



*Order file*

**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

215 PROFESSIONAL BUILDING  
1036 QUARRIER STREET  
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.  
Governor

TELEPHONE: 304-348-2616

December 19, 1985

Stephen Jory  
Attorney at Law  
P. O. Box 1905  
Elkins, WV 26241

Barbara Lee Ayres  
Huddleston, Bolen, Beatty,  
Porter & Copen  
P. O. Box 2185  
Huntington, WV 25722

Docket Nos.: James A. Jones Vs. B & O Railroad  
ES-59-80/REP-449-80 & REP-68-83

Dear Mr. Jory and Ms. Ayres:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of James A. Jones Vs. B & O Railroad.

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*  
Howard D. Kenney  
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

JAMES A. JONES,  
COMPLAINANT.

VS.

B & O RAILROAD  
RESPONDENT.

DOCKET NOS.: ES-59-80  
REP-449-80  
REP-68-83

ORDER

On the 14th day of November, the West Virginia Human Rights Commission considered the "Recommended Order of Examiner's Findings of Fact and Conclusion of Law", the "Examiner's Recommended Order for Costs and Expenses", Respondent's "Exception to Examiner's Recommended Order for Costs and Expenses", Respondent's "Recommended Order as to Costs," the "Recommended Order as to Costs", "Complainant's Response to Respondent's Exceptions."

After consideration of the aforementioned, the Commission does hereby adopt the Hearing Examiner's "Recommended Order of Examiner's Finding of Fact and Conclusion of Law and "Examiner's Recommended Order for Costs and Expenses" as its own EXCEPT insofar as is set out below:

It is hereby ORDERED that

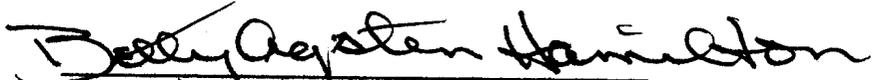
1. The complainant be awarded attorney's fees and costs in the amount of Eleven Thousand Six Hundred Seventy-Six 77/100 Dollars (\$11,676.77).

2. The complainant be awarded total damages in the amount of Eighty Two Thousand Eighty-nine Dollars and 80/100 (\$82,089.80) less the costs which the Hearing Examiner recommended in his November 13, 1984 "Recommended Order as to Costs."

It is hereby ORDERED that the Hearing Examiner's "Recommended Order of Examiner's Findings of Fact and Conclusions of Law", the "Examiner's Recommended Order as to Costs", and "Examiner's Recommended Order for Costs and Expenses, be attached hereto and made a part of this Order.

In accord with the "Agreed Dismissal Order" of the parties in case number REP-68-83, it is hereby ORDERED dismissed with prejudice.

Entered this 5 day of December, 1985.

  
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CHAIR/VICE CHAIR  
WV HUMAN RIGHTS COMMISSION

**THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

JAMES A. JONES,

Complainant,

v.

DOCKET NOS. ES-59-80  
& REP-449-80

B & O Railroad Company,

Respondent.

**RECOMMENDED ORDER OF EXAMINER'S  
FINDING OF FACT AND CONCLUSION OF LAW**

This case came on for hearing initially on the 25th day of January, 1984. After two days of evidence, the matter was rescheduled and the balance of the evidence as to liability was taken on June 5-7, 1984. The proceeding in January, 1984, was held at the Federal Courthouse, Randolph County, Elkins, West Virginia, and the June proceeding was held at the Municipal Building, Elkins, West Virginia.

The Complainant was present in person for all proceedings and was represented thereat by counsel, Stephen Jory, Esquire. The Respondent was represented by counsel, Anne W. Lindsay and Nicholas S. Yovanovic at the January proceeding and by Ms. Lindsay and Joseph A. Wallace at the June Proceeding. The company representative was Carl Hoose. The West Virginia Human Rights Commission was represented by Gail Ferguson at the January proceeding and by Douglas Miller in the June proceeding.

The panel for each proceeding consisted of Theodore R. Dues, Jr., Hearing Examiner and the Honorable Nathaniel G. Jackson, Hearing Commissioner.

On the 1st day of August, 1979, the Complainant filed a verified complaint alleging that the Respondent had discriminated against him on the basis of sex by not awarding him the position of clerk-typist in July, 1979.

A letter of determination and subsequent thereto a notice of hearing was served upon the Respondent by the Commission.

All parties were afforded every reasonable opportunity to present evidence and call witnesses relevant to this Complaint. The Complainant called eighteen (18) witnesses in its case-in-chief and the Respondent seven (7). In addition, the Complainant called one (1) rebuttal witness.

After full consideration of the testimony and documentary evidence, this Examiner makes the following recommendations for Findings of Fact and Conclusions of Law:

#### **ISSUES**

1. Whether the Complainant was qualified for the clerk-typist position in July 1979; being the time the position was sought?

2. If the Complainant was qualified was the Respondent's decision to award the position to a female motivated by the sex of the awardee or by legitimate job related reasons?

### FINDINGS OF FACT

1. Complainant was hired by Respondent on March 3, 1975.
2. Prior to Complainant's hiring with Respondent, Complainant had successfully completed study at the National Railroad Institute.
3. The National Railroad Institute (NRI) training included instruction in the areas of agency work, teletype work, computer work and typing in all areas of railroad assignments.
4. Subsequent to the NRI training, Complainant successfully completed a typing test for employment with the Richmond-Fredricksburg and Potomac Railroad (RFPR).
5. In the spring of 1969, Complainant was hired by the RFPR and performed card sorting, keypunch functions and typed information from weigh bills onto computer cards.
6. Complainant was drafted into the service in 1970 where he was entered into and completed clerical school consisting of the processing of general correspondence and typing.
7. Subsequent to completing clerical school, complainant was assigned to perform clerical work for a commissioned officer.
8. Upon his discharge from the Army in 1972, Complainant was employed by the Company C Headquarters of the West Virginia State Police.

9. Complainant's job title was radio dispatcher and the job entailed typing all communications including the use of teletype equipment.

10. Complainant held this position until he was hired by the Respondent in 1975.

11. Complainant passed an aptitude test and a 40 wpm typing test prior to his hiring by the Respondent.

12. Within two weeks of his employment with Respondent, Complainant qualified as an operator.

13. During his first two years of employment with Respondent, Complainant completed a correspondence course in speedwriting.

14. During his tenure as agent-operator, Complainant familiarized himself on the clerk-stenographer job by voluntarily and without pay working the same alongside a co-worker assigned that position.

15. While on the extra-board Complainant worked the clerk-stenographer position for a total of sixty-eight (68) days.

16. While filling the clerk-stenographer position Complainant performed all functions of that position.

17. Complainant was allowed opportunity to step-up to clerk-stenographer positions that were open from time to time; in particular the position held by Ms. Leakes in the years 1976 to 1978.

18. Prior to being allowed to step up on a position, the employee must first possess the skills to qualify for the position.

19. As of May 1977, management of Respondent was so impressed with Complainant's work that he was recommended for a company position.

20. Complainant qualified on the various positions of the entire division by 1979 with the exception of the Chief Clerk's position and a few others.

21. Complainant was refused opportunity to work the clerk positions after failing a typing test in 1979 administered by Mr. Bell; an official of Respondent.

22. Mr. Bell's grading of exams applied a greater penalty per error for males than females, which effected more males having lower scores than otherwise comparably tested females.

23. As an extra-board employee Complainant was assigned less desirable shifts and received invariably more varied job assignments and locations than his female counterparts.

24. In July, 1979, a clerk-typist position in the Elkins Shop was created.

25. The qualification description initially required a 35 wpm typing speed.

26. The position would supplement the Leake clerk-stenographer position.

27. Three males (one of whom was the Complainant) and a female applied for the position.

28. The female was Kathy Harris, who was also an extra-board employee at the time.

29. The males had to take a typing test. Kathy Harris did not.

30. Respondent's position was that Mr. Hoose understood and was aware of Harris' abilities.

31. Kathy Harris received the job but never worked the same.

32. The position was reposted as a temporary position without the 35 wpm qualification.

33. Complainant and Susie McIntyre were among the applicants.

34. Both passed the test.

35. The position posted required mostly typing information onto form papers.

36. Due to the nature of completing forms by typing, unlike typing in open or paragraph format, speed is compromised to some extent to obtain accuracy. This applied to the job relevant to these proceedings.

37. It was an acceptable practice for clerks to "white-out" errors.

38. Some of the monthly reports were in essence perfected by "whiting-out" old entries and typing in new ones; i.e., updating the report from the previous month.

39. After Harris was awarded the clerk-typist position, Complainant filed a complaint with the West Virginia Human Rights Commission.

40. After the filing of his Complaint and subsequent to Respondent's notice of the same, Complainant was scrutinized more closely during work assignments.

41. In addition, Complainant was required to perform duties, such as janitorial, that were added to the positions held by him concurrent to his assuming the position.

42. Until 1979, women performed little if no janitorial duties attendant to their performance of the same jobs on which Complainant was required to perform the same.

43. In the latter part of 1980 and early 1981, Complainant's work schedule was manipulated with the motive and the effect of inconveniencing and harassing Complainant.

44. Subsequent to December, 1980, Complainant took a typing test from an official other than Bell, passed the same and was awarded a clerk-typist position.

45. Complainant received no training to enhance his skills from 1979 when he received a failing grade on Bell's test.

46. Respondent's testing was not uniform nor frequent enough in filling similar job vacancy situations to be equivalent to a legitimate job prerequisite; women routinely took no typing test other than the hire-in test at the time of their initial employment. This remained essentially unchanged until 1979, when Susie McIntyre tested for the

position subject of these proceedings after Complainant and the other male applicants complained of her not being required to test.

47. Typing speed was not a legitimate skill requirement and necessity for the clerk-stenographer or clerk typist job.

48. Complainant was a senior employee to Susie McIntyre.

49. Harris is approximately four (4) years Complainant's senior as to employment with Respondent.

50. In 1977, Harris attempted to bump complainant from a clerk-stenographer position in which he was filling a vacancy and was denied the bump by Mr. Shank for reasons that she was not qualified.

51. Respondent's position for not initially testing McIntyre was because she had been tested within eight (8) months previous; at hire-in.

#### **CONCLUSION OF LAW**

The Complainant was qualified for the position of Clerk-Typist at the time the position was posted in 1979. The duties of clerk-stenographer and clerk-typist were essentially the same. The evidence is clear that typing speed was of minimal use, if any, to satisfactorily perform the duties of the position and that the 35 wpm typing requirement was not a bona fide job qualification for the position of Clerk-Typist.

The evidence is just as clear that the Respondent implemented job eligibility requirements for clerical positions in a manner that males were required to satisfy requirements not demanded of females. As a result, Complainant was precluded from qualifying and being awarded the Clerk-Typist position in the summer of 1979, although he was the senior employee to the awardee.

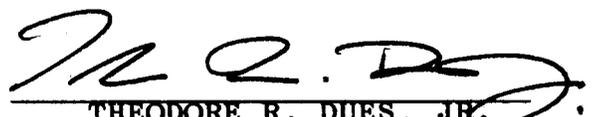
Accordingly, it is the conclusion of this Examiner that the Complainant was denied the job of Clerk-Typist in July 1979, for unlawful sex related reasons and so find Respondent in violation of the West Virginia Human Rights Act, as amended.

The Examiner further concludes that the conduct of the Respondent as to the Complainant's work assignments and schedule subsequent to its receiving notice of the complaint filed in this matter was retaliatory in motive and substance.

The parties are hereby ORDERED to refrain from filing any exceptions to this Order until such time that a hearing on damages has been perfected. At that time, the filing of exceptions may be made within fifteen (15) days of the entry date of the Order on damages.

DATED: November 13, 1984

ENTER:

  
THEODORE R. DUES, JR.  
HEARING EXAMINER

**THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

JAMES A. JONES,

Complainant,

v.

DOCKET NOS. ES-59-80  
&REP-449-80

B & O RAILROAD COMPANY,

Respondent.

**RECOMMENDED ORDER AS TO COSTS**

The Examiner recommends the following disposition of expenses and witness fees:

As to expenses incurred by Respondent as a result of perfecting its witnesses and representatives' appearance at the April 19, 1983, proceeding scheduled in this matter. The hearing had to be rescheduled as a result of Eunice Green, Counsel for Commission, having been relieved of her duty the day prior to the hearing.

Of those expenses reflected in the appended Exhibit, this Examiner recommends payment be approved by the Commission as follows:

R. H. Hosmeyer:	
Travel Expense	
(2 days)	\$35.00
Meals (2 days)	<u>32.00</u>
Total	\$67.00

\$ 67.00

J. W. Beall:		
Travel Expense		\$18.00
Meals		<u>17.00</u>
Total		\$35.00
		\$ 35.00

C. L. Hoose:		
Meals		\$ 12.00
Total		<u>\$ 12.00</u>
		12.00

N. S. Yovanovic, Esq.		
20 hrs. @ \$20.00/hr.		\$400.00
Transportation		243.23
Hotel		35.15
Meals		<u>21.36</u>
Total		\$699.74
		699.74

A. W. Lindsay, Esq.		
20 hrs. @ \$20.00/hr.		\$400.00
Transportation		230.80
Hotel		31.50
Meals		<u>24.00</u>
Total		\$686.30
		686.30

It is further recommended that witnesses subpoenaed that are in Respondent's employment be paid at \$15.00 per witness and at the rate of mileage otherwise payable to State employees.

The parties are ORDERED to file any exceptions to this Order with the Chairperson of the Commission, the Honorable Russell Van Cleve.

DATED: November 13, 1984

ENTER:

  
 THEODORE R. DUES, JR.  
 HEARING EXAMINER

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

**RECEIVED**

AUG 21 1985

W.V. HUMAN RIGHTS COMM.

JAMES A. JONES,

Complainant,

vs.

Docket Nos. ES-59-80  
REP-449-80

B & O RAILROAD COMPANY,

Respondent.

EXAMINER'S RECOMMENDED ORDER FOR COSTS AND EXPENSES

The Examiner having previously entered a recommended Order in this matter finding the Respondent liable for damages as a result of its violation of the West Virginia Human Rights Act does hereby recommend the following award of damages and costs.

FINDINGS OF FACT

1. The Respondent was guilty of discrimination against Complainant for unlawful sex related reasons.

2. Respondent was guilty of retaliatory conduct against the Complainant because he filed a discrimination claim with this agency against it.

3. As a result of the conduct of the Respondent, the Complainant had suffered severe stress and strain.

4. As a result of the Respondent's retaliatory conduct in manipulating the Complainant's work assignments and schedules the Complainant suffered a financial loss in the amount of Two Thousand Eighty-Nine Dollars and Eighty Cents (\$2089.80).

5. As a result of the complaint filed with the Commission, the management of Respondent deemed the Complainant to be undesirable as potential management material. Accordingly,

the previous recommendation for his consideration for advancement into management was withdrawn.

6. The result of that action was to nullify any opportunity for the Complainant to advance into management.

7. The Complainant suffered severe emotional distress because of the Respondent's discriminatory conduct in requiring males to take typing tests which were not required to be taken by females.

8. The Complainant suffered severe emotional distress when he learned that his low scores were a result of the fact that railroad applied a greater penalty per error for males than for females which caused Complainant to have lower scores than otherwise comparably attested females.

9. Complainant suffered great indignity and humiliation as a result of the teasing which he received from female employees because of his low typing scores; said scores being the result of Respondent's unlawful discriminatory conduct.

10. Complainant suffered severe emotional distress and humiliation as a result of being assigned to janitorial duties subsequent to the filing of his complaint ; said duties were not required to be performed by females similarly situated.

11. Job assignments given to Complainant after the filing of his complaint were discriminatory as to duties, location and hours which caused Complainant severe emotional distresss and humiliation.

12. As a result of the discriminatory and retaliatory actions of Respondent, the Complainant suffered from paranoia as

exemplified by his fear of being seen in public places by fellow railroad employees, by his constant concern that his employment would be terminated if he were to make the slightest mistake in his work, and his belief that he was constantly being watched while on duty.

13. Complainant has been under severe stress since the commencement of this action in July of 1979.

14. As a result of the emotional distress and other attendant emotional problems, Complainant and his wife have suffered marital difficulties, Complainant has lost his self-respect within the community which he has lived all his life and he suffers great anxiety about his future employment security.

15. The Complainant's attorney has incurred attorney's fees and costs in the amount of Twelve Thousand Nine Hundred Eighty-Six Dollars and Seventy-Seven Cents (\$12,986.77). Said costs and fees are deemed to be reasonable and in conformity with the provisions of the prevailing cases in this jurisdiction.

#### CONCLUSIONS OF LAW

1. The Complainant is entitled to damages as a result of the unlawful manipulation of his work schedule and assignment in the amount of Two Thousand Eighty-Nine Dollars and Eighty Cents (\$2089.80).

2. The Complainant is entitled to damages as a result of his severe mental pain and suffering realized as a result of the Respondent's unlawful discriminatory action in the amount of Eighty Thousand Dollars (\$80,000.00).

3. The Complainant is not entitled to punitive damages.

4. A seize and desist Order is warranted to prevent such blatant discriminatory conduct on the part of the Respondent.

5. The Complainant is entitled to reasonable attorney's fees and costs in the amount of Twelve Thousand Nine Hundred Eighty-Six Dollars and Seventy-Seven Cents (\$12,986.77).

RELIEF

1. That the Commission issue a seize and desist Order against the Respondent.

2. That the Complainant be awarded total damages in the amount of Eighty Two Thousand Eighty-Nine Dollars and Eighty Cents (\$82,089.80).

3. That the Complainant be awarded attorney's fees and costs in the amount of Twelve Thousand Nine Hundred Eighty Six Dollars and Seventy-Seven Cents (\$12,986.77).

DATED August 20, 1985

ENTER:



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Theodore R. Dues, Jr.  
Hearing Examiner