



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
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CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCHA MOORE JR
Governor

December 30, 1986

Betty L. Musick
Rt. 2, Box 325
Delbarton, WV 25670

Colonial Stair & Woodwork Co.
P.O. Box 38
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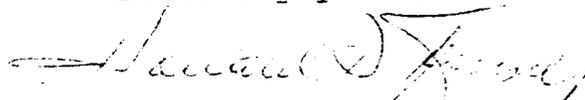
RE: Musick v. Colonial Stair & Woodwork Co.
ES-42-84 & EA-43-84

Dear Parties:

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

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 thirty (30) days, the Order is deemed final.

Sincerely yours,



Howard D. Kenney
Executive Director

HDK/mst
Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

BETTY LOUISE MUSICK,

Complainant,

v.

DOCKET NOS. EA-43-84
ES-42-84

THE COLONIAL STAIR &
WOODWORK CO.,

Respondent.

FINAL ORDER

On the 20th day of November, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner, James Gerl. After consideration of the aforementioned and the entire record, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own, with the exceptions and amendments set forth below.

The Commission hereby amends the Proposed Order and Decision of the Hearing Examiner by modifying the section titled Discussion of Conclusions as follows:

In paragraph 7 following the last complete sentence on page 8 strike, the present language and substitute, "This statement could be the gravamen of a Commission complaint statutorily authorized pursuant to WV Code 5-11-10 et seq., and by the Commission's own Administrative Rules and Regulations, Rule 3. 3.01 (c), wherein the Commission acting on its own initiative can make, sign and file a complaint, based upon information presented to it, in instances in which a violation of the Act is apparent."

Accordingly, it is hereby ORDERED that:

1. The complaint in this matter be dismissed.

2. The Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order, as amended by this Order.

3. The Commission staff shall notify the respondent under separate cover, contemporaneously mailed with this Order, of its invitation to meet with Commission representatives to discuss and draft an agreement which would include provisions, satisfying the Commission that the respondent will take affirmative steps and corrective actions to bring the respondent into compliance with regards to its employment practices and policies on the issue of sex-segregated job categories.

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 (10) days to request a reconsideration of this Order, and that they have the right to judicial review.

Entered this 29th day of December, 1986.

RESPECTFULLY SUBMITTED

BY Betty A. Hamilton
CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

RECEIVED

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W.V. HUMAN RIGHTS COMM.

BETTY LOUISE MUSICK,

Complainant,

V.

Docket No. EA-43-84
ES-42-84

THE COLONIAL STAIR &
WOODWORK COMPANY,

Respondent.

PROPOSED ORDER AND DECISION

PRELIMINARY MATTERS

A public hearing for this matter was convened on July 16, 1986 in Williamson, West Virginia. The complaint was filed on July 11, 1983. The notice of hearing was issued on March 27, 1985. A telephone Status Conference was convened on May 7, 1986. Subsequent to the hearing, both parties filed 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 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 findings as stated herein, it is not credited.

CONTENTIONS OF THE PARTIES

Complainant contends that respondent discriminated against her on the basis of her age and sex by not recalling her from layoff. Respondent maintains that complainant was not recalled from layoff because of her poor attendance record.

FINDINGS OF FACT

Based upon the parties stipulations of uncontested fact as stated on the record, the Hearing Examiner has made the following findings of fact:

1. Complainant was hired by respondent on August 19, 1974.
2. Complainant was laid off by respondent on May 5, 1982.

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

3. Complainant is female.
4. Complainant was more than 40 years old at the time of her lay off by respondent.
5. Subsequent to complainant's layoff, respondent hired twenty male employees, all of whom were less than twenty-seven years old.
6. During the period from 1978 through 1982 complainant did not attend work 23% of the time that she was scheduled to work.
7. In 1978 complainant missed 51 days and had an attendance record of 80%.

8. In 1979 complainant missed 48.34 days and had an attendance record of 81%.

9. In 1980 complainant missed 76.59 days and had an attendance record of 68%.

10. In 1981 complainant missed 54.53 days and had an attendance record of 78%.

11. In 1982 complainant missed 11.88 days and had an attendance record of 83%.

12. For the period from 1978 through 1982, complainant had the highest absenteeism rate of all employees.

13. In many instances complainant did not tell the plant manager the reason for her absence.

14. Prior to the lay off, complainant worked on the finger jointing operation. This involved a three-person team and requires some degree of skill. When one member of the team was absent, the operation could not be run as efficiently and was sometimes shut down. Attendance is critical for this position.

15. Prior to May 1982, respondent's plant manager informed all employees, including complainant, that absenteeism at the plant was high and that the absenteeism had to stop.

16. Prior to recalling any employees, respondent's management assessed all employees with regard to attendance, growth potential, skill level and attitude.

17. Respondent decided not to recall complainant because of her high rate of absenteeism.

18. Of the three female employees of respondent, two were recalled from lay off.

19. Three of the eight employees recalled from layoff by respondent were over age 40.

20. Four male former employees who were younger than complainant were not recalled from layoff.

21. Of the 120 applications for new employment received by respondent 36% were from applicants in their late teens; 55% were in their 20's; 2% were in their 40's and 1% were in their 50's.

22. Respondent's foreman refuses to hire women for jobs in the sawmill.

CONCLUSIONS OF LAW

1. Betty Louise Musick 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, §5-11-10.

2. The Colonial Stair & Woodwork Company is an employer as defined by 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 of age and sex discrimination.

4. Respondent has articulated a legitimate non-discriminatory reason for its failure to recall complainant.

5. Complainant has not demonstrated that the reason articulated by respondent for failing to recall her is pretextual.

6. Respondent has not discriminated against complainant on the basis of her age or sex by failing to recall her. West Virginia Code, Section 5-11-9(a).

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.3d 342, 352-353 (W.Va.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 nondiscriminatory reason for the action which it has taken with respect to complainant. Shepherdstown Volunteer Fire Department., supra; McDonnell-Douglas, supra. If respondent articulates such a reason, complainant must show that such reason is pretextual. Shepherdstown Volunteer Fire Department., supra; McDonnell-Douglas, supra. In the instant case, complainant has established a prima facie case of age and sex discrimination. Complainant has proven that she is female, that she was over 40 years of age at the date of her layoff, that she was laid off by respondent, that she was not recalled from layoff, that 20 men who were less than 27 years of age were hired by respondent after complainant's layoff. Such facts are sufficient to establish a prima facie case.

Respondent has articulated a legitimate non-discriminatory reason for its action in not recalling complainant from layoff.

Respondent proved that for the five years prior to her layoff complainant did not attend work 23% of the time she was scheduled to work. During that period, complainant had the highest absenteeism rate of all respondent's employees. Often, complainant did not tell the plant manager why she was absent from work. Respondent proved that it was concerned about productivity and that as employees were considered for recall that respondent's management assessed each employee's work performance based upon several factors, including attendance. Because of complainant's poor attendance record, she was not recalled by respondent from layoff.

Complainant has not demonstrated by a preponderance of evidence that the reasons articulated by respondent is pretextual. Complainant presented the testimony of two witnesses and the affidavit of a third witnesses, who died prior to the hearing herein, to the effect that respondent's plant manager, Perry, made statements to complainant and to Sherman Harmon that only young male employees would be hired by respondent. Perry contradicted this testimony by denying that he ever made such statements. Moreover the record evidence contradicts that respondent may have had such an intent. The evidence at the hearing was clear that two of the three female employees laid off by respondent were subsequently rehired. Additionally, three of the eight employees recalled from layoff by respondent were over age forty, including one age 47, one age 49, and one age 52. Thus the record evidence indicates that respondent had no intention of refusing to recall from layoff either female employees or older employees. The testimony of Perry,

because of his demeanor and the demeanor of the live witnesses testifying before the Hearing Examiner and for the reasons as stated herein, is more credible than the testimony of complainant and her witnesses. It is concluded that Perry never made the statements attributed to him.

With regard to the hiring statistics, the record evidence indicates that respondent's new hires represented approximately the ages of the persons from whom they received applications for new hires.

Complainant argues that respondent's reason is pretextual because three of the four categories used by respondent to evaluate employees who had been laid off when determining whether to recall them were subjective. Assuming arguendo that such three categories are in fact subjective, the factor upon which complainant failed was attendance. Attendance is an objective criterion which can be verified with regard to attendance records for each employee. Significantly, complainant admits in her post-hearing brief that attendance is an objective factor. Thus, the factor which is relevant to this case, attendance, is an objective factor, and plaintiff cannot benefit from the alleged subjectivity of the categories upon which she did not receive bad grades.

Complainant contends that her absences were often excusable because of medical reasons and that respondent never disciplined complainant for any attendance related problem. Although respondent's method of selecting employees from recall may be harsh, it is not unlawful. The record evidence is clear that respondent

had an attendance problem at its plant. Respondent chose to rehire employees from layoff who had good attendance records. Respondent was well within its rights to recall from layoff only those employees who would best serve respondent's needs. The issue in this case is recall not discharge; complainant admitted that respondent validly laid her off for lack of work. Thus, whether or not certain of complainant's absences from work were for good reason and whether complainant received prior discipline are not relevant to the central inquiry. Respondent chose to deal with its attendance problem by rehiring from layoff only those employees who regularly attended work.

One statement by Perry, respondent's plant manager, requires some comment even though it does not establish that respondent's reason for not recalling complainant is pretextual. Perry testified that he will not hire a woman for any job at respondent's sawmill. Although this statement does not relate to this case because complainant did not apply for a job in the sawmill and has not sought to be rehired except to her former employment, such statement reflects a shameful attitude about sex-segregated job categories. Although this statement is an embarrassment given the number of years that the Civil Rights statutes have been in existence, it does not apply to the facts of this case. This statement, however, may be relevant to future liability for respondent in the event that an unsuccessful female applicant for a sawmill position at respondent is not hired and files a complaint of discrimination against respondent. This statement does

not cause respondent to lose the instant case, but the Hearing Examiner strongly suggests that respondent consider educating Perry as to the requirements of the Civil Rights statutes with regard to hiring and maintaining sex-segregated job categories. The Hearing Examiner makes this recommendation to respondent in the strongest terms, and suggests that it be done immediately.

DETERMINATION

The complaint in this matter is not supported by a preponderance of the evidence.

PROPOSED ORDER

Based upon the foregoing, the Hearing Examiner hereby recommends that the Commission dismiss the complaint in this matter, with prejudice.



James Gerl
Hearing Examiner

ENTERED: September 23, 1956

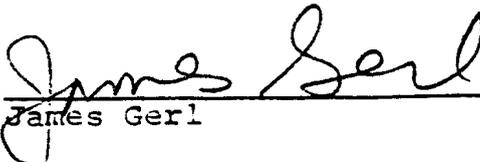
CERTIFICATE OF SERVICE

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:

Richard D. Owen, Esquire
1500 One Valley Square
Charleston, WV 25301

Michael E. Froble, Esquire
Public Defender
Tenth Judicial Circuit
115 South Kanawha Street
Beckley, WV 25801

on this 23d day of September, 1986.


James Gerl



This is for reference ¹⁻⁵⁻⁸⁵
purposes — it is not
a part of the final order

STA

ARCH A. MOORE, JR.
Governor

Monia Turley

C. Neal McMurray
Vice President
Colonial Stair & Woodwork Co.
P.O. Box 38
Jeffersonville, WV 43218

RE: Musick v. Colonial Stair and Woodwork Co.
Docket Nos. ES-42-84 & ES-43-84

Dear Mr. McMurray:

The WV Human Rights Commission invites the respondent to meet with Commission representatives within 30 days of the receipt of this correspondence to discuss the respondent's statements contained in the above-cited Public Hearing Transcript, pages 179 through 197. Wherein, upon the record before the Commission, respondent's representative, Norman Perry, testified that he would not hire women in the sawmill. (See Attachment A)

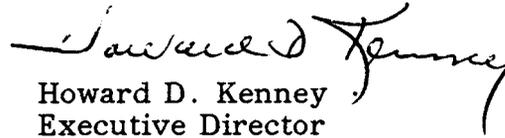
The Commission has reason to believe that the above representation may reflect the respondent's maintenance of sex-segregated job categories, thus a meeting to discuss this matter is imperative.

It is anticipated that a meeting between the Commission and the respondent will result in an agreement to insure that respondent does not and will not, in the future, maintain sex-segregated hiring practices and job categories. Otherwise, the Commission will be compelled to fulfill its statutory duty and issue a Commission complaint to fully resolve this matter.

C. Neal McMurray
December 31, 1986
Page Two

At your earliest convenience, please contact Norman Lindell, Compliance Director, to establish a time and place for a meeting on this issue.

Sincerely,


Howard D. Kenney
Executive Director

HDK/JE/mst

Enclosure

cc: Betty L. Musick
Michael E. Froble, Esq.
Richard D. Owen, Esq.

A T T A C H M E N T A

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

BETTY LOUISE MUSICK,

Complainant,

vs.

NO. ~~EA~~-43-84
ES-42-84

THE COLONIAL STAIR &
WOODWORK COMPANY,

Respondent.

Transcript of proceedings had or testimony adduced in the above-styled case before the Human Rights Commission in Room 222, Mingo County Courthouse, Williamson, Mingo County, West Virginia, at 9:45 a.m., on the 16th day of July, 1986, pursuant to order issued by the Commission.

APPEARANCES: Plaintiff present and represented by:
MICHAEL E. FROBLE, Attorney at Law
Special Assistant Attorney General
115 South Kanawha Street
Beckley, West Virginia 25801
Counsel for Complainant.

RICHARD D. OWEN, Attorney at Law
Goodwin & Goodwin
1500 One Valley Square
Charleston, West Virginia 25301
Counsel for Respondent.

ALSO PRESENT: C. NEAL McMURRAY, Vice-President
Colonial Stair & Woodwork Company

started hiring new people in '83.

Q The first person hired in '83 was hired in May. You started calling people 'back in May of '83?

A Yes, sir.

Q That was before you evaluated Mrs. Musick?

A Right.

Q So, how come you didn't call her back before you evaluated her?

A Sir?

Q How come you did not call her back before you evaluated her?

A Because we didn't have work for her.

Q You had work for Mr. Gary Dempsey?

A Right.

Q In June, you had work for John Adkins?

A Right.

Q Kenneth Hatfield?

A Right.

Q You hired twenty people. What did they do?

A They done work which really requires a man to do. You can't put a woman out on a sawmill. Anybody knows better than that.

Q Why can't you?

A Would you put one out there? Would you ask a woman to work on a sawmill?

Q Why can't you put a woman out on a sawmill?

A Because of the manual labor that's involved.

Q What kind of manual labor is it?

A It's lifting work.

Q Are you stating now that you will not hire a woman, never will hire a woman, and the company policy is that women will not be hired for work in a sawmill?

A I don't know about the company policy, but personally, I wouldn't. I think it would be silly; it would be crazy.

Can you find one in West Virginia or anywhere, as far as that matter, unless she's sitting

Perry - Cross

pushing a button.

Q Are you stating that all twenty of these employees that were hired, these young males in 1983, were hired in the sawmill?

A No.

Q Were any of them hired outside the sawmill?

A Yes; right.

Q What were they hired to do?

A They were hired to run turning lathes, rip saws.

Q Were they hired to do any work that Mrs. Musick could do, in your opinion?

A There was probably some of it that she could do.

Q Then there was available work?

A There had to be work available or we wouldn't have hired the people; that's simple, the answer to that.

Q In June of '83, you informed her that

there wasn't available work, but yet you were hiring people to do the same work?

A Not for the finger jointer. We didn't hire anyone for the finger jointer in June of '83.

Q Mrs. Musick could do nothing else besides run a finger joint?

A That was her job.

Q She did nothing else?

A She had occasionally, but that was her classification, her job.

Q What were the classifications of the people hired in 1983?

A Which ones?

Q Go down the list of all twenty of them and tell me what classification they were.

A Gary Dempsey was hired to run a rip saw, which also Johnny Adkins was hired to run a rip saw. Kenny Hatfield was hired rip saw, Walter Cline was on the sawmill.

Christopher Kirk was hired in the finish

department, which consisted of molders, lathes, band saws, and right on down the line.

Charlie Swafford was in the sawmill; Randy Carter was in the sawmill.

These two men here were glue rail people.

Q Did any of those people listed there, those twenty employees, were they hired to do any work that Mrs. Musick, in your opinion, could have done?

A No, sir, not specifically, not the work that she did do.

Q All twenty of those employees were hired based upon the fact that only men could do the work they were hired for?

A Not directly on the fact that only men could do the work. At the time, we were operating on a most-efficient basis, and we definitely didn't want a woman or someone in there that if we didn't have work over here today, we would have to lay her off tomorrow, because the work was too heavy or manual labor.

But these people here mostly didn't have

any specific job. They were later assigned to specific positions, but probably when they was first hired, we used them everywhere.

Q Why wouldn't a woman be able to do the work that you referred to?

A You mean the labor work?

Q Yes.

A Just too much manual labor.

Q What do you mean by manual labor?

A I mean lifting. You have to see the operation really to know.

Q How much did they lift; four hundred pounds?

A No; can you?

Q When you're talking manual labor, lifting, how much weight are you talking?

A I'm talking about probably thirty-five, forty pounds at a time, all day long, just continually, one board right after another, or working on a glue rail where it takes a lot of strength to tighten up glue clamps

or stand there pounding with a hammer all day, stuff of that nature.

A woman, you can't ask a woman to do that. She'll have you in court this day and time.

MR. FROBLE: I have no further questions.

THE WITNESS: You can ask her to, but you can't make her.

HEARING EXAMINER GERL: Any redirect?

MR. OWEN: Yes.

REDIRECT EXAMINATION

BY MR. OWEN:

Q Mr. Perry, in Complainant's Exhibit No. 2, which lists the new hirees for 1983, did you consider these the best people for the jobs available?

A Yes, sir, I did.

Q Did you consider them more qualified for the particular jobs than Mrs. Musick, given your knowledge of her from her prior work?

A Yes, sir, I did.

Q Do you have any need, when you are

restarting the plant, for someone who doesn't show up for work twenty-three percent of the time?

A No, sir.

Q There was some discussion concerning Mr. Harmon. Did he also have an absenteeism problem?

A Yes, he did.

Q Was that the reason that he was not recalled?

A Yes, sir.

Q Did you ever tell him otherwise?

A Other than the same meetings that Mrs. Musick attended.

Q Did you ever tell him that he had not been recalled for any reason, other than absenteeism?

A No, sir. He approached me one time and asked me why he hadn't been recalled, and my answer to him was, "You know as well as I do why you wasn't recalled".

Q What did he say?

A He uttered an oath, and said, "John Noe".

Q You did not tell him that you were hiring

younger employees and that that was the reason?

A No, sir.

Q Did you tell him --.

A He knew we were hiring younger employees.

Like I said before, it was a community project. You hire a man this morning and everybody on the -- everybody on the four-mile radius knows about it by lunch time.

Q Did you tell him that age was part of the reason that he was not recalled?

A No, sir.

Q You worked with Mrs. Musick for how many years?

A Sir?

Q How many years did Mrs. Musick work for you?

A She worked directly for me from '75 -- I worked with her. She worked under me from the time she was hired there really.

Q You had the opportunity to watch her at work, view her physical capabilities?

A Yes.

Q Based on that, did you feel she was qualified for any of the work available in June of 1983 when she visited you?

A No, sir.

Q If a man, due to size, weight, physical restrictions, has problems lifting, would you have hired him in June of 1983?

A No, sir.

MR. OWEN: I don't have any further questions.

HEARING EXAMINER GERL: Any recross?

MR. FROBLE: Yes.

RECROSS-EXAMINATION

BY MR. FROBLE:

Q Sherman Harmon, you stated that he had a similar, equal, or worse absentee problem than Mrs. Musick?

A Equal and probably worse. I don't have the exact figures on it, but at least equal.

Q Did you, at any time, view his percentage

of absenteeism?

A Not that I recall.

Q If I told you it was thirteen percent, would that be reasonable?

A I would say it was more than that.

Q Do you have any idea what Mrs. Musick's percent was?

A I would say it would run somewhere between -- probably around twenty percent. Just an offhand guess.

Q What do you base that on?

A Huh?

Q What do you base that on? Do you keep records?

A Huh?

Q Do you keep records?

A I keep time records, which are available.

Q Mr. Harmon came and talked to you in April or May of 1984, is that correct?

A I spoke with him at that time. He didn't come. He was out on the parking lot talking to some of

the employees when I went out from work.

When I went out that evening, he hollered at me and we had a slight conversation there about everything in general.

Q Did he inquire about his recall?

A Yes, he did.

Q What did he say?

A He wanted to know why he wasn't -- just like I told Mr. Owen a few minutes ago. He wanted to know why he hadn't been recalled.

Q What did you tell him?

A I said, "You know the reason as well as I do, Sherman".

Q What did he say?

A Like I said, he uttered an oath and said, "John Noe". That was the end of the --

Q Afterwards, did he ask whether it was based upon his age?

A No, sir.

Q You have testified that women can't do the

work. What about elderly people; can they do the work?

A It would depend upon their health situation. I've seen people at seventy-five years old that could do as much work as I can, and I've seen some that's twenty that can't.

Q Do you consider age when you hire people?

A No, sir.

Q The twenty new employees that were hired were ages nineteen to twenty-six. Did you not take that into consideration when you hired them?

A No, sir.

Q When you did not recall Mrs. Musick, did you take her age into consideration?

A No, sir.

Q Did you take her sex into consideration?

A No, sir.

Q You didn't hire her for the sawmill, did you?

A No, sir.

Q Based upon her attendance?

A Based upon her attendance and her ability.

Q Not her sex?

A No, sir.

MR. FROBLE: That's all the questions I have.

MR. OWEN: I don't have anything else.

HEARING EXAMINER GERL: Let me ask you a few questions, Mr. Perry.

EXAMINATION

BY HEARING EXAMINER GERL:

Q Were you ever told by any of your superiors to avoid hiring older applicants for the job?

A No, sir.

Q How about female applications?

A No, sir.

Q It was always your decision?

A Right.

Q It was part of your job to decide who was hired, is that true?

A Yes, sir.

Q Did you have to get that approved by Mr.

McMurray?

A No, sir.

Q By anyone else?

A No, sir. The only approval I got was how many -- when and how many. The hiring procedure was left up strictly to myself.

Q When you recalled people from layoff, though, you did consult with Mr. McMurray?

A Right.

Q And Mr. Burnett?

A Right.

Q Tell me about the sawmill jobs. What is it about being female that prevents a woman from being able to do that job?

A Well, have you ever been in a sawmill?

Q No, I haven't.

A Well, all you have to do is look at it. Can you ask a female woman to stand there all day and handle sixteen-foot boards, two inches thick, do that all day long?

Perry - Examination

Q You told me before there was some seventy-year olds that could do that, is that not true?

A There probably is some seventy-year old men that could work at it.

Q But there's no female that could do that job?

A I don't think so.

Q None on earth?

A In my opinion, I wouldn't want to put one out there, because two days later, she would have you in court for harassment or something.

Q What other jobs are there that women can't do at your plant, besides the sawmill?

A I would say a woman couldn't operate a rip saw; a woman couldn't work on the glue rails, the wood presses.

Q Why is that?

A The manual labor that's required.

Q When you say "manual labor", do you mean lifting?

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A Lifting, the hard stress manual labor. At least, I wouldn't ask a woman. I wouldn't want my wife doing it, and I'm sure you wouldn't want yours either.

Q That's not what I'm asking. I'm asking whether there's any woman that could do that job, and you're telling me no, as I understand it.

A I've never seen one that could or would.

HEARING EXAMINER GERL: That's all I have.

Anything from Respondent based on my questions?

MR. OWEN: One question, Mr. Perry.

REDIRECT EXAMINATION

BY MR. OWEN:

Q In regard to the sawmill work and Mrs. Musick's qualifications, without regard to women as a whole, do you believe that Mrs. Musick, in particular, had the ability to perform that work?

A No, sir, and I think she would tell you the same thing.

Q Was she more or less qualified than the individuals hired to do that job?

A Oh, yes.

Q More or less?

A Less.

MR. OWEN: That's all I have.

MR. FROBLE: I have one question.

RE-CROSS-EXAMINATION

BY MR. FROBLE:

Q What qualifications do you need to work in a sawmill?

A Really, what we require, we require someone that's a high school graduate. That's the first thing which we require. That's strictly for everything anymore. Other than that --

Q Is there any training or anything?

A Other than that, the requirements is that you would want someone that you could depend on, not someone that would -- that would be there every day. You would want someone that was physically able to do the work. Someone that's probably a pretty good man.

Q It's manual labor?

A Yes, it is, mostly manual labor.

MR. FROBLE: That's all I have.

THE WITNESS: Handling lumber.

MR. OWEN: I don't have any other questions.

HEARING EXAMINER GERL: Thank you for your testimony. Do either of you need him anymore, or is he free to leave?

MR. OWEN: No, and the Respondent rests.

(Witness stands aside.)

HEARING EXAMINER GERL: My records show that in addition to the testimony of the two witnesses, you have had five exhibits offered and all of them admitted. You have no further exhibits or testimony.

MR. OWEN: That's correct.

HEARING EXAMINER GERL: Does Complainant have any further evidence?

MR. FROBLE: No, Mr. Examiner.

HEARING EXAMINER GERL: As I recall, I gave Complainant leave until the end of this week to submit to Respondent a certain document, an affidavit from Mr.