

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICES

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ROLLIN R. LEWIS, :
Complainant :
 :
v. : COMPLAINT DOCKET NO. E-19317
 :
CAROLINA FREIGHT CARRIERS :
CORP., :
Respondent :

STIPULATION OF FACTS

1. The Complainant herein is Rollin R. Lewis, an adult individual residing at 178 Ridge Hill Road, Mechanicsburg, Cumberland County, Pennsylvania.

2. Respondent, Carolina Freight Carriers Corp., is a corporation with its principal place of business at Highway 150 East, Cherryville, North Carolina. Respondent operates a trucking terminal in Carlisle, Cumberland County, Pennsylvania. Respondent is an employer within the meaning of Section 5(a) of the Pennsylvania Human Relations Act.

3. Respondent is a common carrier involved in the transportation of freight by motor vehicle in interstate commerce and is subject to the Federal Motor Carrier Safety Regulations, Federal Highway Administration, United States Department of Transportation. All road drivers employed by Respondent are subject to these regulations as well.

4. At all times material to this proceeding, Respondent and its road drivers have been subject to the terms and

conditions of the National Master Freight Agreement and Central Pennsylvania Over-the-Road and Local Cartage Supplemental Agreement for the periods April 1, 1979 to March 31, 1982 and April 1, 1982 to March 31, 1985.

5. Over-the-road drivers employed by Respondent at its Carlisle terminal are represented by Teamsters Local 776.

6. On August 6, 1980, Complainant applied for employment with Respondent as a road driver assigned to Respondent's Carlisle terminal.

7. The road driver position with Respondent requires the driver to drive a tractor-trailer from terminal to terminal through states within the operating authority of Respondent. Road drivers must be physically and mentally able to safely operate a motor vehicle at all times in all types of weather and traffic conditions and also must be physically capable of delivering and unloading freight to customers.

8. Also, on September 12, 1980, as part of the physical examination, Complainant was sent to Ritzman Associates, an association of physicians, for a spinal X-ray.

9. The sole reason that Complainant was not hired by Respondent for the road driver position is because he failed to meet Respondent's minimum physical standards of employment due to his lower back condition.

10. On October 20, 1980, Complainant was examined by Dr. Thomas Malin, an Orthopedic Specialist.

11. To date, Rollin Lewis has not filed an application for determination of driver's medical qualifications with

the Director of the Bureau of Motor Carrier Safety, United States Department of Transportation, to resolve the dispute concerning his qualification under the regulations to safely operate a motor vehicle.

12. Complainant has approximately 27 years of experience as an over-the-road driver.

13. Complainant has never lost time from work because of a back problem, has never been hospitalized because of his back and at the time of his application was not experiencing any back pain.

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14. Had Rollin Lewis been employed at the time he applied for employment with Respondent, his seniority date would have been at or around September 12, 1980. ²⁰⁸⁷


15. On April 15, 1982, Respondent, through its counsel, made an immediate unconditional offer of employment as a new hire as a road driver to Rollin Lewis which was rejected by letter from Commission counsel dated April 22, 1982.

16. The Memorandum of Agreement of Amendments to Central Pennsylvania Over-the-Road and Local Cartage Supplemental Agreement which was in effect on April 15, 1982, provides that the following rates of pay shall apply to all newly hired probationary employees:

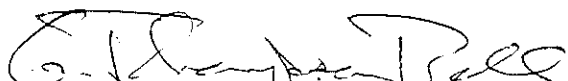
- a) Effective first day of employment, 70% of the current rate;
- b) Effective 1st anniversary date of employment, 80% of the current rate;

- c) Effective 2nd anniversary date of employment, 90% of the current rate;
- d) Effective 3rd anniversary of employment, 100% of the current rate.

17. All procedural prerequisites to a public hearing under the Pennsylvania Human Relations Act have been met in this case.



William J. Flannery
Counsel for Respondent



G. Thompson Bell
Counsel for Complainant

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICES

PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM R. BIRCH, :
Complainant :
v. : COMPLAINT DOCKET NO. E-19318
CAROLINA FREIGHT CARRIERS :
CORP., :
Respondent :

STIPULATION OF FACTS

1. The Complainant herein is William R. Birch, an adult individual residing at 880 King Street, Lewisberry, Cumberland County, Pennsylvania.

2. Respondent, Carolina Freight Carriers Corp., is a corporation with its principal place of business at Highway 150 East, Cherryville, North Carolina. Respondent operates a trucking terminal in Carlisle, Cumberland County, Pennsylvania. Respondent is an employer within the meaning of Section 5(a) of the Pennsylvania Human Relations Act.

3. Respondent is a common carrier involved in the transportation of freight by motor vehicle in interstate commerce and is subject to the Federal Motor Carrier Safety Regulations, Federal Highway Administration, United States Department of Transportation. All road drivers employed by Respondent are subject to these regulations as well.

4. At all times material to this proceeding, Respondent and its road drivers have been subject to the terms and

conditions of the National Master Freight Agreement and Central Pennsylvania Over-the-Road and Local Cartage Supplemental Agreement for the periods April 1, 1979 to March 31, 1982 and April 1, 1982 to March 31, 1985.

5. Over-the-road drivers employed by Respondent at its Carlisle terminal are represented by Teamsters Local 776.

6. On August 6, 1980, Complainant applied for employment with Respondent as a road driver assigned to Respondent's Carlisle terminal.

7. The road driver position with Respondent requires the driver to drive a tractor-trailer from terminal to terminal through states within the operating authority of Respondent. Road drivers must be physically and mentally able to safely operate a motor vehicle at all times in all types of weather and traffic conditions and also must be physically capable of delivering and unloading freight to customers.

8. On September 11, 1980, as part of the physical examination, Complainant was sent to Ritzman Associates, an association of physicians for a spinal X-ray.

9. The sole reason that Complainant was not hired by Respondent for the road driver position is because he failed to meet Respondent's minimum physical standards of employment due to his lower back condition.

10. On October 14, 1980, Complainant was examined by Dr. Thomas Malin, an Orthopedic Specialist.

11. To date, William Birch has not filed an application for determination of driver's medical qualifications with the Director of the Bureau of Motor Carrier Safety, United States Department of Transportation, to resolve the dispute concerning his qualification under the regulations to safely operate a motor vehicle.

12. Complainant has approximately 30 years of experience as an over-the-road driver.

13. Complainant has never lost time from work because of a back problem, has never been hospitalized because of his back and at the time of his application was not experiencing any back pain.

14. ~~Had William Birch been employed by Respondent,~~ ^{wjz}
~~his seniority date would have been at or around September 11, 1980.~~

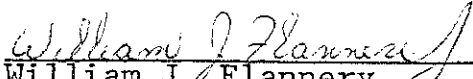
15. On April 15, 1982, Respondent, through its counsel, made an immediate unconditional offer of employment as a new hire as a road driver to William Birch which was rejected by letter from Commission counsel dated April 22, 1982.

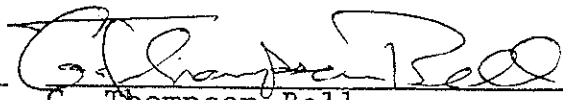
16. The Memorandum of Agreement of Amendments to Central Pennsylvania Over-the-road and Local Cartage Supplemental Agreement which was in effect on April 15, 1982, provides that the following rates of pay shall apply to all newly hired probationary employees:

- a) Effective first day of employment, 70% of the current rate;

- b) Effective 1st anniversary date of employment, 80% of the current rate;
- c) Effective 2nd anniversary date of employment, 90% of the current rate;
- d) Effective 3rd anniversary of employment, 100% of the current rate.

17. All procedural prerequisites to a public hearing under the Pennsylvania Human Relations Act have been met in this case.


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Counsel For Respondent


G. Thompson Bell
Counsel For Complainant

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ROLLIN R. LEWIS, :
 :
 Complainant :
 :
 v. : Docket No. E-19317
 :
 CAROLINA FREIGHT CARRIERS, :
 :
 Respondent :

SUPPLEMENTAL STIPULATION OF FACTS

1. The chart below lists by seniority order employees of Carolina Freight, formerly employed by Wilson Freight, who were hired by Carolina during September and October 1980 subsequent to the closing of Wilson Freight in July 1980, and indicates the date of their (1) application for employment; (2) physical examination; and (3) seniority:

<u>Employee</u>	<u>Application</u>	<u>Physical</u>	<u>Seniority</u>
Dennis Browne	8/7/80	9/8/80	9/26/80
Floyd Eckenroad	8/13/80	9/8/80	9/26/80
Niles Ehrhart	8/6/80	9/11/80	9/26/80
Ron Sheaffer	8/6/80	9/8/80	9/26/80
James Hower	9/8/80	9/12/80	9/28/80
William McPherson	8/6/80	9/22/80	10/9/80

2. The seniority order of the four employees hired on the same day (9/26/80) was chosen by lot. Each of the four employees, Browne, Eckenroad, Ehrhart and Sheaffer selected a

number out of a hat which resulted in the seniority order listed above.

3. Complainant, Rollin R. Lewis applied on 8/6/80, and had his physical examination on 9/12/80.

4. The following chart sets forth the gross earnings of the employees listed for the period from the fourth quarter 1980 to August 27, 1983:

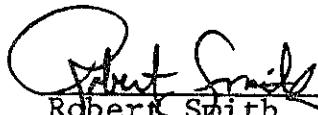
	<u>GROSS EARNINGS</u>			
	<u>4th Quarter 1980</u>	<u>1981</u>	<u>1982</u>	<u>Year to Date 1983</u>
Browne, D.	\$8,878.08	\$34,357.38	\$38,762.01	\$27,374.22
Echenroad, F.	\$9,658.50	\$38,806.68	\$39,462.01	\$28,112.21
Ehrhart, N.	\$8,501.82	\$33,909.30	\$32,139.07	\$22,843.62
Sheaffer, R.	\$9,291.78	\$35,821.47	\$35,753.51	\$25,707.30
Hower, J.	\$7,379.49	\$24,975.42	\$26,423.89	\$17,199.23
McPherson, W.	\$6,374.06	\$24,822.08	\$18,159.55	\$12,512.93

5. Employee James Hower was laid off as a road driver on 11/19/81. In order to obtain some earnings during lay-off, Hower, at his own option, bid on to the extra board on the dock on 11/24/81. On 2/14/82, Hower was recalled as a road driver. On 10/17/82, Hower, at his own request, was transferred to an opening on the dock. Hower's place on the road driver's seniority list was taken by McPherson who moved up in Hower's absence.

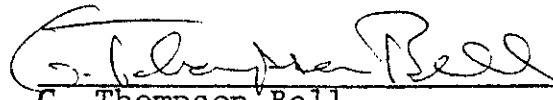
6. Employee William McPherson was terminated as a road driver on May 15, 1982.

7. Complainant, Rollin R. Lewis, earned the following sums from September, 1980 to July 29, 1983:

September, 1980 to December 31, 1980	\$1,942
1981	\$21,031
1982	26,728
January 1, 1983 to July 29, 1983	17, 048



Robert Smith
Counsel for Respondent



G. Thompson Bell
Counsel for Complainant

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

WILLIAM BIRCH, :
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 Complainant :
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 v. : Docket No. E-19318
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 CAROLINA FREIGHT CARRIERS, :
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2. The seniority order of the four employees hired on the same day (9/26/80) was chosen by lot. Each of the four employees, Browne, Eckenroad, Ehrhart and Sheaffer selected a

number out of a hat which resulted in the seniority order listed above.

3. Complainant, William Birch applied on 8/6/80, and had his physical examination on 9/11/80.

4. The following chart sets forth the gross earnings of the employees listed for the period from the fourth quarter 1980 to August 27, 1983:

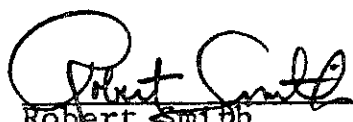
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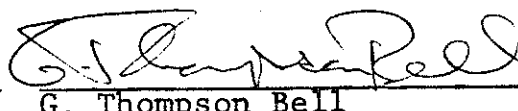
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6. Employee William McPherson was terminated as a road driver on May 15, 1982.

7. Complainant, William Birch, earned the following sums from September, 1980 to August 13, 1983:

September 1980 to December 31, 1980	\$3,474
1981	\$19,545
1982	\$32,077
January 1, 1983 to August 13, 1983	\$17,482


Robert Smith
Counsel for Respondent


G. Thompson Bell
Counsel for Complainant

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICES
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ROLLIN R. LEWIS
and
WILLIAM R. BIRCH,

Complainants

v.

CAROLINA FREIGHT CARRIERS,

Respondent

DOCKET NOS. E-19317
E-19318

FINDINGS OF FACT*

1. In August of 1980, Complainants Lewis and Birch were able to safely and efficiently perform the duties of road drivers.
2. The X-ray of each Complainant's lower back revealed a number of small osteophytes, bony spurs on the vertebrae. Complainants were not medically approved to be truck drivers by Dr. Harhigh because of these osteophytes.

* The foregoing Stipulations of Facts are hereby incorporated herein as if fully set forth.

3. While Dr. Harhigh testified that osteophytes of the lower back may cause loss of leg function, he did not establish any reasonable degree of likelihood that such an event might occur in connection with driving a truck.

4. Had Complainants not been disqualified for employment by Dr. Harhigh, they would have been hired by Carolina on September 26, 1980.

CONCLUSIONS OF LAW

1. Complainants are individuals within the meaning of the Pennsylvania Human Relations Act ("Act").
2. Respondent is an employer within the meaning of the Act.
3. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in these cases.
4. The Commission has jurisdiction over the parties and subject matter of these cases.
5. The Commission is not preempted by federal law in these cases.
6. Complainants are handicapped persons within the meaning of the Act.
7. Respondent has failed to establish that Complainants' handicaps were job related.
8. Respondent refused to hire Complainants on the basis of their non-job related handicaps.
9. Complainants as prevailing parties in this matter are entitled to an award of back pay, less the amounts they have earned since September of 1980, plus legal interest, and to an order that they be hired as truck drivers.

OPINION

The cases arise on complaints filed by Rollin R. Lewis and William R. Birch ("Complainants") against Carolina Freight Carriers Corporation ("Carolina" or "Respondent") with the Pennsylvania Human Relations Commission ("Commission") on November 26, 1980; Mr. Lewis' complaint was filed at Docket No. E-19317, that of Mr. Birch at E-19318. Each alleged a violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act") in Carolina's refusal to hire him as a truck driver on the basis of a non job related handicap or disability. Age was alleged in each complaint as an alternative basis of the refusal to hire but those claims were not pursued at hearing. Carolina answered the charges with the statement that the Complainants were not hired because they did not meet minimum qualifications for employment as drivers in accordance with applicable federal safety regulations.

Commission staff investigated the cases and found probable cause to credit the allegations of discrimination. When efforts to conciliate were unsuccessful the consolidated cases were approved for public hearing. Hearings were held in Harrisburg, Pennsylvania on September 20, 1983 and November 2, 1983, before Commissioner Doris M. Leader, who chaired the panel, and Commissioners Rita Clark and Requel Otero de Yiengst. The hearing record was left open for receipt of the depositions of Drs. Thomas H. Malin and George H. Harhigh. These were received and made part of the record in June of 1984. The panel then received briefs and reply briefs from the parties. The cases are now ripe for decision.

The essential facts giving rise to this dispute are not contested. Each Complainant initiated an application for employment with Respondent as a

road driver during August of 1980. After successfully completing components of the application process which are not relevant here, the Complainants underwent physical examinations and spinal X-rays. The examining physician in each case then found the Complainant unqualified for employment because of a lower back condition; the parties stipulated in each case that the sole reason for the refusal to hire was that the Complainant because of this lower back condition did not meet Respondent's minimum physical standards of employment.

The parties also stipulated that Carolina is a common carrier engaged in the transportation of freight by motor vehicle in interstate commerce, subject as such to the Federal Motor Carrier Safety Regulations of the Federal Highway Administration, Department of Transportation ("DOT"). All road drivers employed by Respondent must meet certain requirements imposed by these regulations which are set forth at 49 C.F.R. §391.41-49. Section 391.41 provides in relevant part that:

Physical qualifications for drivers.

(a) A person shall not drive a motor vehicle unless he is physically qualified to do so and, except as provided in § 391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person _____

. . . .

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a motor vehicle safely;

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.

Respondent vigorously asserts that our jurisdiction over this case is

preempted by the federal scheme, of which the cited regulation is a portion. We do not find that to be so.

The parties argue, and we agree, that federal preemption should be found here if there is actual conflict or inconsistency between state and federal law. Teamsters Union, Local 20 v. Morton, 377 U.S. 252 (1964); De Canas v. Bica, 424 U.S. 351 (1976). As in our last look at this issue, we find no inconsistency between the cited federal regulation and the relevant portions of the Act and regulations. In Culver v. Interstate Motor Freight System, Docket No. E-14582, decided January 6, 1981, we found that the Act's focus upon the job relatedness of handicaps and disabilities encompassed a concern with safety which was in complete harmony with the cited DOT regulations. Those regulations address a driver's ability to control and operate a motor vehicle safely; the Act protects only those whose handicaps or disabilities do not ... "substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in or has been engaged in". 43 P.S. §.954(p). Regulations defining job relatedness provide that a handicap is job if there is a demonstrable threat of harm to the health and safety of others, or a threat of demonstrable and serious harm to the employee or applicant, because of it. 16 Pa. Code § 44.4 (e)(ii) and (iii). Federal and state law alike articulate concern with a driver's ability to safely operate a vehicle. There is a simply no inconsistency between them.

Nor are we persuaded by Respondent's argument that the DOT regulations provide the exclusive procedure for resolving conflicts of medical evaluation. They do of course provide a procedure for resolution; there is however nothing in that scheme which even mentions exclusivity. The particular section relied upon by Respondent states only that a driver shall be deemed

to be unqualified "(o)nce an application [for determination of medical qualification] is submitted to the Director... until such time as the Director makes a determination..." 49 C.F.R. §391.47 (f).

We note also that the DOT regulations themselves provide:

State and local laws, effect on.
Except as otherwise specifically indicated, Parts 390-397 of this subchapter are not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the persons subject thereto.

49 C.F.T. §390.30. We therefore decline to find ourselves preempted by federal law and turn to consideration of the merits of these cases.

There can be little dispute, and we find, that Complainants are handicapped or disabled persons within the meaning of the Act and applicable regulations. Specifically, we find that Carolina regarded the Complainants as having physical impairments, lower back conditions, which would substantially limit them in the conduct of the major life activity of working. They thus meet the regulatory definition of handicapped or disabled person set out at 16 Pa. Code §44.4 (i)(C) and upheld in Pennsylvania State Police v. Pennsylvania Human Relations Commission, 72 Pa. Commonwealth Ct. 520, 457 A.2d 584 (1983) and Pennsylvania State Police v. Pennsylvania Human Relations Commission, Pa. Commonwealth Ct. _____, A.2d _____ (1984). Having found that Complainants are handicapped within the meaning of the Act, we must determine whether their handicaps were job related.

The Act defines "non-job related handicap or disability" in relevant part as "any handicap or disability which does not substantially interfere

with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in, or has been engaged in."

43 P.S. §954 (p). Pertinent regulations provide:

(e) Non--job related Handicap or Disability

...
(ii) A handicap or disability is not job related merely because the job may pose a threat of harm to the employee or applicant with the handicap or disability unless the threat is one of demonstrable and serious harm.

(iii) A handicap or disability may be job related if placing the handicapped or disabled employee or applicant in the job would pose a demonstrable threat of harm to the health and safety of others.

16 Pa. Code §44.4 (e). The burden of establishing job relatedness is on Respondent. Pennsylvania State Police v. Pennsylvania Human Relations Commission, 457 A.2d 584, 589.

Nothing in the record suggests that either Complainant was unable in August of 1980 to perform the duties of an over the road truck driver, and we do not understand Respondent to argue that this was the case. Job relatedness if present here may be found only in the threat of future harm to the Complainants or other people, within the meaning of 16 Pa. Code §44.4 (e)(ii) and (iii), cited above. On this record we cannot conclude that such a risk was present.

Each Complainant was found by X-ray to have a number of osteophytes, defined by both Dr. Malin and Dr. Harhigh as bony spurs, on the vertebrae of the lower back. There was some disagreement about the size of the various osteophytes; the largest figure mentioned by either doctor was five millimeters. In addition, the X-ray of Mr. Birch was read by a Dr. Miller at Ritzman Associates, the radiology practice that performed the X-ray, as possible revealing a small blastic lesion, although this was described as

"highly unlikely". Dr. Harhigh, the physician who disqualified the Complainants, mentioned this as having some bearing on his opinion regarding Mr. Birch. Dr. Harhigh's testimony was vague and contradictory about this unlikely lesion, however, and we are satisfied that the disqualification of Mr. Birch was based on the presence of osteophytes alone.

Dr. Harhigh testified that bony spurs on the lower vertebrae may, especially given continuing jarring of the spinal column, interfere with the functioning of nerves leaving the spine in that area, in turn causing impairment of the functioning of the legs. His testimony about both the likelihood and the severity of such leg impairment was inconclusive and unpersuasive, especially given Dr. Malin's entirely contradictory evidence on the same issue. Dr. Harhigh seemed to suggest possibilities ranging from sudden paralysis to gradual weakening of the legs; he described no situation in which this sort of impairment actually occurred in connection with driving a truck. In short, we find that Respondent's evidence on the issue of risk was vague and hypothetical, and fell far short of what we have consistently held to be required to prove job relatedness under the cited regulations.

Rather than squarely addressing the question of job relatedness, Respondent argues that medical certification pursuant to the federal regulations establishes a bona fide occupational qualification for the position of truck driver. We reject this contention. Given our earlier holding that we are not preempted, we believe that the Act requires analysis of the job relatedness of the Complainants' handicaps, not an inquiry into whether the absence of such handicaps should be considered to be a bona fide occupational qualification for the positions sought.

We therefore conclude that Respondent refused to hire Complainants on

the basis of their non-job related handicaps, in violation of Section 5(a) of the Act, and must consider appropriate relief. Carolina, while not conceding liability, raises a number of issues in connection with the proper scope of relief in these cases.

Section 9 of the Act empowered us to award relief including hiring and backpay following a finding of discrimination. Carolina argues that neither remedy may be ordered here because Complainants were not DOT certified in the fall of 1980. We believe that this argument is disposed of by Commonwealth Court's decision in Pennsylvania State Police v. Pennsylvania Human Relations Commission, _____ Pa. Cmwlth. Ct. _____, _____ A.2d _____ (1984), wherein the Court upheld out backpay order in spite of the fact that the Complainant had not completed the final steps of the application process at the time his application was rejected. As the Court noted, "... it is not the complainant's fault that it is still unknown whether he will pass the two remaining steps in the application process." _____ A.2d at _____.

Carolina next argues that backpay liability even if found should be cut off by the unconditional offer of employment which it made to the Complainants on April 15, 1982, and which they rejected. Ford Motor Co. v. EEOC, 458 U.S. 219 (1982), where an unconditional offer of the position originally sought (without retroactive seniority) was held to cut off back pay liability under Title VII, is cited in support. We disagree.

First, while we may of course look to federal law for authority, we are not bound by it. See General Electric Corp. v. Pennsylvania Human Relations, 469 Pa. 292, 365 A.2d 649 (1976); Anderson v. Upper Bucks County Area Vocational Technical School, Pa. Cmwlth., 373 A.2d 126 (1977). We find the

Ford Motor Co. decision to be utterly inconsistent with one of the primary purposes of the Act and indeed of Title VII, making victims of discrimination whole. We therefore decline to follow it.

Second, even if the Ford Motor Co. decision were a binding interpretation of the Act, we find the facts of the instant case to be distinguishable from the situation there. The parties before us have stipulated that in April of 1982, when the Complainants rejected Carolina's offer of employment, the effective collective bargaining agreement provided that probationary new hires would be paid at 70% of the current rate for their first year, 80% for the second year, 90% for the third year, and 100% of the current rate only after their third anniversary date. Thus, in addition to lost seniority, Complainants would have accepted jobs at substantially lower wages than either those which they would have earned had they been hired in 1980 or those which they were earning at the positions they subsequently found. We do not read Ford Motor Co. to require this result.

Finally, Carolina argues that Complainants would not have been hired until sometime after September 26, 1980 even if Dr. Harhigh had certified them at the time of their original examinations. We find however that the record provides support for Complainants' contention that they would have been hired on that date, absent Carolina's discriminatory actions, as were several other individuals who applied and had their physical examinations at essentially the same time as did the Complainants.

Having concluded that Carolina refused to hire Complainants on the basis of their non-job related handicaps, in violation of Section 5 of the Act, we order relief as described with specificity in the order which follows.

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICES

PENNSYLVANIA HUMAN RELATIONS COMMISSION

----- :
WILLIAM R. BIRCH and ROLLIN :
R. LEWIS, :
Complainants :
v. : DOCKET NOS. E-19317
CAROLINA FREIGHT CARRIERS, : E-19318
Respondent :
----- :

RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in these cases, the Hearing Panel concludes that Respondent violated Section 5(a) of the Pennsylvania Human Relations Act, and therefore recommends that the foregoing findings of fact, conclusions of law, and opinion be adopted and ratified by the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Act.

December 17, 1984
Date:

Doris M. Leader
DORIS M. LEADER
Hearing Panel Chairperson

December 17, 1984
Date:

Rita Clark
RITA CLARK
Hearing Commissioner

December 17, 1984
Date:

Raquel Otero De Yienast
RAQUEL OTERO DE YIENAST
Hearing Commissioner

3. Respondent shall pay to Rollin Lewis a lump sum of \$38,322, representing his lost earnings between September 26, 1980, and August 27, 1983.

Respondent shall also pay to Mr. Lewis the difference between his actual earnings and the amount he would have earned between August 27, 1983, and such time as a bona fide offer of employment is made to him, assuming a seniority date of September 26, 1980.

Respondent shall also pay to Mr. Lewis interest of six per cent per annum on all amounts described in this paragraph.

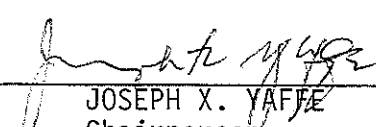
4. Respondent shall pay to William Birch a lump sum of \$33,674, representing his lost earnings between September 26, 1980, and August 27, 1983.

Respondent shall also pay to Mr. Birch the difference between his actual earnings and the amount he would have earned between August 27, 1983, and such time as a bona fide offer of employment is made to him, assuming a seniority date of September 26, 1980.


Respondent shall also pay to Mr. Birch interest of six per cent per annum on all amounts described in this paragraph.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: _____


JOSEPH X. YAFFE
Chairperson

ATTEST:


ELIZABETH M. SCOTT
Secretary