) to the position of Centerless Grinder Operator (an hourly bargaining unit position) with an effective date of August 27, 1979. (S.F. #15)

11. On August 16, 1977, a White male respondent employee (Harry Fishel) functioning in a first level supervisory position similar to the Complainant's, ordered two bargaining unit employees to move tubs of materials through a "pack and wash" operation without completing the operation. Fishel then falsified production records by claiming credit for the entire base hours allotted to the operation, even though the operation had not been completed. (R.E. #13)

12. Fishel's actions violated the Respondent's base hour integrity standards. (R.E. #13; N.T. 180, 181, 234)

13. Fishel was suspended for two weeks with pay for his infraction. (R.E. #13; C.E. 6 at #5)

14. Both the Complainant and Fishel ordered bargaining unit employees to engage in inappropriate conduct and both incidents involved falsification of production records that amounted to violations of the Respondent's base hour integrity standards. The Complainant was demoted for his conduct while Fishel was suspended for two weeks with pay. (R.E. #2, R.E. #13; C.E. 6)

15. In both the incidents involving the Complainant and that involving Fishel, the Respondent acted after being made aware of the incident by the bargaining unit employees involved.

(R.E. #1, 2; C.E. 6; N.T. 119, 231)

16. The Respondent had never condoned violations of its base hour integrity standards and had published, at least since 1973, a booklet which indicated that under its policy, falsification of production records could subject the employee to discharge.

(R.E. #22 at pp. 10-11; N.T. 157, 177, 196, 197)

17. The Respondent, on or after August 25, 1977, issued a memo dealing with incorrect production reporting. (R.E. #8)

18. The August 25, 1977 memo did not represent a change in Respondent's policy regarding violations of base hour integrity standards. It was simply a clarification of the policy and a reminder to employees. The memo was addressed to bargaining unit employees. (N.T. 177, 196, 197, 243)

19. The Respondent had disciplined employees prior to the issuance of the August 25, 1977 memo and had, on at least one occasion, discharged an employee. (S.F. #14; N.T. 242)

20. The Respondent's decision to suspend Fishel occurred at a time when its policy permitted discharge for the offense committed. Fishel's supervisor at the time, Paul Pfeiffer (General Foreman) admitted that Fishel could have been discharged for his offense. (N.T. 235)

21. On other occasions, the Respondent has imposed different types of discipline on bargaining unit employees who committed similar offenses. John Engles, a White male, on August 17, 1977 and August 18, 1977, incorrectly reported production counts. He was suspended for 90 days (later reduced to 45 days). Adrian Herbert, a Black female, on February 16, 1978, incorrectly reported production counts. She was discharged (later reduced to a two week suspension). (R.E. 6, 10, 14, 15, 16, 17)

22. Banking or the reporting of fewer production pieces than are actually produced while saving the remainder in the "bank" for future use is a violation of the Respondent's base hour integrity standards. (R.E. 8; N.T. 32)

23. The practice of banking has continued subsequent to the issuance of the August 25, 1977 memo. Management is aware or should be aware that the practice has continued, both by direct observation by management employees, including first level supervisors and by review of daily production reports. (N.T. 121, 122, 123)

24. Base hour integrity standards were frequently violated throughout the year 1979 on the second and third shifts in department 23. The violations included first level supervisors "padding" machine setup times so that operators could run production while listed as being on a non-productive account. The effect of this was to increase the percentage of production achieved. (N.T. 133-137, 156)

25. Because of the unusually high percentages achieved during this time period, management knew or should have known that base hour integrity standards were being violated yet no disciplinary action was taken. First level management employees, in fact, engaged in a production race and were responsible for the padding that went on. Upper level management reviewed production records which would have alerted them to the unusual percentages.

(N.T. 136, 139, 144-147, 156-161)

25. The Complainant on several other occasions informed management of incorrect reporting practices. No disciplinary action was ever taken as a result of those complaints. With respect to the incorrect reporting practice by a bargaining unit employee named Eady, Respondent admits that on at least one occasion, an incorrect account was used. Yet, Eady's supervisor, who had access to the production report filed by Eady, took no action against him. No action was taken against the supervisor.

(R.E. 5; N.T. 38, 45, 53-65)

27. Apart from the Complainant, Herbert and Eady, all of the employees involved are White. (R.E. 6; N.T. 64, 123, 148, 163)

28. From the effective date of the Complainant's demotion through the pay period ending December 23, 1979, the Complainant received gross pay totalling \$4,970.02. (S.F. #16)

29. From the pay period ending December 30, 1979 through the pay period ending December 28, 1980, the Complainant received gross pay totalling \$23,999.25. (S.F. #17)

30. From the pay period ending January 4, 1981 through the pay period ending October 4, 1981, the Complainant received a gross pay totalling \$22,141.61. (S.F. #18)

31. From September 27, 1981 to the present, the Complainant has been paid an hourly wage rate of \$12.04 and has been scheduled to work a 40 hour work week (exclusive of overtime). The Complainant's weekly gross pay is \$481.66. (S.F. #19)

32. Complainant and Respondent have stipulated that had the Complainant remained a supervisory employee, he would have been entitled to salary and all related benefits received by comparable management employees as outlined in Exhibit C-4.

(N.T. 64; C.E. 4)

33. Complainant received a five percent (5%) performance increase in December, 1978, based upon Respondent's evaluation of his performance as a supervisor. Performance increases are given on a yearly basis based upon the evaluation given for the preceding year. (N.T. 70, 71)

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CATERPILLAR TRACTOR :
COMPANY, :
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CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainant and the Respondent and the subject matter of the Complaint under the Pennsylvania Human Relations Act, pursuant to Section 9 of the Pennsylvania Human Relations Act ("Act") 43 P.S. 959.
2. The parties in the Commission have fully complied with the procedural prerequisites to a public hearing in this matter, pursuant to Section 9 of the Act, 43 P.S. §959.
3. Respondent is an "employer" within the meaning of Section 4(b) and 5(a) of the Act, 43 P.S. §954(b) and §955(a)
4. Complainant is an "individual" within the meaning of Section 5(a) of the Act, 43 P.S. §955(a).

5. The Respondent discriminated against the Complainant because of his race, Black, by demoting him from a supervisory position for violation of the Respondent's base hour integrity standards when it did not demote a White employee, Harry Fishel, who engaged in similar conduct.

6. The actions of the Respondent in demoting the Complainant while treating White employees differently violates §5(a) of the Act, 43 P.S. §955(a).

7. The Respondent's defense to the charge of race discrimination amounts to a pretext and does not justify the disparate treatment received by the Complainant.

8. The evidence of record does not support Respondent's defense that the Complainant was demoted for a legitimate, non-discriminatory reason.

9. A prevailing Complainant in an action involving a discriminatory demotion is entitled to an award which includes reinstatement to the position previously held, back pay with interest, and all benefits associated with the position.
43 P.S. 959.

10. Whenever the Commission concludes that the Respondent has engaged in an unlawful discriminatory practice, the Commission may order such affirmative action as in its judgment will effectuate the purposes of the Act. 43 P.S. 959.

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DOCKET NO. E-16424

O P I N I O N

I. HISTORY OF THE CASE

This case arises from a complaint filed by Henry G. Baynes, ("Complainant") against the Caterpillar Tractor Company ("Respondent") on August 8, 1979. The initial facts surrounding this complaint were not in dispute.

In May of 1979, the Complainant was employed by the Respondent as a Production Foreman. On May 18, 1979, the Complainant ordered two subordinate bargaining unit production employees to "bank" or falsely report their production counts. Both employees followed these orders but later reported the order to upper level management. On June 1, 1979, the Complainant admitted to Ronald G. Brunson, General Foreman, that he had ordered the false reporting. The order resulted in the false reporting of nine-tenths (9/10) of a production hour. The Respondent demoted the Complainant from his position as Machine Shop Foreman to the

position of a Centerless Grinder Operator with an effective date of August 27, 1979. The latter position was an hourly position.

After the complaint was filed, staff of the Pennsylvania Human Relations Commission ("Commission") conducted an investigation to determine whether probable cause existed to credit the allegations of the complaint. Probable cause was found to credit the allegations and the findings were sent to the Respondent in August, 1980. Attempts were made to eliminate the alleged unlawful practice through conference, conciliation and persuasion, but were unsuccessful. Consequently, a public hearing was convened before Commissioners Doris M. Leader, Raquel Otero DeYiengst, and Rita Clark on January 7, 1982 and January 8, 1982 in York, Pennsylvania.

II. LIABILITY

After carefully reviewing the record in this case and in consideration of the briefs submitted by the attorneys for the Complainant and Respondent, we find that the Respondent unlawfully discriminated against Complainant in violation of Section 5(a) of the Pennsylvania Human Relations Act ("Act"), Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §955 et seq., by demoting him from his position as Machine Shop Foreman to the hourly position of Centerless Grinder Operator because of his race, Black.

A. COMPLAINANT ESTABLISHED A PRIMA FACIE CASE BY SHOWING THAT HE WAS DEMOTED FOR ORDERING TWO SUBORDINATE EMPLOYEES TO FALSELY REPORT PRODUCTION AND THAT A WHITE EMPLOYEE WAS NOT SIMILARLY DISCIPLINED FOR COMMITTING THE SAME INFRACTION. AFTER RESPONDENT PROVIDED A LEGITIMATE, NON-DISCRIMINATORY REASON FOR THE DIFFERENT TREATMENT, COMPLAINANT WAS ABLE TO SHOW THE REASONS TO BE PRETEXTUAL.

In an action brought pursuant to the Pennsylvania Human Relations Act, the Complainant carries the initial burden of establishing a prima facie case. McDonnell-Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed 2nd. 668 (1973). General Electric Corporation v. Pennsylvania Human Relations Commission, 459 Pa. 292, 365 A.2d 649 (1976). A prima facie case is established by showing that Complainant is a member of a protected minority, that he applied for a job for which he was qualified, that his application was rejected and that the employer continued to seek other applicants of equal qualifications.

In fashioning the above four part test, the Supreme Court noted that differing factual situations would require variations in the test. McDonnell-Douglas, p. 802. Once a prima facie case is established, the burden shifts to the employer to provide a legitimate, non-discriminatory reason for the difference in treatment. If the employer meets this burden, the Complainant must then show that the reason provided was pretextual.

The evidence established that Complainant, a Black foreman, was demoted from his position for ordering two subordinate

employees to falsely report production in May, 1979. (N.T. 16, 17, 23). The evidence showed that Harry Fishel, a White foreman, was suspended for two weeks with pay for ordering his subordinate employees to claim credit for performing an operation that they had not completed. (N.T. 179; R.E. 13). Since the evidence showed that Mr. Baynes received different treatment from Mr. Fishel for committing a similar offense, a prima facie case was established.

The Respondent attempted to justify the difference in treatment accorded to Fishel and Complainant by stating that the Fishel incident occurred prior to the issuance of the August 25, 1977 memo clarifying the policy regarding false production. (R.E. 8; N.T. 182). They contended that prior to the issuance of the memo, some of the hourly employees and foremen may not have understood exactly what was expected of them concerning base hour integrity. (N.T. 182).

The company also stated that the Fishel incident was distinguishable from that of Complainant because of certain extenuating circumstances. Mr. Fishel was disciplined for ordering two hourly employees to move tubs of material through the pack and wash operation without the operation being completed and claimed the base hours for completing the entire operation. (R.E. -13). The extenuating circumstances was an urgent request for Heat Treat (a separate department in Respondent's plant) to have material to keep their furnaces loaded. (N.T. 234, 244).

Fishel answered the requested and in fact did perform part of the operation. (N.T. 180).

The reasons offered by Respondent to justify treating Complainant and Fishel differently are not convincing. We find them to be a pretext for discrimination. Both Fishel and Complainant ordered bargaining unit employees to engage in inappropriate conduct and both incidents involved violations of the company's base hour integrity standards. The circumstances surrounding the Fishel incident were no more extenuating than the circumstances surrounding the incident involving Complainant. Fishel was under pressure to get needed materials to Heat Treat. (N.T. 244). He performed part of the operation and claimed credit for performing the entire operation. The system did not allow him to take credit for performing part of an operation. (N.T. 245).

Similarly, Mr. Baynes was laboring under extenuating circumstances. He was suffering with excruciating pain from a hemorrhoid condition. (N.T. 16). This condition was so severe that Mr. Baynes had to have an operation several days later which kept him out of work for nine weeks. (N.T. 19). As Complainant started up the aisle to get off the line, one of his hourly employees, Joe Lyle, told him that he had run out of pieces to run on his machine. (N.T. 16). Complainant told Lyle to punch off of that job and wash his own pieces. (N.T. 17). After he spoke to Lyle, he continued to walk up the aisle, but was stopped by another hourly employee, Floyd Wiltrout. (N.T.17).

Wiltrout told Complainant that the machine he was operating had gone down and that he needed a pipe fitter to repair it. (N.T. 17). Complainant told Wiltrout to go into an indirect account No. 73, repairing the defective materials. (N.T. 17). Then Complainant changed his mind and told Wiltrout to wash pieces for Lyle to use on his welding machine and allow Lyle to take the credit for them. (N.T. 19). Complainant testified that at the time, he did not think about his orders not being according to the proper procedure because of the extenuating circumstances of his pain. (N.T. 20).

The second reason that Respondent offered to distinguish the Fishel incident was the issuance of the memo dated August 25, 1977 which concerned itself with incorrect production. Respondent stated that the Fishel incident occurred prior to the issuance of this memo and therefore additional punishment was not warranted. (N.T. 201). This defense is also pretextual. Respondent acknowledged that the August 19, 1977 memo did not amount to a change in policy. (N.T. 177, 196, 197, 243). Respondent had never condoned violations of base hour integrity. (N.T. 167, 177, 196, 197). The memo simply represented a clarification of already existing policy. (N.T. 196). In fact, Respondent's policy, as outlined in this booklet, "Welcome to Caterpillar," was that falsification of job cards could lead to termination. (R.E. 22 at pp. 10-11). The booklet explaining this policy had been given to employees since at least 1973 and was being used before the Fishel incident. (N.T. 73, 196, 197).

Certainly to the extent that the August 19, 1977 memo represented a clarification of existing policy, it was not necessary to clarify Fishel's action or responsibility. Respondent concluded prior to the issuance of the memo that Fishel violated the company's base hour integrity standards. (R.E. 13). Both Gordon Lee, a manufacturing manager at the time of the incident, and Paul Pfeiffer, a general foreman at the time, admitted that Fishel was guilty of cheating. (N.T. 180, 181, 234). Pfeiffer also stated that Fishel could have been terminated for his conduct. (N.T. 235). The fact that Fishel was disciplined for his conduct shows that Respondent acknowledged it to be an infraction of the rules. In fact, Respondent had terminated a bargaining unit employee for falsification prior to the issuance of the memo. (N.T. 242). The fact that the discharge was later changed to a 30 day suspension during a grievance procedure is not relevant because it shows Respondent considered falsification to be an offense serious enough to warrant dismissal even before the issuance of the memo.

The evidence clearly demonstrates that base hour integrity was a problem before the issuance of the August, 1977 memo and continues to be a problem at the York plant. John Engles, an hourly employee was suspended for incorrectly reporting production on August 17, 1977 and August 18, 1977. (R.E. 14). Adrian Herbert, an hourly employee was suspended for incorrectly reporting production in February, 1978. (R.E. 16). Robert Wagner and Ronald Hampton are both hourly employees at Respondent's plant in York. Both of these men worked on different

shifts in the same department. They testified regarding the practice of padding setup times in order to run production while punched out on an indirect or non-productive account. (N.T. 133-137, 156). The effect of this padding was to increase the percentage of production achieved. (N.T. 136). Both individuals testified about a production race engaged in by their supervisors in 1979. (N.T. 139, 156). They testified that unusually high production percentages were achieved by frequently violating base hour integrity standards. (N.T. 139, 156). There was testimony that management knew or should have known that cheating was occurring because they reviewed daily performance reports and could see when percentages were unusually high. (N.T. 123). Upper management knew what percentages the machines were physically capable of producing because they were line foreman before obtaining their present positions. (N.T. 142,157).

Complainant also testified that he informed upper level management on several occasions about cheating that was going on in the plant, and that no action was taken by management to stop it. (N.T. 35, 37; C.E. 1, 2). One such incident involved an hourly employee named Lenny Lloyd. (N.T. 48) Mr. Lloyd was punched in on a job ticket that indicated he was doing "rework". Mr. Baynes was supervising Mr. Lloyd on the day in question and observed that he was not doing the work that he was receiving credit for performing. (N.T. 50). He called the general foreman, Richard Miller, to the scene and reported that Mr. Lloyd was cheating. (N.T. 52). Mr. Miller observed that Mr. Lloyd was not doing the work but did not discipline him for it. (N.T. 52).

In review, the evidence clearly shows that Respondent disciplined Complainant more harshly than a White foreman who committed a similar offense as Complainant. The reasons offered by Respondent to justify the different treatment were shown to be pretextual. There were extenuating circumstances in both incidents. The August 1977 memo did not represent a change in policy regarding base hour integrity. Base hour integrity was a problem before the memo was issued and after the memo was issued. Respondent had attempted to terminate an employee in August, 1977 for falsification and this incident occurred before the memo was issued. There was substantial testimony of the continued violations of base hour integrity standards that management knew about or should have known about. Yet, management did nothing to discipline the employees involved. The different treatment accorded Complainant amounts to discrimination and is a violation of Section 5(a) of the Act.

III. REMEDY

There is little dispute regarding an appropriate remedy in this case. Section 9 of the Act provides that, upon a finding of discrimination:

... The Commission shall ... issue an Order requiring such Respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including but not limited to ... reinstatement or upgrading of employees, with or without back pay, ... as, in the judgment of the Commission, will effectuate the purposes of this Act, and including a requirement for report of the manner of compliance. 43 P.S. 959

Respondent and Complainant have stipulated that had the Complainant remained a supervisory employee, he would have been entitled to salary and all benefits received by comparable management employees. (N.T. 68; C.E. 4). The parties also stipulated as to the Complainant's actual wages earned from the date of his demotion until October 4, 1981 with a further stipulation regarding his current hourly pay rate. (S.F. 16-19).

Thus, in order to calculate damages, it is only necessary to review the benefits actually received by the Complainant with those given to management employees in positions comparable to the Complainant. As stated at the hearing, "there is no dispute as to damages ... it is just a simple accounting procedure..." (N.T. 66). Because Fishel lost no pay during his two week suspension, no setoff is in order. Moreover, because the Complainant has spent the last two and one-half (2 1/2) years as an hourly employee, there is no need to consider suspending him for two weeks.

The only item of damages not stipulated to, had to do with entitlement to yearly performance increases. Testimony at hearing established that management employees were evaluated on December 1st of each year and given merit increases based upon the evaluation. (N.T. 70). The Complainant was evaluated in December of 1978 and received a 5% salary increase. (N.T. 31). No evidence was introduced to establish that merit increases were not granted in subsequent years nor any evidence to show that the Complainant, but for the demotion, would not have

continued to receive at least a 5% increase.

Thus, the Complainant is entitled full back pay, including all incremental salary increases (cost of living adjustment, shift differential, extra shift pay, general salary increases and merit salary increases) less interim earnings, together with all benefits accruing to management employees. Complainant is also entitled to an award of interest, calculated at 6%. Goetz v. Norristown Area School District, 16 Pa. Cmwlth. 389, 328 A.2d 579 (1974).

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CATERPILLAR TRACTOR COMPANY :
Respondent :
:

OPINION OF DISSENTING HEARING COMMISSIONER

I disagree with the panel's decision in this case and therefore, I respectfully dissent. I do not believe that Complainant Henry Baynes was treated differently from Harry Fishel because of Complainant's race. The circumstances surrounding the Fishel incident were sufficiently different from the circumstances surrounding the Baynes incident to justify the different treatment accorded to them.

Harry Fishel was disciplined for taking credit for performing an entire operation when he had actually only performed part of the operation. Unlike Complainant, he did not order his subordinate employees to falsify the records. Although Fishel was guilty of violating company policy, he did perform part of the operation for which he claimed credit and did so in good faith. He was under pressure to move the parts along to Heat Treat for processing. He could not meet this request if the entire operation was performed. Therefore, he used poor judgement in deciding to sacrifice part of the operation to meet the request.


I do not think that the extenuating circumstances of Complainant's illness can be equated with the dilemma faced by Fishel to move parts to

Heat Treat. I do not believe that there is any dispute about the pain Complainant was suffering on the night of the incident in question. However, Complainant could have gone home sick and allowed another foreman to take over his duties. Had Complainant gone home, he would not have been faced with the problems that the two employees had with their machines, which ultimately resulted in him telling them to falsify the records.

Another factor which distinguished the Fishel incident from the Baynes incident was the issuance of the August 25, 1977 memo. The Fishel incident indicated that many of the employees misunderstood the rules governing base hour integrity. The memo was issued to clarify the company policy and make certain that all employees knew that they could be discharged for falsification of records. Fishel received only a disciplinary suspension because the rules were unclear when the incident occurred. Complainant violated the policy almost two years after the memo was issued. At that time, the policy should have been quite clear because several bargaining unit employees had been severely disciplined for violating the policy. Complainant found himself in the unfortunate position of being the next foreman caught violating the rules. Thus, he was dealt with more severely than Fishel.

Moreover, there was at least one other foreman demoted for ordering hourly employees to falsify production records. The other foreman, Jarl Thorsen, is white. Mr. Thorsen was demoted in 1980 from a first line supervisory position to the weekly payroll, which was the position that he held prior to being promoted to supervisor. Complainant was not demoted to the weekly payroll because the weekly position that he held prior to becoming a supervisor was a temporary training position.

In conclusion, I feel that the prima facie case established by Complainant was successfully rebutted by Respondent and no pretext was proven. Therefore, I believe that no discrimination occurred and would recommend that the Commission reject the Proposed Findings of Fact, Conclusions of Law Opinion, and Order of the Hearing Panel and dismiss this complaint.


RITA CLARK


Date

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DOCKET NO. E-16424

RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in the above-captioned matter, it is the view of the hearing panel that Respondent demoted Complainant from his position as Machine Shop Foreman because of his race in violation of Section 5(a) of the Pennsylvania Human Relations Act. Accordingly, it is the panel's recommendation that the attached Findings of Fact, Conclusions of Law, Opinion, and Order be adopted by the full Pennsylvania Human Relations Commission.

Doris M. Leader 6/28/82
DORIS M. LEADER, Panel Chairperson Date:

Raquel Otero de Yienst 7/10/82
RAQUEL OTERO DE YIENGSTI DATE:

COMMONWEALTH OF PENNSYLVANIA

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PENNSYLVANIA HUMAN RELATIONS COMMISSION

HENRY G. BAYNES,

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Respondent

DOCKET NO. E-16424

ORDER

AND NOW, this 1st day of September, 1982,
the Pennsylvania Human Relations Commission hereby adopts the
foregoing Findings of Fact, Conclusions of Law, and Opinion in
accordance with the recommendation of the hearing panel and
therefore orders:

- 1) That the Respondent shall cease and desist from discriminating against the Complainant because of his race in the terms and conditions of his employment.
- 2) That the Respondent shall reinstate the Complainant to the position of first level supervisor, either the position that he held immediately prior to his demotion or supervisory position encompassing comparable skill, effort, responsibility and promotional opportunity.

Complainant's seniority date as a supervisory employee shall be adjusted so as to include the period of time subsequent to August 27, 1979 that he has spent as an hourly employee.

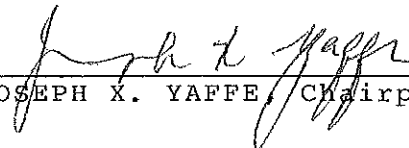
3) That the Respondent shall pay the Complainant a sum of money equal to the difference in pay that he has received subsequent to his demotion (effective date of demotion was August 27, 1979) and that which he would have received had he remained in his supervisory position.

Calculation of the Complainant's supervisory salary shall include, but not necessarily be limited to, base pay, shift differential, cost of living increases, general salary increases, yearly merit increases of 5% and extra shift pay, where applicable.

4) That the Respondent shall restore all accrued benefits that the Complainant would have been entitled to receive had he remained as a supervisory employee and has not received or has received to a lesser extent, including, but not necessarily limited to, stock option benefits, accrued vacation benefits, increased medical benefits, personal leave of absence benefits, salary continuation benefits and retirement income benefits.

5) Satisfactory written proof of compliance with all terms of this Order shall be provided to the Commission within 30 days of the date found on the Order. Provided that if an appropriate supervisory position is not available within the 30 day time period, the Respondent shall reinstate the Complainant to the first available position and shall, in the interim, provide Complainant with the salary and benefits associated with the supervisory level into which he fits.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 
JOSEPH X. YAFFE, Chairperson

ATTEST:


ELIZABETH M. SCOTT, Secretary