



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION
215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301
TELEPHONE 304-348-2616

ARCH A. MOORE, JR.
Governor

October 30, 1985

Jack E. Clark
109 Charles Street
Logan, WV 25601

Carolyn Marsh, Esquire
1634 Quarrier Street
Charleston, WV 25311

Guyan Machinery Company
P. O. Box 150
Logan, WV 25601

Fred Holroyd, Esquire
209 W. Washington Street
Charleston, WV 25302

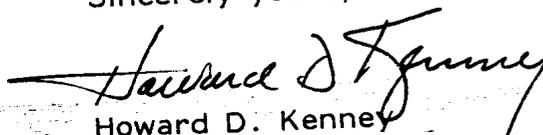
RE: Jack Eugene Clark V. Guyan Machinery Company
ER-431-80

Dear Above Parties:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of ER-431-80-Jack Eugene Clark V Guyan Machinery Company.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED. FILED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

JACK EUGENE CLARK
COMPLAINANT,

V.

DOCKET NO.: ER-431-80

GUYAN MACHINERY COMPANY
RESPONDENT.

ORDER

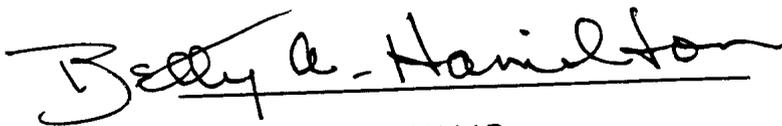
On the 9th day of October, 1985, the Commission reviewed Hearing Examiner, Anne B. Charnock's, Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this Order, a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 28 day of October, 1985.

RESPECTFULLY SUBMITTED,



CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

Approved
8/6/85
LRH

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED

JUL 10 1985

JACK EUGENE CLARK,
Complainant,

Vs.

GUYAN MACHINERY COMPANY,
Respondent.

ER 431-80 ADMINISTRATIVE DIVISION
SUPREME COURT OF APPEALS

AUG 9 1985

FINDINGS OF FACT, CONCLUSIONS OF LAW
RECOMMENDATIONS AND ORDER

Pursuant to notice issued to the Respondent, this matter came on for hearing on the 15th day of May, 1985 in the County Commission Courtroom of the Logan County Courthouse, Logan, West Virginia. Russell Van Cleve, Commissioner, and Anne B. Charnock, hearing examiner, presided.

The Complainant, Jack Eugene Clark, appeared in person and by his counsel, Carolyn Marsh, Attorney at Law, Special Assistant Attorney General, State of West Virginia and the Respondent, Guyan Machinery Company, appeared in person by John Browning, Personnel Manager of General Motors Company and by its counsel Fred F. Holroyd, Esquire of Holroyd and Yost, Charleston, West Virginia.

It appearing to the panel that notice as required by law, setting forth the time and place of the hearing and the matters to be heard, had regularly been served upon the Respondent and that the same appeared by their representatives, the hearing was convened at the aforesaid time and place.

Upon due consideration of the pleadings; the testimony, demeanor and credibility of the witnesses; a review of the exhibits

entered as evidence at the hearing and a review of the transcript of the hearing; the hearing examiner makes the following findings of fact, conclusions of law and recommendations:

FINDINGS OF FACT

1. The Complainant, Jack Eugene Clark, is a black man and lifelong resident of Logan County, West Virginia, who was employed by Respondent from May 25, 1970 until April 8, 1980 at its Phico facility.

2. That the Respondent, Guyan Machinery Company operates a facility at Phico, Logan County, West Virginia. At this facility a number of factory type operations occur including the resistor department in which Complainant worked.

3. The hourly employees at this facility are grouped by their skill in grades 7 through 10. The lower the grade the higher the skill and therefore wage.

4. Built into each grade are a number of increments. Each increment has a difference pay rate. Every ninety days an employee is evaluated. If the employee receives a specific number of points he is moved to the next increment. This procedure is akin to a merit raise.

5. The top pay level within each grade is the premium rate. Upon attaining the premium rate an employee is not eligible for any further merit pay increase as he has reached the highest pay in that grade.

6. General, across the board pay raises apply to all employees regardless of grade or whether the premium rate has been

attained.

7. Promotions from one grade to another are granted.

8. In 1980 the grades were designated as follows:

Grade 10 - janitor
Grade 9 - small assembler/coil seat bolt welder
Grade 8 - large assembler
Grade 7 - general utility assembler

As a part of grade 9 activity, large amounts of welding are included. As a grade 7 one is capable of performing not only grade 7 work but also grade 8 and 9 work if the need arises. However a grade 9 cannot perform grade 8 or 7 work and a grade 8 cannot perform grade 7 work.

9. A grade 7 employee who is assigned to do grade 9 work will be paid at his grade 7 rate. This type of assignment will not interfere with merit increases, if eligible.

10. When hired by respondent, Complainant was a grade 10. Through the years he moved up to the grade 7 position, although he was never a grade 8. At the time of his dismissal he was at the premium rate of grade 7.

11. In 1980 approximately 40 persons were employed at the Phico facility in the resistor department. Only 2 or 5% of the employees were blacks.

12. On April 8, 1980 complainant was discharged by Respondent on the grounds of insubordination. One incident led to this action. Complainant was finished with the work at his work station. He moved to the next work station to assist a fellow employee. At that time he was asked by his supervisor to move to another work station and do what amounted to grade 9 work. Complainant refused on the basis

that he was already doing work.

13. Complainant was asked a number of times to perform the assigned job and he refused. As a result he was indefinitely suspended and then fired.

14 Complainant was considered a very good welder. Until this incident occurred he had been a good employee.

15. Complainant was often asked to weld (grade 9 work) and in fact did.

16. At the time of his dismissal complainant was at the premium rate in Grade 7 and had been since December of 1978. He became a grade 7 on April 16, 1975.

17. After being hired by respondent at grade 10 Complainant did not reach the premium rate. However he was a grade 10 for only six months. (5-25-70 to 12-1-70). At that time he was promoted to grade 9.

18. Complainant did reach the premium rate in grade 9 and did so on October 1, 1973, almost three years after reaching grade 9.

19. Insubordination is a cause subject to discharge.

20. Complainant is presently unemployed and has had only temporary work since his dismissal.

CONCLUSIONS OF LAW

1. The Complainant is a "person" within the meaning of the West Virginia Human Rights Act. W. Va. Code §5-11-3(a).

2. The Respondent is an "employer" within the meaning of the West Virginia Human Rights Act. W. Va. Code §5-11-3(d).

3. It is the public policy of the State of West Virginia to provide all of its citizens equal opportunity for employment. Equal opportunity in the areas of employment is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness or handicap. W. Va. Code §5-11-2.

4. On May 9, 1980 Complainant filed a complaint against Respondent (ER 431-80) alleging that Respondent had engaged in unlawful discriminatory practices prohibited by law. W. Va. Code §5-11-9(a).

5. Said Complaint was timely filed as within ninety days of the alleged act of discrimination. W. Va. Code §5-11-10.

6. Pursuant to the mandate issued by the court in Edith Allen, et al v. State of West Virginia Human Rights Commissioner, et al, 324 S. E. 2d 299 (W. Va. 1984) the public hearing was held.

7. Racial discrimination need not be proved by direct or circumstantial evidence. Rather a four point standard had been adopted in both federal and state courts. McDonnell Douglas v. Green 411 U.S. 792 (1973), Shepardstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E. 2d 342 (W. Va. 1983).

This scheme requires the Complainant to meet established criteria to establish a prima facie case. These requirements are: that complainant

belongs to a protected class, that the complainant was discharged and that there is some evidence of disparate treatment from which the trier of fact may infer a cause or connection between race and the discharge. Jackson v. Ohio Power Company, ER 562-7.

8. Complainant has established a prima facie case. He is a member of a protected class (Black) and he was discharged and he testified to what he considered disparate treatment from Respondent.

9. Once Complainant has met his burden of establishing a prima facie case the burden shifts to the Respondent. Following the McDonnell-Douglas scheme the Respondent must articulate a legitimate non-discriminatory reason for firing Complainant.

10. Respondent meets this burden as Complainant's discharge was because of insubordination. Complainant failed to obey a number of requests from his supervisors to perform a certain task. This direct refusal is insubordination and is cause for discharge.

11. Once Respondent has met his burden the burden again shifts. As following the McDonnell-Douglas pattern it is now Complainant's duty to show that Respondent's rationale is but a pretext to discrimination.

12. Complainant has failed to meet this burden. No showing of disparate treatment was made. In fact Complainant admitted that he did not obey his supervisor's request. Respondent's act was non-discriminatory albeit harsh.

THEREFORE, based on the foregoing, I make the following recommendation:

1. That this Complaint ER-431-80, filed by Complainant

against Respondent be dismissed by the Commission with prejudice.
Respectfully submitted this 9th day of July, 1985.

Amal Bhandari
Hearing Examiner