



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304-348-2616

October 8, 1987

ARCH A. MOORE, JR.
Governor

Richard Holloway
133 Savannah Ave.
Westover, WV 26505

Consolidation Coal Co.
P.O. Box 1314
Morgantown, WV 26505

Danny L. Fassio, Esq.
Consolidation Coal Co.
1800 Washington Rd.
Pittsburg, PA 15241

Allan N. Karlin, Esq.
174 Chancery Row
Morgantown, WV 26505

Franklin Cleckley, Esq.
P.O. Box 4
Morgantown, WV 26505

Robert M. Steptoe, Jr., Esq.
Steptoe & Johnson
Union National Center East
Clarksburg, WV 26301

RE: Holloway v. Consolidation Coal Co.
ER-486-86

Dear Parties:

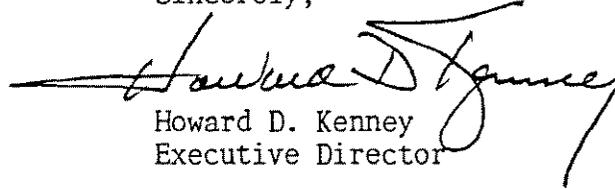
Herewith, please find the final order of the WV Human Rights Commission in the above-styled and numbered case.

Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective April 1, 1987, any party adversely affected by this final order

Richard Holloway
October 8, 1987
Page two

may file a petition for review with the supreme court of appeals within 30 days of receipt of this final order.

Sincerely,



Howard D. Kenney
Executive Director

HDK/mst

Attachments

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

NOTICE
OF STATUTORY RIGHT TO JUDICIAL REVIEW
AMENDED AND EFFECTIVE
AS OF APRIL 1, 1987

Err. H. B. 2608]

3

116 this article.

§5-11-11. Appeal and enforcement of commission orders.

1 (a) From any final order of the commission, an
2 application for review may be prosecuted by either
3 party to the supreme court of appeals within thirty days
4 from the receipt thereof by the filing of a petition
5 therefor to such court against the commission and the
6 adverse party as respondents, and the clerk of such
7 court shall notify each of the respondents and the
8 commission of the filing of such petition. The commis-
9 sion shall, within ten days after receipt of such notice,
10 file with the clerk of the court the record of the
11 proceedings had before it, including all the evidence.
12 The court or any judge thereof in vacation may
13 thereupon determine whether or not a review shall be
14 granted. And if granted to a nonresident of this state,
15 he shall be required to execute and file with the clerk
16 before such order or review shall become effective, a
17 bond, with security to be approved by the clerk,
18 conditioned to perform any judgment which may be
19 awarded against him thereon. The commission may
20 certify to the court and request its decision of any
21 question of law arising upon the record, and withhold
22 its further proceeding in the case, pending the decision
23 of court on the certified question, or until notice that the
24 court has declined to docket the same. If a review be
25 granted or the certified question be docketed for
26 hearing, the clerk shall notify the board and the parties
27 litigant or their attorneys and the commission of the fact
28 by mail. If a review be granted or the certified question
29 docketed, the case shall be heard by the court in the
30 manner provided for other cases.

31 The appeal procedure contained in this subsection
32 shall be the exclusive means of review, notwithstanding
33 the provisions of chapter twenty-nine-a of this code:
34 *Provided*, That such exclusive means of review shall not
35 apply to any case wherein an appeal or a petition for
36 enforcement of a cease and desist order has been filed
37 with a circuit court of this state prior to the first day
38 of April, one thousand nine hundred eighty-seven.

39 (b) In the event that any person shall fail to obey a
40 final order of the commission within thirty days after
41 receipt of the same, or, if applicable, within thirty days
42 after a final order of the supreme court of appeals, a
43 party or the commission may seek an order from the
44 circuit court for its enforcement. Such proceeding shall
45 be initiated by the filing of a petition in said court, and
46 served upon the respondent in the manner provided by
47 law for the service of summons in civil actions; a hearing
48 shall be held on such petition within sixty days of the
49 date of service. The court may grant appropriate
50 temporary relief, and shall make and enter upon the
51 pleadings, testimony and proceedings such order as is
52 necessary to enforce the order of the commission or
53 supreme court of appeals.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RICHARD HOLLOWAY,

COMPLAINANT,

v

Docket No: ER 486-86

CONSOLIDATED COAL COMPANY,

RESPONDENT.

FINAL ORDER

On the 8th day of October 1987, the Commission reviewed the proposed order and decision of Hearing Examiner, James Gerl, in the above-captioned matter. After consideration of the aforementioned and exceptions thereto, the Commission does hereby adopt said proposed order and decision, encompassing proposed findings of fact, conclusions of law, discussion of conclusions, and relief, as its own, with modifications and amendments set forth below.

In the subsection titled Findings of Fact, the paragraph enumerated as 21 is modified by striking the number "136.9" contained therein and substituting therefor the number "146.3."

In the subsection titled Discussions of Conclusions, referencing the 2nd paragraph contained therein, the final sentence which reads, "He had never received a suspension, a written reprimand or an oral reprimand from respondent in twenty-one years of employment" is stricken. Substituted therefor is the following language: "The evidence further reveals that non-members of the protected class were not disciplined or were disciplined less severely than the complainant, although engaging in similar if not more egregious conduct. State ex rel. State Human Rights Commission v

Logan-Mingo Area Health Agency, Inc., 329 S.E. 2d 77 (W.Va. 1985, Burdette v FMC Corp., 566 F. Supp. 808 (N.D. W.Va. 1983))."

Based upon the foregoing, it is hereby Ordered that the Hearing Examiner's Proposed Order and Decision be attached hereto and made a part of this Final Order except as amended by this Final Order.

It is further Ordered as follows:

1. The complaint of Richard Holloway is sustained.
2. Respondent shall immediately cease and desist from discriminating against individuals on the basis of race in making employment decisions.
3. Respondent shall offer and unconditionally reinstate complainant into his former position, with full benefits and seniority restored, at a rate of pay comparable to that which complainant would be receiving but for the unlawful termination, within 30 days.
4. Respondent shall pay complainant a sum equal to the wages he would have earned but for respondent's unlawful termination of complainant's employment. Such wages for the period from the date of complainant's discharge to September 20, 1987, is \$99,458.53. Compounded interest on said backpay award shall be computed at the statutory rate of 10%. Respondent shall pay said amount plus interest within 30 days. For each subsequent month thereafter an additional \$4,972.93 shall be added, less any interim wages earned by complainant, until complainant is reinstated or refuses a bona fide offer of reinstatement.
5. Respondent shall pay complainant within 30 days the sum of \$8,000.00 for incidental damages for humiliation, embarrassment, emotional and mental distress and loss of personhood and dignity

as a result of the discriminatory treatment toward him by the agents and employees of respondent. Respondent shall pay complainant's reasonable attorney fees in the amount of \$21,945.00 for Allan Karlin and \$5,625.00 for Franklin Cleckley. (Said fee affidavits are appended as Exhibit A.)

6. Respondent shall pay complainant the sum of \$1,280.30 for costs reasonably expended by complainant and reasonably necessary to the litigation of this matter. (Said cost schedule is appended as Exhibit B.) Complainant is directed to surrender any transcripts of this matter in the possession of complainant to the respondent forthwith after respondent has complied with all provisions of this Order.

It is finally ORDERED that respondent provide to the Commission proof of compliance with the Commission's Final Order within 35 days of service of said Final Order by copies of cancelled checks, affidavits or other means calculated to provide such proof.

By this Final 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 Final Order and that they may seek judicial review.

Entered this 9th day of October, 1987.

RESPECTFULLY SUBMITTED,

BY Betty A. Hamilton
VICE CHAIR
WV HUMAN RIGHTS COMMISSION

RECEIVED

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

JUL 29 1987

W.V. HUMAN RIGHTS COMM.

RICHARD HOLLOWAY,

Complainant,

v.

DOCKET NO. ER-486-86

CONSOLIDATION COAL COMPANY,

Respondent.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing was convened for this matter on March 31, April 1 and 2, 1987, in Morgantown, West Virginia. The complaint was filed on April 2, 1986. The notice of hearing was served on September 26, 1986. Respondent answered on October 10, 1986. A Status Conference was held on November 12, 1986. Subsequent to the hearing, respondent and complainant submitted written briefs and proposed findings of fact.

All proposed findings, conclusions and supporting arguments submitted by the parties have been considered. To the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views as stated herein, they have been accepted, and to the extent that they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues as presented. To the extent that the testimony of various witnesses

is not in accord with the findings herein, it is not credited.

CONTENTIONS OF THE PARTIES

Complainant contends that respondent discriminated against him on the basis of his race by discharging him. Respondent maintains that complainant was discharged because of insubordination/cussing.

FINDINGS OF FACT

Based upon the parties stipulations of uncontested facts as set forth in the joint pre-hearing memorandum, and on the record during the hearing, the Hearing Examiner has made the following findings of fact:

1. Complainant, who is black, was employed by respondent on or about January 26, 1965.
2. Respondent is a corporation engaged in the business of mining coal in the State of West Virginia.
3. In January, 1986, complainant was employed as a dispatcher at respondent's Humphrey No. 7 Mine.
4. On or about January 23, 1986, complainant was suspended with intent to discharge from his position at respondent.
5. Had complainant not been terminated by respondent, he would have earned, \$69,620.95 from the date of his discharge through March 20, 1987.

Based upon the preponderance of the evidence, the Hearing Examiner has made the following findings of fact:

6. Prior to his suspension with intent to discharge, complainant had never been disciplined by respondent during

twenty-one year tenure.

7. Complainant has worked as a dispatcher for respondent for four years prior to his discharge. The dispatcher must respond to calls over 50 radios and 45 telephones. The job is stressful.

8. In the month prior to his discharge, complainant was harrassed by persons using the radio and telephones while making racially derogatory comments. Complainant reported this to Superintendent Krynicky.

9. On January 19, 1986, respondent's supervisor harrassed complainant by repeatedly calling complainant on the radio without reason.

10. On January 20, 1986, complainant heard an unknown voice make racially derogatory comments over the radio. Such comments made reference to complainant's race and to Dr. Martin Luther King's birthday.

11. At about the same time as the comments referred to in finding of fact no. 10 were being made, respondent's supervisor Hunt called complainant several times seeking clearance to go into the mine. Complainant, however, was not able to respond to Hunt at first because he was then responding to another call from someone else who was seeking the road into the mine.

12. On January 20, 1986, complainant said to Hunt over the radio, "... go where in the fuck you want to and leave me alone,..." A few minutes later, Hunt called complainant again and complainant said, "Dave, you and Frank Slavensky are the same. Go ahead on and leave me alone."

13. Respondent's Employee Conduct Rule No. 4 prohibits "[i]nsubordination (refusal or failure to perform work assigned or to comply with supervisory direction) or use profane, obscene, abusive, or threatening language or conduct toward subordinates, fellow employees, or officials of the company."

14. The use of profanity and obscene language is commonplace at respondent. Employees routinely refer to bosses as mother fuckers, S.O.B.'s or tell them to kiss my ass or go to hell. Respondent's supervisors, including Hunt, often engage in the use of profane and obscene language. Many employees use the profane and abusive term "nigger."

15. Complainant is the only employee who has been discharged or otherwise disciplined by respondent for using profane language.

16. Respondent's interpretation of its Employee Conduct Rule No. 4 involves the application of subjective criteria.

17. Complainant was not drunk at work on January 19 or 20, 1986.

18. Respondent made the decision to fire complainant before confronting him to obtain his side of the story. When complainant came to respondent's management, respondent made no serious attempt to ascertain complainant's version of what was said over the radio on that night.

19. Three other dispatchers of respondent, Tamasasky, Merrimen, and Shrader, either reported to work drunk or had severe performance problems. Each was initially discharged, but two of them were returned to work and the other, Merrimen, was permitted to retire.

20. As a result of his termination by respondent, complainant suffered extreme humiliation, embarrassment and loss of dignity. After being fired, complainant lost his sense of worth, and he threatened suicide.

21. Complainant's attorney, Allan N. Karlin reasonably expended 136.9 hours in the litigation of this matter.

22. Complainant's attorney, Franklin D. Cleckley, reasonably expended 37.5 hours in the litigation of this matter.

23. An hourly rate of \$150.00 per hour is reasonable for the legal services rendered by each of complainant's attorneys in the instant case.

24. Complainant reasonably expended \$1,280.30 for costs related to the litigation of this matter.

CONCLUSIONS OF LAW

1. Richard Holloway is an individual claiming to be aggrieved by an alleged unlawful discriminatory practice and is a proper complainant for purposes of the Human Rights Act. West Virginia Code, Section 5-11-10.

2. Consolidation Coal Company is an employer as defined in West Virginia Code, Section 5-11-3 (d) and is subject to the provisions of the Human Rights Act.

3. Complainant has established a prima facie case that respondent discriminated against him on the basis of his race by firing him.

4. Complainant has shown that the reasons articulated by respondent for the termination of complainant's employment are pretextual.

5. Respondent discriminated against complainant on the basis of his race in violation of West Virginia Code, Section 5-11-9(a) by terminating his employment..

DISCUSSION OF CONCLUSIONS

In fair employment, disparate treatment cases, the initial burden is upon the complainant to establish a prima facie case of discrimination. Shepherdstown Volunteer Fire Department v. West Virginia Human Rights Commission 309 S.E.2d 342, 352-353 (WVa 1983); McDonnell-Douglas Corporation v. Green 411 U.S. 792 (1973). if the complainant makes out a prima facie case, respondent is required to offer or articulate a legitimate non-discriminatory reason for the action which it has taken with respect to complainant. Shepherdstown Volunteer Fire Dept., supra; McDonnell Douglas, supra. If respondent articulates such a reason, complainant must show that such reason is pre-textual. Shepherdstown Volunteer Fire Dept., supra; McDonnell Douglas, supra.

In the instant case, complainant has established a prima facie case of discrimination by proving facts, which if otherwise unexplained, raise an inference of discrimination. Furnco Construction Company v. Waters 438 U.S. 567, 577 (1978); Texas department of Community Affairs v. Burdine 450 U.S. 248 (1981). The parties have stipulated that complainant is black and that he was discharged by respondent. He had never received a suspension, a written reprimand or an oral reprimand from respondent in twenty-one years of employment.

Respondent has articulated a legitimate non-discriminatory

reason for complainant's discharge. Respondent presented testimony that complainant was discharged for cussing supervisor Hunt.

Complainant has demonstrated that the reason articulated by respondent is pretextual. First, the testimony of complainant and his witnesses was more credible than the testimony of respondent's witnesses. Amick, respondent's General Superintendent of Humphrey No. 7 mine, made the decision to terminate complainant. Amick's testimony was not credible because of his evasive demeanor and because of several defects in his testimony. Amick's testimony that complainant did not say he was called a "nigger lover" is contradicted by a prior inconsistent written statement. Amick gave contradictory testimony as to whether Shrader was returned to work by an arbitrator or whether he was returned to work as a settlement of grievance prior to arbitration. Amick changed his position regarding whether complainant's alleged reporting to work drunk was the reason for his discharge. In a prior written communication to the Human Rights Commission, Amick provides great detail about complainant's being drunk and consequent erratic behavior. Cursing was only casually mentioned, and there is no statement that complainant used profane or obscene language with regard to any individual. At the hearing herein, Amick testified that the decision to discharge complainant was based solely upon his using profanity in reference to Hunt.

Amick testified at first that his evidence that complainant came to work drunk was complainant's alleged statement, "I was out with the girls and got drunk." Later, Amick changed

this testimony to quote complainant saying "I came to work drunk." Amick's testimony that no employee ever complained to him about cursing is directly contradicted by the credible testimony of Hale.

The testimony of Hunt, the white supervisor who complainant allegedly cursed, is not credible because of his nervous and rehearsed demeanor and because of several defects in his testimony. Hunt clearly exaggerated his testimony to the effect that complainant cursed him for four to five minutes. No other witness even comes close to verifying Hunt's exaggeration. Hunt's testimony that complainant called him a "mother fucking" boss and a "no good son of a bitch" is contradicted by the credible testimony of Osecky. Significantly, after Hunt related the alleged cursing, incident to management, he told Harmon that the company finally "...has that black S.O.B. where they want him." Hunt denies having made this statement, but Harmon's credible testimony is corroborated by the credible testimony of Slifko, who heard Harmon relate the statement to management employees Myles and Hagendorn. Respondent's other witnesses also were not credible for similar reasons.

The testimony of complainant and his witnesses was credible. Complainant's demeanor was credible. As respondent's brief artfully points out, complainant did provide testimony at this hearing that was different from his testimony at grievance proceedings and at an unemployment hearing. In the instant hearing, complainant admitted for the first time that

he did use curse words over the radio on January 20, 1986. Complainant's candid admission does not, however, indicate that he is not telling the truth. Rather, this testimony, taken in conjunction with complainant's demeanor, indicates that he is telling the truth.

Complainant's testimony is bolstered by the testimony of his witnesses. The Hearing Examiner specifically rejects the argument suggested by respondent that all members of the UMWA will lie under oath if called to testify by another union member. The oath taken by union members merely requires that a member will ~~never~~ knowingly wrong another member. One cannot conclude from this oath, or from the testimony in this case that union members will lie under oath at hearing.

Complainant's testimony is also corroborated in many important respects by the testimony of respondents witnesses. For example, Jones, the only supervisor other than Hunt who claims to have heard complainant use profane language, directly contradicts the testimony of Hunt. Jones claims to have heard complainant say to Hunt "I don't care where you go, just stay off the mother fucking radio," and that Hunt and Slavensky are the "worst bosses." The testimony regarding worst bosses is contradicted by a written statement drafted by Campbell shortly after the incident, but even assuming arguendo that Jones' testimony is true with regard to both ~~statements~~, Jones did not hear complainant call Hunt a "mother-fucking boss," or a "no good son of a bitch." Thus, even Jones, a witness called by respondent, provides no corroboration for Hunt's claim that complainant used profanity in direct

reference to Hunt's person.

Similarly, complainant's testimony that he told Amick that Krynicki was prejudiced and that complainant had had a dream regarding Dr. Martin Luther King, Jr. is corroborated by Phillips, respondent's personnel director.

Complainant has also demonstrated through the use of several witnesses that the use of profanity and obscene language was commonplace at respondent. Employees regularly cursed bosses and vice versa. Yet, complainant was the only employee ever discharged or disciplined for this behavior. Significantly, Myers, respondent's second in command, testified that both he and Amick often heard complainant use the word "mother-fucker" in reference to persons, yet never disciplined him. Respondent's highest management thus sent a clear signal to complainant that it would condone profanity, but, subsequently, respondent would have one believe that such conduct is not permissible.

Respondent's Employee Conduct Rule No. 4 as applied necessarily involves the use of subjective criteria. Although the use of such criteria is not in itself a violation of the fair employment laws, the use of subjective criteria does warrant special scrutiny and skepticism. Rowe v. General Motors. 475 F.2d 348, 359 (5th Cir. 1972). The reason for skepticism and special scrutiny of subjective employment criteria is illustrated by the instant case. Hunt, for example, has heard white employees use the profane and abusive word "nigger," which he considers to be a violation of Rule 4, yet he has

never imposed discipline for these Rule 4 violations. White employees constantly use profane and obscene language in the mine. Complainant, who is black, however, was fired for using profanity.

Complainant has also demonstrated pretext by showing disparate treatment vis-a-vis other dispatchers. The record reveals that three other dispatchers, all white, were fired by respondent for conduct much worse than that alleged to have been done by complainant. Two were fired for being drunk on the job and one for serious problems regarding competence. In each case, however, the discharge was reversed by respondent. Complainant who is black, despite his long record of good work for respondent, was not afforded this courtesy.

The record evidence taken as a whole compels the conclusions that complainant was fired by respondent because he is black and that respondent's articulated reason is pre-textual.

RELIEF

Complainant has demonstrated that he suffered extreme humiliation, embarrassment and loss of dignity as a result of his discharge by respondent. He was depressed and he contemplated, and at least twice threatened, suicide. According to his doctor, complainant had only two things in his life: his wife; complainant spent much of his time caring for her during her long illness until her death in 1980; and his job. The loss of his job devastated complainant. Although the record is clear that at least some of complainant's depression

was caused by the loss of his wife, it is also clear that respondent's unlawful termination of complainant caused him much harm. It is recommended that complainant be awarded incidental damages of \$8,000.00.

The quality of legal representation in this matter was unusually good on both sides. The hourly rate of \$150.00 sought by complainant's attorneys is reasonable and appropriate. Each of complainant's lawyers demonstrated a high level of skill at the hearing herein. The only factor which might lean toward reducing the hourly rate is the fact that complainant's lawyers unduly prolonged the hearing in this matter by unsuccessfully attempting to demonstrate a pattern and practice of race-discrimination by calling witnesses to give irrelevant anecdotal accounts of their own experiences, other than the use of profanity and racial name-calling. The Hearing Examiner expressly declines to find any pattern or practice of discrimination at respondent based upon the record evidence herein. This one negative factor, however, is more than counterbalanced by the otherwise excellent representation of complainant by his attorneys.

It is recommended that complainant's request for \$85.75 for funds to a third year law student be denied inasmuch as no affidavit from said law student is included with the motion.

PROPOSED ORDER

In view of the foregoing, the Hearing Examiner recommends the following:

1. That the complaint of Richard Halloway, Docket No.

ER-486-86 be sustained.

2. That respondent rehire complainant into his former position at a rate of pay comparable to what he would be receiving but for the discriminatory termination.

3. That respondent pay complainant a sum equal to the wages he would have earned but for respondent's unlawful termination of complainant's employment. Such wages for the period from the date of complainant's discharge to March 20, 1987, would have been \$69,620.95. For each subsequent month an additional \$4,972.93 should be added. Respondent should also be ordered to pay complainant interest on the amount of back pay owed him at the statutory rate of ten percent.

4. That respondent pay to complainant the sum of \$8,000.00 for incidental damages for humiliation, embarrassment, emotional and mental distress and loss of personhood and dignity as a result of the discriminatory treatment toward him by the agents and employees of respondent.

5. That respondent be ordered to pay complainant's reasonable attorney's fees in the amount of \$20,535.00 for Allan Karlin and \$5,625.00 for Franklin Cleckley.

6. That respondent be ordered to pay complainant the sum of \$1,280.30 for costs reasonably expended by complainant and reasonably necessary to the litigation of this matter.

7. That respondent be ordered to cease and desist from discriminating against individuals on the basis of their

race in making decisions regarding termination of employment.

8. That respondent report to the Commission within thirty days of the entry of the Commission's Order, the steps taken to comply with the Order.



James Gerl
Hearing Examiner

ENTERED: July 27, 1987

The undersigned hereby certifies that he has served the foregoing Proposed Order and Decision by placing true and correct copies thereof in the United States Mail, postage prepaid, addressed to the following:

Allan Karlin, Esq.
174 Chancey Row
Morgantown, WV 26505

Franklin Cleckley, Esq.
P.O. Box 4
Morgantown, WV 26505

Robert M. Steptoe, Jr., Esq.
Steptoe & Johnson
P.O. Box 2190
Clarksburg, WV 26302

Danny L. Fassie, Esq.
Consolidation Coal Co.
1800 Washington Rd.
Pittsburg, PA 15241

on this 27th day of July, 1987.



James Gerl

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CONSOLIDATION COAL COMPANY,

Petitioner,

vs.

CASE NO. 85-C-AP-222

RICHARD FULLER,

Respondent.

AFFIDAVIT OF ALLAN N. KARLIN

I, Allan N. Karlin, being first duly sworn, do depose and state:

1. I am requesting an attorney fee of One Hundred and Fifty Dollars pursuant to my representation of Richard Fuller on this appeal of the Consolidation Coal Company.

2. I am requesting that the fee be calculated at the rate of One Hundred Fifty Dollars (\$150.00) per hour.

3. I am a resident of Monongalia County, West Virginia. I am admitted to practice law in the State of California and the State of West Virginia.

4. I obtained my B. A. Degree from Yale University in 1969. I graduated summa cum laude. I was also admitted to Phi Beta Kappa.

5. I received my J. D. from Boalt Hall, the Law School of the University of California at Berkeley. Based upon my academic record, I was admitted to the Order of the Coif.

6. From September, 1974, through August, 1977, I was employed by the North Central West Virginia Legal Aid Society in

Morgantown, West Virginia, on a Reginald Heber Smith Fellowship. In February, 1976, while on the Fellowship, I became Acting Director of the North Central West Virginia Legal Aid Society. In June, 1976, I was appointed Director and continued to serve as Director until I left in November, 1981.

7. During my tenure as Director of the North Central West Virginia Legal Aid Society, I was actively involved in the practice of law and I also trained other attorneys. My involvement in training included programs at the Legal Aid Society, on a statewide basis, and, on two occasions, in other states. Training programs in which I participated and/or coordinated included new lawyer training, federal litigation training, and a variety of other skill and subject matter training programs.

8. Since entering private practice in November, 1981, I have specialized in employment law, criminal law, and litigation. I have advised a substantial number of individuals, as an attorney at Legal Aid and in private practice, on their rights under laws prohibiting discrimination. In addition to this case, I have participated in a number of other cases before the Human Rights Commission. I have also been involved in discrimination claims in state and federal courts. These claims include discrimination based on race, sex, age and/or handicap.

9. I have served as an adjunct professor of law at the West Virginia University College of Law where I supervised students in a criminal law clinic. In addition, I have

frequently appeared at the Law School to speak to seminars/ classes on a variety of topics including civil rights litigation. I have also taught in the trial advocacy program at the Benjamin Cardozo School of Law in New York City, New York.

10. In 1986, I spoke on Human Rights litigation at a Continuing Legal Education Program and prepared related materials for distribution to other attorneys.

11. In a previous case, this Hearing Examiner awarded me the rate of One Hundred Dollars per hour, but concluded:

Because counsel for complainant has indicated that an hourly rate of \$100.00 per hour is acceptable to him, the Hearing Examiner will not set a higher rate even though the hearing examiner is tempted to do so because of the vast experience and high level of training of Mr. Karlin as well as the great level of skill demonstrated by him during the instant hearing. Fuller v. Consolidation Coal Company, ER-11-82, Recommended Decision, p. 17.

In two subsequent cases, Hearing Examiner Michael Nogay awarded me a fee based on an hourly rate of \$125.00:

The hearing examiner, in his private practice, has successfully been involved in trial work before judges and juries in West Virginia and Ohio and before judges and hearing examiners in Pennsylvania. Never has the hearing examiner observed such a high degree of lawyering skill as was displayed by Alan Karlin, counsel for Complainant, in this case.

Hollis v. Consolidation Coal Company, ER-288-81, Recommended Decision, pp. 8-9.

See also, Turney and McLaughlin v. WVU Hospital and the West Virginia Board of Regents, Case Nos. ES-16-76 and ES-379-77, Recommended Decision, p. 10.

12. A higher award is justified since counsel took this case on a contingent fee basis and also advanced all costs, including expert witness costs and transcript costs. Such advances of costs are necessary in cases such as this because a claimant who has been discharged and unable to find work will almost never be able to obtain counsel or to pay for the costs of litigation unless counsel, such as that involved in the present case, is willing to accept the matter on a contingent fee basis and willing to advance costs to cover necessary expenses.

13. Attorneys are not likely to take cases on a contingent fee basis or to advance costs if the Commission awards a low fee. Attorneys who take these cases do not expect to win every case. If their fee is set such that it pays them an hourly rate without regard to the contingent nature of the fee, then attorneys will be encouraged only to take those cases that are absolutely certain winners.

14. The hours I spent on the case were as follows:

8/9/86	Start review of documents	.5
10/11/86	Review documents from Richard Holloway including unemployment transcript	1.5
10/14/86	Phone/client	.2
10/18/86	Notice to respondent	.3
10/20/86	Begin review of arbitration transcript	.5
10/21/86	Phone/client	.3
10/21/86	Review Human Rights Commission documents; continue arbitration transcripts	1.0

10/22/86	Review Consol discovery; draft first request for production of documents	.5
11/1/86	Phone/client	.2
11/1/86	Send Freedom of Information request for EEOC information	.2
11/4/86	Conference with client re: case and interrogatories	2.4
11/5/86	Phone re: discovery	.1
11/10/86	Letter to Hearing Examiner re: filing of documents	.2
11/11/86	Phone/Co-counsel re: conference	.1
11/11/86	Conference/client; edit interrogatories and request for production of documents	2.0
11/13/86	Conference call/status conference	.7
11/15/86	Edit request for production of documents	.3
11/16/86	Letter/Dr. D'Alessandri	.2
12/15/86	Phone/Dr. D'Alessandri	.3
12/18/86	Letter/opposing counsel re: inspection of documents	.2
1/7/87	Phone call from EEOC re: request for information	.2
1/12/87	Travel to Clarksburg; review documents	2.8
1/17/87	Letter to Human Rights Commission re: documents	.2
1/22/87	Letter to Hearing Examiner	.2
1/28/87	Phone calls to Human Rights Commission re: documents	.2
2/6/87	Letter to client; phone/opposing counsel	.2
2/9/87	Phone/client	.1
2/11/87	Review file and statements to begin preparation for hearing	2.0
2/13/87	Meet with client	2.7

2/16/87	Phone/opposing counsel re: pre-trial order and continuance	.4
2/17/87	Conference call re: request for continuance; phone/opposing counsel re: dates; letter to client re: continuance	.5
2/23/87	Letter to Hearing Examiner re: subpoenas	.3
3/3/87	Meet with client	.1
3/4/87	Conference with law student regarding case preparation	.1
3/16/87	Preparation of pre-trial memorandum	1.0
3/17/87	Phone/opposing counsel	.3
3/18/87	Meet with client; speak with opposing counsel	1.5
3/20/87	Phone regarding subpoena	.1
3/22/87	Speak with law student aiding in the preparation of case and interviewing of witnesses	.2
3/23/87	Letter to Hearing Examiner	.2
3/23/87	Review documents in preparation for hearing	1.2
3/24/87	Discuss potential witnesses with law student who did interviewing; miscellaneous case preparation	.5
3/24/87	Phone/witnesses; review information regarding witnesses	1.7
3/25/87	Phone/opposing counsel; phone/witnesses; letter/re: subpoena	5.0
3/26/87	Phone calls to witnesses	1.2
3/26/87	Conference/client	1.5
3/26/87	Prepare subpoenas; miscellaneous case preparation	3.0
3/25/87	Phone calls to witnesses and case preparation	2.7
3/27/87	Miscellaneous preparation	3.0

3/27/87	Travel to Fairmont; review arbitration decisions from union	2.5
3/27/87	Conferences with witnesses	1.5
3/28/87	Call potential witnesses	4.0
3/29/87	Review exhibits	.3
3/30/87	Miscellaneous phone calls	.3
3/30/87	Meet with witnesses	2.5
3/30/87	Meet with co-counsel and client	2.0
3/30/87	Trial preparation including preparation of questions for witnesses on direct	3.0
3/30/87	Review file and prepare cross examination including adverse witness examination	1.5
3/31/87	Hearing preparation	.7
3/31/87	Hearing (morning)	2.5
3/31/87	Preparation over lunch including review of questions for examination and review of documents	1.0
3/31/87	Hearing (afternoon)	4.5
3/31/87	Meet with co-counsel	.3
3/31/87	Meet with witness, review documents	.3
3/31/87	Prepare for questioning witnesses on second day	1.0
4/1/877	Go over questions; talk to witnesses	.7
4/1/877	Hearing (morning)	3.0
4/1/87	Meet with witnesses; prepare for afternoon session during lunch break	1.3
4/1/87	Hearing (afternoon)	4.7
4/1/87	Phone witnesses (potential rebuttal witnesses); obtain subpoenas; contact process server re: service of subpoenas	1.0

4/1/87	Prepare for cross examining witnesses on next day	1.3
4/2/87	Review cross examination plans; review exhibits	.6
4/2/87	Hearing (morning)	3.0
4/2/87	Work during lunch break; talk to potential rebuttal witnesses; prepare cross examinations and direct examinations	.7
4/2/87	Hearing (afternoon)	3.5
4/9/87	Phone/client	.1
4/20/87	Begin review of transcripts	5.3
4/21/87	Review transcripts	6.0
4/22/87	Start draft of Brief/Findings	3.0
4/24/87	Brief/Findings	3.0
4/28/87	Work on brief	10.00
4/29/87	Work on Brief, Affidavit, Motion	11.00
4/30/87	Complete Brief, Findings, etc.	6.0
TOTAL		136.9

Allan N. Karlin
 ALLAN N. KARLIN

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, TO-WIT:

Taken, sworn to and subscribed before me this 30th day of April, 1987, by Allan N. Karlin.

My commission expires

July 16, 1996

Regina A. Charon
 NOTARY PUBLIC

STATE OF WEST VIRGINIA: HUMAN RIGHTS COMMISSION

RICHARD HOLLOWAY,

Complainant,

v.

DOCKET NO. ER-486-86

CONSOLIDATION COAL COMPANY,

Respondent.

AFFIDAVIT FOR ATTORNEY FEES

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, to-wit:

I, FRANKLIN D. CLECKLEY, the affiant, under oath do hereby state as follows:

1. My normal fee for civil rights cases or any other cases that I participate in exceeds the rate that I am requesting in this case of \$150.00 hourly.

2. I have also reduced the number of hours that I have rightfully earned to avoid any argument of unnecessary duplication with co-counsel.

3. I respectfully request that co-counsel be given his entire request and if there is any adjustment that it be done with my request for attorney fees.

4. The following constitutes my request for fees:

a. Pretrial Preparation: 12 hours

March 26 - 4 hours preparation

March 27 - 2 hours preparation

March 28 - 2 hours preparation

March 30 - 4 hours preparation

b. Trial Hours: 25.5 hours

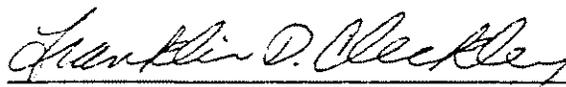
March 31 - 7 hours for hearing and
3 hours for after-hearing
preparation

April 1 - 7 hours for hearing and
2 hours for after-hearing
preparation

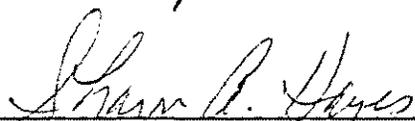
April 2 - 6.5 hours for hearing

5. Therefore, my request for attorney fees is 37.5 hours at the rate of \$150.00 hourly.

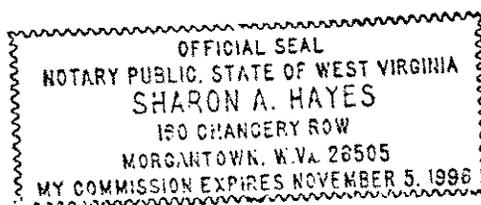
And further your affiant sayeth not.


FRANKLIN D. CLECKLEY

Taken, sworn to and subscribed before me, in my said County and State, this 29th day of April, 1987.


Notary Public in and for
Monongalia County, West Virginia

My commission expires: November 5, 1996.



STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

RICHARD HOLLOWAY,

Complainant,

vs.

DOCKET NO. ER-486-86

CONSOLIDATION COAL COMPANY,

Respondent.

MOTION FOR COSTS

Comes now the complainant, by counsel, and moves the Human Rights Commission for an order directing the respondent to pay costs in this matter as follows:

1. The cost of the hearing transcripts for three days of hearings:

March 31, 1987 \$224.00

April 1, 1987 \$267.40

April 2, 1987 \$253.50

2. Expert witness fees charged by Dr. Robert D'Alessandri for the time spent in preparing for testifying and testifying at this trial \$450.00

3. Copying costs assessed by respondents for documents produced during discovery in this case \$25.40

4. The cost of having subpoenas served on
witnesses in this case \$60.00
TOTAL \$1,280.30

RICHARD HOLLOWAY,
COMPLAINANT,
BY COUNSEL.



ALLAN N. KARLIN
COUNSEL FOR COMPLAINANT
174 CHANCERY ROW
MORGANTOWN, WV 26505

FRANKLIN CLECKLEY
COUNSEL FOR COMPLAINANT

N. JOAN THAXTON COURT REPORTERS, INC.

7715 Sissonville Drive
Sissonville, WV 25320
(304) 988-9970 988-1634
EIN #55-061-2865

TO: Allan N. Karlin, Attorney at Law
160 Chancery Row
Morgantown, West Virginia 26505

Invoice #237-4-87

Date: April 13, 1987

In re: Richard Holloway vs. Consolidation Coal Co.,
Docket No. ER-486-86

Hearing of March 31, 1987, Morgantown, WV: Volume I.

*Transcript \$ 224.00

Hearing of April 1, 1987, Morgantown, WV: Volume II.

*Transcript \$ 267.40

Total \$ 491.40

*Transcripts mailed April 13, 1987
(N. Joan Thaxton, Reporter)

N. JOAN THAXTON COURT REPORTERS, INC.

7715 Sissonville Drive
Sissonville, WV 25320
(304) 988-3970 988-1634
EIN #55-061-2865

Invoice #248-4-87

TO: Allan Karlin, Attorney at Law
160 Chancery Row
Morgantown, WV 26505

Date: April 15, 1987

In re: Richard Holloway vs. Consolidated Coal Company, Docket
No. ER-486-86, Volume III

Hearing of April 2, 1987:

*Copy of transcript

\$253.50

*Mailed 4-14-87
(Debbie Skidmore, Reporter)

K. B. ...

Attorney, Morgantown, W. Va.

March 27

19³⁷

Chas. ...

vs.

Consolidation Club

\$ 500

Received payment of

7 times ...

Dollars

For Executing and serving

Subpoena

100

in above styled case

CK 3457 Cash M.O.

11

8419

Deputy

Deputy

For Joseph C. Janco, Sheriff Monongalia County

THE STATE TAX COMMISSIONER RULES THAT ALL FEES ARE DUE AND PAYABLE IN ADVANCE.

Karlin Attorney, Morgantown, W.Va. March 26, 1987
Holloway vs. Consolidation Coal
Received payment of Five Dollars 10/10 Dollars
For Executing and serving Subpoena in above styled case
CK 5452 Cash _____ M.O. _____
8413 Bette M. Conway Deputy
For Joseph C. Janco, Sheriff Monongalia County
THE STATE TAX COMMISSIONER RULES THAT ALL FEES ARE DUE AND PAYABLE IN ADVANCE.

Yancy Attorney, Morgantown, W.Va. March 26, 1987
Holloway vs. Consolidation Coal
Received payment of Five Dollars 10/10 Dollars
For Executing and serving (7) Subpoenas in above styled case
CK 5454 Cash _____ M.O. _____
8414 Bette M. Conway Deputy
For Joseph C. Janco, Sheriff Monongalia County
THE STATE TAX COMMISSIONER RULES THAT ALL FEES ARE DUE AND PAYABLE IN ADVANCE.

Karlin Attorney, Morgantown, W.Va. March 27, 1987
Holloway vs. Consolidation Coal
Received payment of Ten Dollars 10/10 Dollars
For Executing and serving (7) Subpoenas in above styled case
CK 5458 Cash _____ M.O. _____
8415 Bette M. Conway Deputy
For Joseph C. Janco, Sheriff Monongalia County
THE STATE TAX COMMISSIONER RULES THAT ALL FEES ARE DUE AND PAYABLE IN ADVANCE.

BEAL'S DETECTIVE AGENCY
212 High Street, Room 320
Morgantown, W V 26305

Business: 304-291-1831

Residence: 304-399-3521

*****INVOICE*****

SECURITY CLIENT: _____ ADDRESS _____ DATE _____
DATE _____ CLIENT _____ SERVICE RATE _____

ALLAN MARLIN _____ 160 CHANCERY BOX MGT. _____ APRIL 1, 87 _____
PROCESS SERVICE CLIENT ADDRESS DATE RECEIVED

TODD OSWICKY _____ RT 1 BOX 86 MT. MORRIS PA. BR-486-86 _____
EXECUTED ON ADDRESS CIVIL ACTION NUMBER

RT 1, BOX 86 MT. MORRIS PA. _____
ADDRESS ACTUALLY SERVED

HOW SERVED: PERSONALLY ~~XXXX~~ ON WHOM POSTING PUBLICATION

FIRST ATTEMPT	SECOND ATTEMPT	THIRD ATTEMPT	FOURTH ATTEMPT
DATE HOUR	DATE HOUR	DATE HOUR	DATE HOUR
4/1/87 10:35, PM			

EXECUTED BY: THOMAS L. BEAL, Private Investigator

RATE OF PAY: PAPERS \$30.00 HOURS n/c MILES n/c @ .20c TOTAL AMOUNT DUE 30.00

FOLLOWING TRIPS IN MONONGALIA COUNTY ONLY \$5.00 PER TRIP TOTAL AMOUNT DUE \$30.00

FINGERPRINTING \$5.00 RECEIVED OF: _____ DATE _____

REPOSSESSIONS : TYPE: _____ YEAR: _____ MAKE: _____ MILES: _____ BODY TYPE: _____

TOTAL AMOUNT DUE \$ _____ VIN # _____

Thomas L. Beal
THOMAS L. BEAL, PRIVATE INVESTIGATOR DATE April 1, 1987

NIGHT SECURITY PATROL BY CONTRACT

BANK RUNS \$25.00 PER BANK RUN RECEIVED OF BANK OR STORE \$ _____
NAME _____

INVESTIGATIONS BY CONTRACT

INVESTIGATIONS BY CONTRACT
LICENSED, BONDED FOR THE STATE
OF WEST VIRGINIA-LIABILITY INSURED.

Allan N. Karlin, Esquire
160 Chancery Row
Morgantown, WV 26505

CLARKSBURG, W. VA. 26301

January 15, 1987

IN ACCOUNT WITH
STEPTOE & JOHNSON - IRS ID No. 55-0286140
ATTORNEYS AT LAW

Holloway v. Consolidation Coal Company

Xerox copying charges	
127 pages at 20¢ per page	\$25.40
Total Due	<u>\$25.40</u>

PA 1/27/87

April 7, 1987

Allan N. Karlin
Attorney at Law
160 Chancery Row
Morgantown, W.V. 26505

Re: Richard Holloway

For services rendered:

Review of medical record	150/hour	2 hours	300
Hearing testimony	150/hour	1 hour	150
Total			450



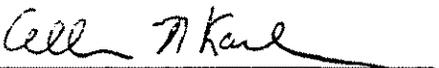
Robert D'Alessandri, M.D.
WVU Medical Center
Dept. of Medicine
Morgantown, WV 26506

CERTIFICATE OF SERVICE

I, ALLAN N. KARLIN, attorney for the Complainant, do hereby certify that service of the within and foregoing Motion for Costs was made upon the party hereinbelow listed by depositing a true copy of the same in the United States Mail, postage prepaid, addressed as follows:

Robert M. Steptoe, Jr.
Steptoe & Johnson
P. O. Box 2190
Clarksburg, WV 26302-2190

all of which was done on the 30th day of April, 1987.


ALLAN N. KARLIN

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

RECEIVED

SEP - 3 1987

W.V. HUMAN RIGHTS COMM.

RICHARD HOLLOWAY,

Complainant,

vs.

DOCKET NO. ER-486-86

CONSOLIDATION COAL COMPANY,

Respondent.

MOTION FOR ADDITIONAL ATTORNEY FEES

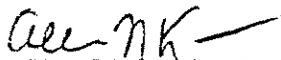
Comes now Allan N. Karlin, and moves the Commission for an order adding attorney fees to reflect the additional work done since the last statement submitted by counsel. In support of this motion, counsel states that work has been done on the Holloway matter in responding to and reviewing the brief filed by the Consolidation Coal Company before this Commission. It is only fair to allow counsel additional attorney fees to reflect this work. Specifically, counsel points out that the Consolidation Coal Company filed extensive exceptions and a brief in excess of 60 pages before this Commission. Counsel's response should lead to an award of some attorney fees. Counsel further states that the work was done by Allan N. Karlin and that he requests the same rate as awarded by the Commissioner. The additional hours include:

7/29/87	Review recommended decision	.2
7/30/87	Meet with client to discuss decision	.3
8/19/87	Outline response to Consolidation Coal Company brief; review Consolidation Coal Company brief; begin complainant's brief	3.2

8/20/87	Continue work on complainant's brief	4.1
8/21/87	Conclude and edit brief; dictate letter filing brief	<u>1.6</u>
TOTAL		9.4

The total amount of hours is 9.4; at \$150.00 per hour, the amount requested is \$1,410.00.

PLAINTIFF,
BY COUNSEL.



ALLAN N. KARLIN
COUNSEL FOR PLAINTIFF
174 CHANCERY ROW
MORGANTOWN, WV 26505

STATE OF WEST VIRGINIA,
COUNTY OF MONONGALIA, to-wit:

This day personally appeared before me, the undersigned authority, ALLAN N. KARLIN, who after being duly sworn, says that the allegations therein contained are true, except insofar as they are stated to be upon information, and that insofar as they are stated to be upon information, he believes them to be true.

AK

ALLAN N. KARLIN

Taken, sworn to and subscribed before the undersigned authority this 1st day of September, 1987.

My commission expires November 5, 1991.

Sharon A. Hayes
NOTARY PUBLIC

