



4. Complainant was hired by Respondent as a Clerk I on January 21, 1980. (S.F. 6)

5. Complainant was required to serve a six month probationary period immediately after he was hired. (S.F. 7)

6. Complainant was terminated on June 12, 1980; the stated reason for his termination was that his relationships with co-workers were unacceptable. (C.E. 1)

7. Complainant was orally cautioned about his behavior with co-workers on three separate occasions, twice by his immediate supervisor, Mr. Meese, and once by Mr. Meese's supervisor, Mr. Baumbaugh. (N.T. 33, 104, 106)

8. Written performance evaluations of non-Civil Service employees such as Mr. Spruill are not always routinely completed by Respondent's supervisory personnel. (N.T. 70)

9. Morris Kupfer, a former Respondent employee, received a written "unsatisfactory" evaluation prior to his termination for unsatisfactory work performance. (C.E. 4, 5, 6)

10. Renee Duffin, a former Respondent employee, received written warning prior to her actual termination that her excessive absenteeism would lead to termination if uncorrected. (C.E. 7, 8, 9, 10)

11. Complainant was accused by co-workers of such conduct as making sexually suggestive comments and gestures at work, parking outside a co-worker's house at night, and indecently exposing himself. (N.T. 81, 82, 100, 101, 109, 113, 119-122, 131-133)

12. Respondent's Working Rules, in effect at the time of Complainant's employment with Respondent, distinguish between Minor and Major Rule Violations; discharge without warning may follow Major Rule Violations. (R.E. 1, N.T. 66)

CONCLUSIONS OF LAW

1. Complainant is an adult individual within the meaning of Sections 4, 5 and 9 of the Human Relations Act.

2. Respondent is an employer within the meaning of Sections 4, 5 and 9 of the Act.

3. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this case.

4. All jurisdictional and procedural prerequisites to a public hearing under the Act have been met.

5. To prevail in this matter, Complainant must initially show that:

- a. He is a member of a protected class or classes; and
- b. He was terminated from his position; and
- c. He was given no warnings prior to termination; and
- d. Similarly situated employees who did not belong to the protected class or classes were warned prior to termination.

6. Complainant has established that he belongs to a protected class or classes and that he was terminated by Respondent.

7. Complainant has failed to establish that he was not warned prior to termination.

8. Complainant has failed to establish that similarly situated White or female employees were warned prior to termination.

9. When as here a Complainant fails to establish a

prima facie case of discrimination under the Act, the complaint must be dismissed.

## OPINION

This case arises on a complaint filed by Mr. Tyrone Spruill ("Complainant") against the Commonwealth of Pennsylvania, Department of Transportation ("Respondent") with the Pennsylvania Human Relations Commission ("Commission") on September 8, 1980, at Docket No. E-18816. 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. Leave was granted to amend the complaint by order dated April 22, 1982. Prior to hearing the parties stipulated to certain facts, which were subsequently incorporated into the record of the public hearing. Both parties having waived their statutory right to a hearing before a panel of three Commissioners, the case went to public hearing on August 2, 1982, before Commissioner Doris M. Leader.

Mr. Spruill's complaint alleged that Respondent violated Section 5(a) of the Human Relations Act, 43 P.S. §§951 et seq., by terminating him from his position as Clerk I on the basis of his race, Black, without the warnings given to White employees prior to termination. The amended complaint alleged the same violation on the bases of race, Black, and sex, male. As Complainant alleges different treatment, our analysis will be guided by the United States Supreme Court's discussion of a prima facie violation of Title VII of the 1964 Civil Rights Act in McDonnell Douglas v. Green, 411 U.S. 792 (1973).

The Court there, in setting out the elements of a prima facie refusal to hire case, indicated that the requirements are flexible and must be modified in light of the facts of a given case. In essence the Complainant must establish facts which, if unrebutted, raise a reasonable inference of discrimination. In this context we find that Complainant must show: (1) that he is a member of a protected class or classes; (2) that Respondent terminated him; (3) that he did not receive prior disciplinary warnings; (4) that similarly situated employees not in the protected classes received disciplinary warnings prior to termination.

Complainant, a Black male, was hired by Respondent as a Clerk I on January 20, 1980. He was terminated on June 12, 1980, shortly before the end of his six month probationary period. The dismissal letter stated that his relationships with co-workers had been unacceptable. Complainant has thus established the first two elements of his prima facie case.

The absence of prior disciplinary warnings is less clear. Complainant urges that he received no written performance evaluation. While a Respondent witness testified that he believed a written performance evaluation was done, none was produced.

However, credible testimony established that, on three separate occasions, Complainant was orally cautioned about his behavior with certain of his co-workers, and told to stop behavior which those co-workers found offensive. Two of these warnings were given by Complainant's immediate supervisor, Mr.

Baumbaugh. While he was apparently not told of the risk of termination, Complainant was put on adequate notice that a change in his behavior was desired by his employer. The fact that this warning was in oral rather than written form is not of great significance, given the testimony of Respondent's Chief of Labor Relations that written evaluations are not always routinely done on non-Civil Service employees such as Mr. Spruill.

It is in relation to the fourth element of his prima facie case that Complainant's proof most clearly fails. He points to two other former Respondent employees who received written evaluations and warnings prior to termination, and argues that his situation is comparable to theirs in all relevant aspects other than race and sex. The record shows, on the contrary, that neither was accused of misconduct as serious as that attributed to Complainant.

The two, Mr. Kupfer and Ms. Duffin, were terminated after receiving written evaluations and, in Ms. Duffin's case, a warning memorandum. The reason given to Mr. Kupfer for his termination was unsatisfactory performance. The reason given to Ms. Duffin was excessive absenteeism. Both unsatisfactory performance and excessive absenteeism are specifically listed in Respondent's Working Rules as Minor Rule Violations.

The accusations made against Mr. Spruill, in contrast, included making sexually suggestive comments and gestures to female co-workers, questioning female co-workers about their sexual activities and about where they lived, exposing himself



indecently on at least two occasions, and parking outside a co-worker's house at night after she had repeatedly refused to give him her address. Not surprisingly, these actions are not specified by Respondent to be rule violations at all. Because of the degree of disruption involved, they more nearly resemble the sorts of conduct specifically listed under Major Rule Violations, those which can lead to discharge without prior warning.

Complainant has therefore failed to establish that he was treated differently from individuals who were similar in all but their race or sex. Accordingly, his case must be dismissed.



