

COMMONWEALTH OF PENNSYLVANIA  
EXECUTIVE OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

JANICE MARIE SCOTT,  
Complainant

v.

PITTSBURGH METAL  
LITHOGRAPHING COMPANY,  
INCORPORATED,  
Respondent

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Docket No. E-10674

STIPULATIONS OF FACT

NOW THEREFORE this 28th day of September, 1982,  
the Pennsylvania Human Relations Commission and Pittsburgh Metal  
Lithographing, Inc., enter into the following stipulation of  
facts as evidenced by the signature of their respective repre-  
sentatives:

1. The Complainant, Janice Marie Scott married name  
Janice Marie Korn is an adult individual residing at 43 Sampson  
Avenue, Pittsburgh, Pennsylvania 15205.
2. Respondent, Pittsburgh Metal Lithographing Company,  
Inc. ("PML") is a corporation with a principal place of business  
located at 2150 Roswell Drive, Pittsburgh, PA 15205.
3. Respondent is an employer of four (4) or more persons  
within the Commonwealth of Pennsylvania.

4. On or about June 25, 1976, the Complainant filed with the PHRC a complaint against PML.

5. Complainant began working for the Respondent February 3, 1975 in the position of receptionist and typist at an annual salary rate of \$4800.00. Exhibit B

6. From May 20, 1974 until November 12, 1975, Joseph Dennis held the position of factory clerk and assistant to plant manager. Exhibit C

7. Joseph Dennis' beginning annual salary was \$8500.00 which rate was increased to \$8750.00 on November 11, 1974.

8. Joseph Dennis resigned from this position on November 12, 1975. Exhibit C

9. From November 12, 1975 until May 28, 1976 Richard L. Markley held the position of factory clerk and assistant to plant manager. Exhibit C

10. Richard L. Markley's beginning annual salary was \$8000.00. Exhibit C

11. Richard L. Markley resigned from this position on May 28, 1976. Exhibit C

12. Had Richard Markley continued his employment with PML he would have received a salary adjustment on or about May 12, 1976 increasing his annual salary to \$8500.00.

13. The position held by Joseph Dennis was also referred to as assistant to plant superintendent. Exhibit D

14. PML's written job description for the position of assistant to plant superintendent as held by Joseph Dennis set forth the primary functions of the job as "to assist the Plant Superintendent in performance of his duties" and set forth the primary duties of the position as follows:

Record and report monthly coater and press production.

Post all metal, paints, and inks that are received, and post all shipping invoices.

Record all typed orders and prepare deco card and envelopes for all new jobs received.

Take monthly Goods in Process inventories for insurance, take occasional physical inventories for various customers, and send each customer a month-end inventory of Raw In Process and Finished Metal on hand.

Help Plant Superintendent determine what ink, paint, coatings, etc., must be ordered.

Furnish J. Aaron with listing of monthly paint and ink usage.

15. On June 1, 1976 Complainant was promoted to the position of Factory Clerk, Assistant to Murray Cashdollar - supervisor of Orders and shipping. Exhibit E.

16. Complainant received a starting annual salary in this position of \$6600.00 a \$1200 increase from the Complainant's previous annual salary. Exhibit B

17. On January 1, 1978, Complainant's salary rate was adjusted to an annual salary rate of \$7200.00. Exhibit B

18. On August 28, 1978, Complainant's salary was adjusted to an annual salary rate of \$7740.00. Exhibit B

19. On August 1, 1979, Complainant's salary was adjusted to an annual salary rate of \$9240.00. Exhibit B

20. Complainant resigned from her position of Factory Clerk Assistant to Murray Cashdollar on January 22, 1980 in order to accept a better paying job with another employer.

21. The Respondent describes Complainant's duties as Factory Clerk, Assistant to Murray Cashdollar - Supervisor of orders and shipping as follows: Exhibit E

Types customers' inventory reports.

Types invoices and shipping papers.

Prepares monthly usage reports of paint and inks.

Keeps records of metal, paint, and ink inventories.

Files plant papers.

Daily production records and monthly summation.

22. Exhibit B referenced above and identified below shall be stipulated to be admissible.

23. The following documents are authentic documents or true and correct copies thereof and can be admitted without further proof of authenticity.

Exhibit A. complaint (4 pages)

Exhibit B. PML payroll document regarding Janice Marie Scott. (3 pages)

Exhibit C. PML document identifying positions held by Joseph Dennis and Richard Markley and containing salary information on Richard Markley. (2 pages)

Exhibit D. Job description of Assistant to Plant Superintendent - Joseph Dennis

Exhibit E. PML document identifying those holding the position of Factory Clerk, Assistant to Murray Cashdollar - Supervisor of Orders and Shipping.

- Exhibit F. PML document entitled Lines of Authority  
and Responsibilities: Plant Operations Only.
- Exhibit G. PML document identifying those holding  
position of Receptionist-Typist.
- Exhibit H. PML August 18, 1976 position statement  
(2 pages)

DATE: September 28, 1982

Michael L. Foreman  
Michael L. Foreman  
Assistant General Counsel  
Pa. Human Relations Commission  
11th Floor State Office Building  
300 Liberty Avenue  
Pittsburgh, PA 15222  
(412) 565-7978

DATE: September 27, 1982

John F. Perry  
John F. Perry  
Attorney for Pittsburgh Metal  
Lithographing Company,  
Incorporated



CONCLUSION OF LAW

1. Complainant is an individual within the meaning of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. 951 et seq. ("Act").
2. Respondent is an employer within the meaning of Sections 4 and 5 of the Act.
3. The Pennsylvania Human Relations Commission ("Commission") has jurisdiction over the parties and subject matter of this case.
4. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this matter.
5. Complainant has the initial burden of proving a prima facie case of discrimination.
6. Complainant has met her burden by proving that she was paid less than a male employee for performing the same or substantially the same duties.
7. Respondent may overcome the Complainant's prima facie case by showing that its conduct did not violate the Act.
8. Respondent has failed to establish that its conduct did not violate the Act.
9. Respondent has not proven either that there was unreasonable delay in bringing this case to hearing or that it was prejudiced in defending itself by any delay which did occur.



10. After a finding of discrimination, the Commission may award relief which includes all wages lost as a result of Respondent's discriminatory conduct.

O P I N I O N

This case arises on a complaint filed by Ms. Janice Marie Scott<sup>1</sup> ("Complainant") against the Pittsburgh Metal Lithographing Company, Inc. ("Respondent" or "PML") with the Pennsylvania Human Relations Commission ("Commission") on June 25, 1976, at Docket No. E-10674. Commission staff investigated the matter and found probable cause to credit the allegations. When attempts to conciliate were unsuccessful, the case was approved for public hearing. The hearing was conducted on October 15, 1982, before Commissioners Elizabeth M. Scott, Chairperson, Rita Clark, and John Wizniewski, in Pittsburgh, Pennsylvania.

Prior to the hearing, the parties stipulated to certain facts. These have been incorporated into the foregoing Findings of Fact.

Ms. Scott alleged a violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act"). She claimed that she was promoted to the position of inventory clerk, then paid less than the male who had immediately preceded her in the position; she further alleged that she was required to perform extra duties without additional compensation, a requirement not made of the male who had held the position. She claimed that these practices discriminated against her on the basis of her sex, female.

Complainant bears the initial burden of establishing a prima facie case of sex discrimination under the Act. General Electric Corp. v. Pennsylvania Human Relations Commission, 365 A.2d 649 (1976). In this case, she may do so by proving that she performed the same, or substantially the same, duties as the male who preceded her in the position, and was paid less than he. Respondent may then prevail by showing that its conduct did not violate the Act. SEE: Philadelphia Electric Company v. Pennsylvania Human Relations Commission, Pa. Cmwlth. 448 A.2d 701 (1982); Pennsylvania State Police v. Pennsylvania Human Relations Commission, Pa. Cmwlth., \_\_\_A.2d\_\_\_ (1983).

Ms. Korn's testimony established that she began to work for PML in February of 1975, as a receptionist-typist and switchboard operator. In May of 1976, she assumed the duties of the position of factory or inventory clerk<sup>2</sup>, the position previously occupied by one Richard Markley; she also continued to perform some of her prior receptionist-typist duties. She continued to work for PML in this position until January of 1980, when she resigned.

As noted, Complainant, in order to prevail, must prove that she performed the same (or substantially the same) duties as the male who held the position before her. Comparison of her testimony with that of Mr. Markley shows that this was in fact the case. Each testified to performing the duties listed in items 14 and 21 of the Stipulations of Fact. The testimony of each was credible.

Credible testimony also established that Complainant's salary was significantly less than that of Mr. Markley. As we have determined that each performed substantially the same duties, we must consider PML's explanation of the salary differential.

Respondent's witness William Kammerer suggested that Complainant in June of 1976 was promoted into a position which had not existed before; reference was also made to a relocation into a new building of a part of PML's operation. We find this testimony utterly insufficient to rebut the strong showing made by Complainant that she and Mr. Markley performed essentially the same duties. Respondent having failed to adequately explain why Mr. Markley was paid more than Complainant for performing the same duties, we conclude that its conduct constituted discrimination on the basis of sex, in violation of Section 5(a) of the Act. We must therefore consider appropriate relief.

Before turning to the question of relief, we briefly consider the issue of laches raised by Respondent at hearing, though not argued in its post-hearing submissions. Laches as an affirmative defense must be proven by the party asserting it. Respondent produced no evidence whatsoever establishing either unreasonable delay or resulting prejudice; the objection to the hearing in this case is without merit. Siegel v. Engstrom, 427 Pa. 381, 235 A.2d 365 (1967); In re Marushak's Estate, 448 Pa. 605, 413 A.2d 649 (1980).

Section 9 of the Act authorizes relief, including backpay,

after a finding of discrimination. In this case, we find that the purposes of the Act will be effectuated by requiring Respondent to pay to Complainant the difference between what she was paid and what we find Mr. Markley would have been paid, had he remained in the position. Mr. Markley's salary, had he remained in the position, is of course impossible to determine with mathematical precision. Such precision is not required, however; backpay calculations need be only reasonable and realistic. Pettway v. American Cast Iron Pipe Co., 494 F.2d 211 (5th Cir. 1974); SEE: Pennsylvania Human Relations Commission v. Transit Casualty Insurance Co., 387 A.2d 58 (1978).

It is reasonable in this case to assume that the \$1900.00 annual salary discrepancy between Complainant and Mr. Markley would have continued. We therefore direct Respondent to provide relief as described with specificity in the Order which follows.

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DOCKET NO. E-10674


RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in this case, the Panel concludes that Respondent violated Section 5(a) of the Act, and recommends that the attached Findings of Fact, Conclusions of Law, Opinion and Order be adopted and entered by the full Pennsylvania Human Relations Commission.


5/23/83  
DATE

  
ELIZABETH M. SCOTT

5/23/83  
DATE

  
RITA CLARK

5/23/83  
DATE

  
JOHN P. WISNIEWSKI



FOOTNOTES

<sup>1</sup>After filing suit in this matter, Complainant was married. At the time of hearing her name was Janice Scott Korn.

<sup>2</sup>The title of the position is of course not dispositive. In this instance, the position was variously known as inventory clerk, factory clerk, assistant to the plant manager, assistant to Murray Cashdollar, or some combination of these.