



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

September 9, 1985

Steve Vickers, Esquire
Box 588
Montgomery, WV 25136

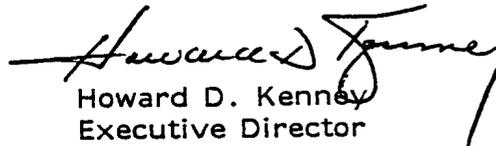
Leonard Dixon
1029 2nd Avenue
Montgomery, WV 25136

RE: Dixon v. James R. Webb
Painting Contractors
ER-308-81 & REP 309-81

Dear Counsel:

Enclosed please find a copy of the Order of the WV Human Rights Commission in the above-styled and numbered case of Leonard Dixon v. James R. Webb, 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

CC: James R. Webb Painting Contractors
c/o Anna F. Webb
228 Maxwell Hill Road
Beckley, WV 25801

CERTIFIED MAIL/RETURN RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LEONARD DIXON,
Complainant,

v.

Docket No.: ER-308-81
REP-309-81

JAMES R. WEBB,
PAINTING CONTRACTOR.
Respondent.

ORDER

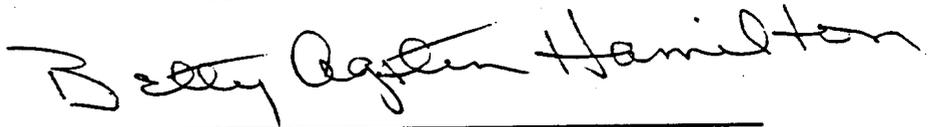
On the 14th day of August, 1985, the Commission reviewed Hearing Examiner Theodore R. Dues, Jr.'s Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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 14th day of August, 1985.

RESPECTFULLY SUBMITTED,



CHAIR/VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION

Received July 5, 1985
REGISTRATION
JUN 27 1985

ADMINISTRATIVE
SUPREME COURT

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED

LEONARD DIXON

Complainant

vs.

DOCKET NO. ER-308-81, REP-309-81, W. HUMAN RIGHTS COMM.

JAMES R. WEBB, PAINTING CONTRACTORS

Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case matured for hearing on June 19, 1985. The hearing was held at the Raleigh County Commission Courtroom, Raleigh County Courthouse, Beckley, WV. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner. The Complainant waived the presence of a Hearing Commissioner.

The Complainant appeared in person and by his counsel, Steve Vickers. The Respondent failed to appear by counsel or company representative.

FINDINGS OF FACT

1. The Complainant, Leonard Dixon, is a black male.
2. The Complainant was employed by the Respondent from September 1980 until January 1981, at which time he was laid off.
3. The Complainant was not recalled when less senior whites were infact recalled.
4. Had the Complainant been recalled for the construction season beginning the spring of 1982, he would have been earning Seven Dollars (\$7.00) per hour.

5. The Respondent worked the crew of which the Complainant was a member each construction season subsequent to the Complainant's layoff in January 1981.

6. The Complainant normally worked forty hours per week.

7. The Complainant had interim earnings of approximately Five Thousand Dollars (\$5,000.00) to date.

8. The Complainant has realized lost wages in the amount of Forty Three Thousand Two Hundred Dollars (\$43,200.00). The Complainant has suffered financially as a result of the layoff in January 1981.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the subject matter and the parties.

2. As in all cases, the Complainant bears the burden of proving the allegations of his complaint that the Respondent discriminated against him because of his race and flesh or in retaliation for his previously filing a discrimination complaint in its decision not to recall him during the 1982 construction year.

3. The Complainant failed to establish a prima facie case of reprisal in as much as the evidence fails to establish that the Respondent failed/refused to recall the Complainant in 1982 due to the Complainant having previously filed a discrimination complaint with the West Virginia Human Rights Commission against the Respondent.

4. The Complainant established a prima facie case of race discrimination in the Respondent's failure to recall him in 1982 on

the grounds of his race by establishing:

- a. he is a member of a protected minority under the West Virginia Human Rights Act;
- b. that he was laid off in the normal course of the construction business at the conclusion of the 1981 construction season;
- c. that despite his availability he was not recalled; and,
- d. that whites less senior to the Complainant was recalled for employment.

5. There is no evidence of record articulating a legitimate non-discriminatory explanation for the failure to recall the Complainant under the circumstances.

6. Accordingly, the Respondent is hereby determined to be in violation of the West Virginia Human Rights Act.

7. The Complainant is entitled to lost wages in the amount of Forty-Three Thousand Two Hundred Dollars (\$43,200.00).

8. The Complainant is entitled to incidental damages in the amount of Five Thousand Dollars (\$5,000.00).

9. That the Complainant receive reasonable attorney's fees upon the submission by his counsel of a properly prepared affidavit and itemization of fees and costs incurred in the prosecution of this matter.

RELIEF

Judgement for the Complainant with backpay, incidental

damages and attorney's fees and costs as heretofore provided.

DATED June 25, 1985

ENTER:

TR. Dues, Jr.
Theodore R. Dues, Jr.
Hearing Examiner