

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

JOSEPH METALA, JR., Complainant

v.

VALLEY MOTORS, INC., Respondent

Docket No. E-38521-A

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT

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 Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
S.F. Joint Stipulations of Fact

1. The Complainant is Joseph Metala, Jr., (hereinafter either "Metala" or "Complainant"). (S.F. 1)
2. The Respondent is Valley Motors, Inc., (hereinafter either "Valley Motors" or "Respondent") and at all times pertinent to this complaint was doing business in New Kensington, Pa. (S.F. 2)
3. Valley Motors is an automobile dealership which has several departments, one of which is a body shop. (N.T. 108)

4. Metala was born on February 16, 1923 and beginning in 1950, he began working a series of heavy collision and auto body repair jobs. (N.T. 11, 12)
5. In October 1983, Metala began working for Valley Motors in the position of body and fender repairman. (N.T. 17, 19)
6. The number of employees working in Valley Motors' body shop fluctuated between 4 and 6 repairmen. (N.T. 64, 80)
7. Until approximately October 1984, Metala's supervisor was Donna Piviroto. (N.T. 64)
8. In June 1984, Valley Motors' body shop manager became Earl Callen, ("Callen"), who also directly supervised Metala. (N.T. 79)
9. Body shop employees were paid by a flat rate pay system which meant that an employee was paid a set rate for work done whether an assignment took longer or shorter than a prescribed time to complete. (N.T. 36, 80)
10. Additionally, when work was slow, employees may have been at Valley Motors all day but only paid for time worked which could be as short as 1 hour per day. (N.T. 22)
11. In 1986, work in Valley Motors' body shop began to slow down. (N.T. 85)
12. In 1986, perceiving that he was not making enough money, Metala began collecting partial unemployment and only doing the work which was available in Valley Motors' body shop. (N.T. 85)
13. Because work remained slow, in June 1986, Metala specifically asked to be completely laid off, as Metala believed he would make more money on unemployment than working at Valley Motors' body shop. (N.T. 22, 39)
14. In 1986, Metala was aware that Callen had been experiencing physical problems. (N.T. 38)
15. Callen had Crohn's disease which caused Callen to be in and out of the hospital in the fall of 1986. (N.T. 87)
16. When Callen was out, his work was done by either Valley Motors' service manager or repair shop foreman. (N.T. 114)
17. Parts of the body shop foreman's duties were to write estimates, distribute work assignments, order parts, and settle claims with adjusters. (N.T. 64, 87)
18. In October 1986, Callen was seeking someone who could do heavy collision work, warranty work, used car repairs, and fill in as foreman during Callen's absences. (N.T. 87)
19. Metala could do all of these tasks except fill in as foreman. (N.T. 90)
20. Metala had only a 6th grade education and had difficulty reading. (N.T. 31, 32)
21. Metala admitted he could not write estimates. (N.T. 38)
22. In October 1986, Callen hired Joseph Bozic, ("Bozic"), who was 46 years old at the time, to perform many of the duties previously done by Metala but to additionally act as foreman in Callen's absence. (N.T. 90)
23. After Bozic's hire, when Callen was out, Bozic filled in for Callen and was paid extra for the additional responsibilities. (N.T. 99)
24. Valley Motors has maintained throughout the course of this matter that Metala was not recalled and that Bozic was hired because Bozic was qualified to do necessary tasks which Metala could not do. (N.T. 132, 140)
25. Other than Bozic, Valley Motors had not hired any other body shop employees during Metala's period of voluntary layoff. (N.T. 97)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties and the Commission have fully complied with the procedural prerequisites to a Public Hearing in this case.
3. Valley Motors is an "employer" within the meaning of "the PHRA.
4. Metala is an "individual" within the meaning of the PHRA.
5. Valley Motors articulated a legitimate reason for failing to recall Metala.
6. Metala failed to establish by a preponderance of the evidence that the reasons offered by Valley Motors for its actions were pretextual.
7. Metala failed to present credible direct evidence of discriminatory animus.

OPINION

This case arises on a complaint filed by Joseph Metala, Jr. ("Metala") against Valley Motors, Inc. ("Valley Motors") with the Pennsylvania Human Relations Commission ("PHRC"). In his complaint filed on or about October 30, 1986, and amended on or about June 8, 1989, Metccla alleged that Valley Motors failed to recall him off of layoff because of his age, 63 years old. Metala's complaint alleges a violation of Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. ("PHRA").

PHRC staff investigated the allegation and found probable cause to credit Metala's allegation. Thereafter, the PHRC attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion but such efforts proved unsuccessful. Subsequently, the PHRC notified Valley Motors that it had approved a Public Hearing.

The Public Hearing was held on July 21, 1989 in Pittsburgh, PA before Permanent Hearing Examiner Carl H. Summerson. The case on behalf of the complaint was presented by PHRC staff attorney Diane Blancett-Maddock. Henry G. Beamer, Esquire appeared on behalf of Valley Motors. Following the Public Hearing, the parties were afforded an opportunity to submit briefs. The post-hearing brief on behalf of the complaint was received on September 11, 1989 and the brief for Valley Motors was received on September 5, 1989. Valley Motors subsequently filed a reply brief which was received on October 12, 1989.

Generally, two analytical approaches can govern a disparate treatment allegation. See Holmes v. Bevilacqua 794 F.2d 142 (4th Cir. 1986). The first model is most often used and involves cases in which Complainants rely on a judicially created inference to support their claim of discrimination. Normally, under this model, a Complainant must first make a prima facie showing. Once established, a Respondent is afforded an opportunity to articulate a legitimate, non-discriminatory reason for its action. If the Respondent meets this production burden, in order to prevail, a Complainant must demonstrate that the entire body of evidence produced demonstrates by a preponderance of the evidence that the Complainant was the victim of intentional discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

The second model involves cases in which Complainants argue there is direct evidence of discrimination. See Blalock v. Metal Traders, Inc., 775 F.2d 703, 39 FEP 140 (6th Cir. 1985); Lujan v. Franklin County Board of Education, 766 F.2d 917, 929 n. 16, 38 FEP 9 (6th Cir. 1985); Miles v. M.N.C. Corp., 750 F.2d 867, 875, 37 FEP 8 (11th Cir. 1985). These cases progress without the aid of rebuttable presumptions because a Complainant's prima facie case consists of evidence of overt discrimination. The burden of persuasion (not merely production) then shifts to the Respondent to prove either that (1) the Respondent had legitimate reasons for its action; or (2) its overt discrimination can be justified as a bona fide occupational qualification. See generally Smallwood v. United Airlines 728 F.2d 614, 34 FEP Cases 217 (4th Cir. 1984). When the direct evidence model is used, the prima facie route becomes unnecessary. See Cline v. Roadway Express, 29 FEP 1365 (4th Cir. 1982).

Looking at the McDonnell Douglas model, we find that in this case, this matter was fully tried on its merits. When this occurs, it is appropriate to move to the ultimate issue of whether Metala has met his ultimate burden of persuasion that Valley Motors' failure to recall him was discriminatory within the meaning of the PHRA. See U.S. Postal Service Board of Governors v. Aikens, 31 FEP 609 (U.S. Supreme Court 1983) ("Aikens").

In this case, Valley Motors responded to Metala's allegation by offering evidence of the reason for the failure to recall Metala. Aikens indicates that once a Respondent does this, the McDonnell-Burdin presumption arising from a prima facie showing drops from the case, and the factual inquiry proceeds to a new level of specificity. Aikens further states that the prima facie case method established in McDonnell Douglas was never intended to be rigid, mechanized, or ritualistic. Rather it is merely a sensible orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination. Aikens, citing Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978).

“Where the [Respondent] has done everything that would be required of [it] if the [Complainant] had properly made out a prima facie case, whether the [Complainant] really did so is no longer relevant. The [trier of fact] has before it all the evidence it needs to decide whether ‘the [Respondent] intentionally discriminated against the [Complainant].’ ” Aikens at 611. In short, we simply must decide which party's explanation of Valley Motors' motivation to believe.

From the aspect of the direct evidence route, the Complainant offered testimony that Callen had, in effect, stated to him that he had hired another man because he was younger than Metala and that Metala was going to retire. Callen specifically denied telling Metala he was too old or that he was being replaced by a younger man. This direct contradiction of testimony necessitates a determination of credibility.

The Respondent's brief correctly points out that Metala's testimony was self-conflicting on at least one occasion. Metala first testified that he did not work on cars at his home while off work. Later, Metala revealed he had purchased a wrecked car and had worked on it outside his house.

Metala also testified that he never borrowed tools from Valley Motors indicating that Valley Motors did not have any tools. Callen credibly testified that Metala had borrowed specialized tools to work on the wreck Metala had purchased. Callen had also credibly testified that Metala

had returned to Valley Motors while in a layoff status, not to see if there was work, but instead to borrow equipment on one occasion and to have his truck inspected on another instance. Metala testified that he had returned approximately two times per month to check if work had picked up. Metala failed to rebut Callen's version.

Complainant bears the burden of establishing by a preponderance of the evidence that Callen had made such an incriminating statement. Considering the record as a whole, Metala failed to meet the preponderance standard in this regard.

It is worthy of mention that Metala's testimony regarding Callen's comment did not come on direct examination but instead was a response to a cross-examination inquiry on how Metala knew Bozic was younger than himself. Metala's testimony immediately preceding his testimony of the alleged animus comment from Callen appeared to be a struggle for Metala as he was having some difficulty pinpointing who Callen had hired and why Metala believed he was a younger man. One would anticipate such an important piece of evidence would have been elicited on direct examination rather than, in effect, volunteered on cross-examination in response to a separate line of inquiry. (N.T. 53). Accordingly, Metala fails to meet the proof burden under the direct evidence analysis.

The remaining question is whether Valley Motors' articulated reason for its action was a pretext for discrimination. Valley Motors credibly indicated that Bozic was hired by Callen to not only do work Metala had been doing but to also do Callen's duties as shop foreman in Callen's absence. Metala admitted that he was aware Callen was experiencing medical problems. These medical problems frequently took Callen away from his work as the physical problems were serious enough to require periods of hospitalization.

Callen further testified that after Bozic's hire, Bozic did perform additional supervisory duties in Callen's absence for which Bozic was paid extra. Clearly, Callen was aware that Metala could not perform the needed functions as Callen accurately perceived Metala could not read very well.

Quite simply, Metala had requested a voluntary layoff in June, 1986 and his degree of skills were insufficient to meet Callen's legitimate needs with respect to having an employee who could perform supervisory functions in his absence. Valley Motors produced sufficient evidence that it was justified in hiring Bozic and failing to recall Metala in October 1986. Metala, on the other hand, failed to present evidence that this articulated reason was pretextual. Accordingly, the complaint in this matter should be dismissed. An appropriate Order follows.

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

JOSEPH METALA, JR., Complainant

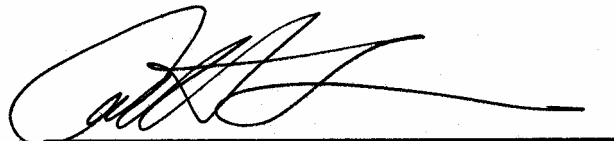
v.

VALLEY MOTORS, INC., Respondent

Docket No. E-38521-A

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has failed to prove discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law and Opinion be Approved and Adopted by the full Pennsylvania Human Relations Commission. If so Approved and Adopted, the Permanent Hearing Examiner recommends issuance of the Attached Final Order.



Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
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FINAL ORDER

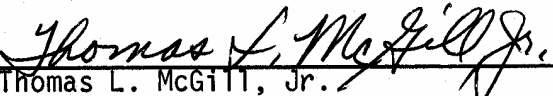
AND NOW, this 30th day of November, 1989, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing 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


that the complaint in this case be, and the same hereby is dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:


Thomas L. McGill, Jr.
Chairperson

ATTEST:


Raquel Otero De Yiengst, Secretary