

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

PAUL MUSUMBA,
Complainant

v,

K-12 STAFFING,
Respondent

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PHRC CASE NO. 201103058
EEOC Charge No. 17F201260407

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. On or about December 12, 2011, Complainant, Paul Musumba, (hereinafter "Musumba"), filed a PHRC Complaint against k-12 Staffing, in which Musumba alleged that because of his National Origin, Kenya, K-12 Staffing failed to pay Musumba for numerous days he worked as a substitute teacher. (O.D. 1).
 2. Under cover letter date July 19, 2012, the PHRC's Philadelphia regional office filed a Petition for Rule to Show Cause. (O.D. 1).
 3. On July 24, 2012, PHRC Motions Examiner Carl H. Summerson issued a Rule to Show Cause which, in effect, notified k-12 Staffing that it had until August 24, 2012 to file a properly verified answer to Musumba's complaint. (O.D. 2).
 4. K-12 Staffing did not file an answer. (O.D. 4).
 5. On August 29, 2012, Motions Examiner Summerson recommended to the full PHRC that K-12 Staffing be found liable for Musumba's allegation. (O.D. 4).
 6. By Order dated September 24, 2012, the PHRC found K-12 Staffing liable for failing to pay Musumba for work he performed as a substitute4 teacher because of Musumba's National Origin, Kenya.. (O.D. 4).
 7. A public hearing on the issue of what, if any, damages are appropriate was held on April 30, 2013, in Philadelphia, Pennsylvania.
- To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

O.D. Official Docket
N.T. Notes of Testimony
C.E. Complainant's Exhibit

8. In early September 2011, Musumba signed a contract of employment with K-12 Staffing to perform work as a substitute teacher. (N.T. 10-12).
9. Pursuant to the contract, Musumba, K-12 Staffing was to pay Musumba \$90.00 for each day he performed duties as a substitute teacher.. (N.T. 12).
10. Initially, Musumba was assigned to a substitute teacher position in the New Media Charter School. (N.T. 12).
11. Musumba performed duties as a substitute teacher for the following days:
 - a. September 5, 2011
 - b. September 6, 2011
 - c. September 7, 2011
 - d. September 8, 2011
 - e. September 9, 2011
 - f. September 12, 2013
 - g. September 13, 2011
 - h. September 14, 2011
 - i. September 16, 2011
 - j. September 19, 2011
 - k. September 20, 2011
 - l. September 21, 2011
 - m. September 22, 2011
 - n. September 23, 2011
 - o. September 26, 2011
 - p. September 27, 2011
 - q. September 28, 2011

- r. September 29, 2011
- s. September 30, 2011
- t. October 5, 2011
- u. October 6, 2011
- v. October 7, 2011
- w. October 12, 2011
- x. October 13, 2011
- y. October 14, 2011
- z. October 17, 2011
- aa. October 18, 2011 (N.T. 15-19; C.E. 2-3).

12. K-12 Staffing paid Musumba for his work as a substitute teacher on the following days:

- a. September 5, 2011
- b. September 12, 2011
- c. September 13, 2011
- d. September 14, 2011
- e. September 16, 2011
- f. September 19, 2011
- g. September 20, 2011
- h. September 21, 2011
- i. September 22, 2011
- j. September 23, 2011 (N.T. 16; C.E. 3).

13. K-12 Staffing failed to pay Musumba for 17 days that he worked as a substitute teacher. (N.T. 16-19; C.E.2-3)..

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission ("PHRC") may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, K-12 Staffing's failure to file a properly verified answer resulted in the entry of a judgment for Musumba on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. The Commission may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.

OPINION

This case arose on a complaint filed by Paul Musumba, against k-12 Staffing. The Complainant's complaint alleged that k-12 Staffing failed to pay Musumba for work he performed as a substitute teacher because of his National Origin, Kenya.. Musumba's complaint states a claim under Sections 5(a) of the Pennsylvania Human Relations Act ("PHRA").

Musumba's verified complaint was filed on or about December 12, 2011. By correspondence dated July 19, 2012, the Pennsylvania Human Relations Commission ("PHRC") Philadelphia regional office petitioned Motions Examiner Summerson for a Rule to Show Cause, indicating that K-12 Staffing had not answered Musumba's complaint. The petition declared that K-12 Staffing had been served with Musumba's complaint on June 8, 2012.

On July 24, 2012, a Rule to Show Cause was issued, directing K-12 Staffing to respond on or before August 24, 2012. After K-12 Staffing failed to file a properly verified answer, on August 29, 2012, Motions Examiner Summerson recommended a finding of liability to the full PHRC. On September 24, 2012, the full PHRC determined that K-12 Staffing failed to pay Musumba for work performed because of his National Origin, Kenya.

After the finding of liability in this case, conciliation efforts were unsuccessfully attempted. Subsequently, this matter was approved for the public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held April 30, 2013, in Philadelphia, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Ryan Allen

Hancock, PHRC Assistant Chief Counsel. K-12 Staffing failed to attend public hearing.

Since liability had been found after K-12 Staffing failed to file a properly verified answer, the only question at the public hearing was what damages Musumba could establish.

Section 9(f) of the PHRA provides in pertinent part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent 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 reimbursement of certifiable travel expenses in matters involving the complaint, hiring reinstatement...with or without back pay...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice...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.

The function of the remedy in employment discrimination cases is not to punish the Respondent, but simply to make a Complainant whole by returning the Complainant to the position in which she would have been, absent the discriminatory practice. See Albermarle Paper Co. v. Moody, 422 U.S. 405, 10 FEP Cases 1181 (1975); PHRC v. Alto-Reste Park Cemetery Association., 306 A.2d 881 (Pa. S. Ct. 1973).

The first aspect we must consider regarding making Musumba whole is the issue of the extent of financial losses suffered. When complainants prove an economic loss, back pay should be awarded absent special circumstances. See Walker v. Ford Motor Company, Inc., 684 F2d 1355, 29 FEP Cases 1259 (11th Cir. 1982). A proper basis for calculating lost earnings need not be mathematically precise but must simply be a "reasonable means to determine the amount [the complainant] would probably have earned..." PHRC v. Transit Casualty Insurance Co., 340 A.2d 624 (Pa.

Commonwealth Ct. 1975), aff'd. 387 A.2d 58 (1978). Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. See Green v. USX Corp., 46 FEP Cases 720 (3rd Cir. 1988).

In this case, Musumba was a contract employee of K-12 Staffing from early September 2011 until late October 2011. During his employment, his contract provided that he was to earn \$90.00 for each day he served as a substitute teacher. The record shows that Musumba worked a total of 27 days but was only paid for 10 of those days. Accordingly, Musumba's damages are calculated as follows:

17 days @\$90.00 per day = \$1,530.00

The only deduction from this amount is \$100.00. On September 24, 2011, Musumba received an advance of \$100.00. Accordingly, the award for unpaid wages equals \$1,430.00 plus interest on this amount..

An appropriate order follows:

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RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, I find that Musumba suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, I further recommend issuance of the attached Final Order

PENNSYLVANIA HUMAN RELATIONS COMMISSION

May 30, 2013
Date

By: 
Carl H. Summerson
Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 25th day of June, 2013 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby.

ORDERS

1. That K-12 Staffing shall cease and desist from failing to pay employees because of their National Origin..

2. That K-12 Staffing shall pay Musumba the lump sum of \$1,430.00 which amount represents unpaid wages for work Musumba performed.
3. That K-12 Staffing shall pay additional interest of 6% per annum on the unpaid wages award calculated from November 1, 2011 until payment is made.
4. That, within thirty days of the effective date of this Order, K-12 Staffing shall report to the PHRC on the manner of K-12 Staffing's compliance with the terms of this Order by letter addressed to Ryan Allen Hancock, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 110 North 8th Street, Suite 501, Philadelphia, PA 19107.


PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:



Gerald S. Robinson, Esquire
Chairman

Attest:



Rev. Dr. James Earl Garmon, Sr.
Secretary