

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

NORA MAE ARTIS,

*Approved
11/25
5/21/86* COMPLAINANT,

VS.

CASE NO. ER-204-76

STEPPE BEAUTICIANS, INC.,

RESPONDENT.

RECOMMENDED DECISION

I. PROCEDURAL HISTORY

A complaint was filed before the West Virginia Human Rights Commission on the 29th day of October, 1976, alleging Respondent discriminated against the Complainant in regards to her race. A pre-hearing was held on April 22, 1985.

A hearing was held on May 24, 1985. The Complainant, Nora Mae Artis, appeared in person and by counsel, F. Winston Polly. The Respondent, Steppes Beauticians, Inc., appeared by counsel, J. Brooks Lawson, Jr. The testimony of (2) two witnesses was taken. On behalf of the Complainant, Nora Mae Artis. On behalf of the Respondent, Marie Penn.

Proposed Findings of Fact and Conclusions of Law were ordered to be submitted by counsel for both parties. Counsel for the Respondent did file a Proposed Findings of Fact and Conclusion of Law; however, the Complainant did not file its Findings of Fact and

Conclusions of Law, but this was not controlling in this decision.

II. ISSUE

Whether the complainant was denied employment because of her race or color.

Whether there was an unlawful pattern and practice of discrimination and whether same resulted in Complainant's not being hired as a result of that pattern and practice.

III. FINDINGS OF FACT

1. The application for employment was made by Complainant in October, 1975, and she was not hired.

2. That the complainant is a black female, aged 30.

3. That the complainant had a Junior License to practice as a beautician in the State of West Virginia at the time of the application in October, 1975.

4. That the respondent placed two (2) ads in a newspaper for a beautician, the first being on May 6, 1975, and the second being on October 6, 1975.

5. That Marie Penn was the only employee of respondent at the time complainant made her application, and quit her employment with respondent in 1982.

6. That during the years of 1975 and 1976, in the State of West Virginia, respondent employed ninety-four persons, only one of which was a black person.

7. That the pay was based on 50% of monies taken in; that nothing was guaranteed, and that compensation was on a commission basis.

8. That the respondent intended to hire a Master and not a Junior beautician.

IV. CONCLUSIONS OF LAW

Complainant's counsel conducted a very effective cross-examination of Marie Penn concerning the respondent's utilization of Master and Junior Beautician workers at the respondent's Williamson place of business. It is, however, this Examiner's opinion that Marie Penn was a credible witness who was honestly attempting to comply with the law.

There is no persuasive proof of a contrived, artificial barrier to employment at the respondent's salon. There was no evidence of a pretext upon which to discriminate against job applicants.

The employee, Marie Penn, was working under a good faith assumption that she could not leave a Junior Beautician alone even if the assumption was not well based in the law of this State.

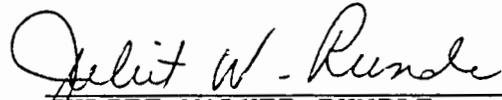
It is this Examiner's conclusion that the denial of a beautician's operating booth to the complainant in the Williamson location of the respondent was based upon a bona fide occupational qualification.

The respondent should prevail under the basic provisions of West Virginia Code, Chapter 5, Article 11, Section 9, concerning occupational qualifications. Further, there is failure of Complain-

ant to meet the Burden of Proof on the issue of whether the named respondent, Steppes Beauticians, Inc., acted with any consciousness of the race or color of the complainant. In racial discrimination actions there is a requirement of a showing of causal connection between the discriminatory practice and the protected category, i.e. the individual's race, color. There is no showing of a causal connection by the complainant.

V. DETERMINATION

It is recommended that the Respondent prevail in this case.



JULIET WALKER-RUNDLE
HEARING EXAMINER
P. O. BOX 469
PINEVILLE, WV 24874-0469
(304) 732-6411

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Recommended Decision was served upon F. Winston Polly, III, 106½ S. Fayette Street, Beckley, West Virginia, 25801 and J. Brooks Lawson, Jr., Box 729, Williamson, West Virginia, 25661 by depositing true and correct copies of same in the United States Mail, postage prepaid, this 2nd day of May, 1986.

Juliet W. Rundle

BEFORE THE WEST HUMAN RIGHTS COMMISSION

NORA MAE ARTIS,

Complainant,

vs.

Docket No. ER-204-76

STEPPE BEAUTICIANS, INC.,

Respondent.

O R D E R

On the 11th day of June, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Juliet Walker-Rundle. After consideration of the aforementioned, the Commission does hereby not adopt the Findings of Fact and Conclusions of Law as its own, for the reasons set forth below.

The Commission is of the opinion that the evidence presented by the complainant was sufficient to establish a prima facie case of discrimination in employment and that the evidence further establishes that the respondent's articulated reason for the discrimination was pretextual in that a white beautician had been employed with a junior's license prior to complainant's application and, in fact, the applicable state law and regulations do not require constant supervision of one with a junior beautician's license.

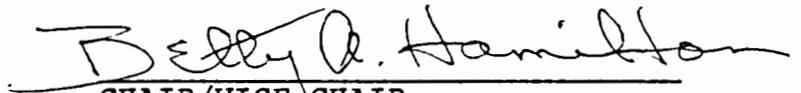
It is therefore ORDERED that the case be remanded to the Commission staff for the preparation of formal findings of fact and conclusions of law and determination of relief consistent

with this Order.

By this Order, a copy of which shall be sent by Certified Mail to the parties, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY WILL HAVE THE RIGHT TO JUDICIAL REVIEW UPON THE ISSUANCE OF THE COMMISSION'S FINAL ORDER IN THIS MATTER.

Entered this 27th day of June, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION