

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

CHRISTOPHER D. MARTIN,

COMPLAINANT,

V.

DOCKET NO. ER-282-83

SMITH'S TRANSFER CORP.

RESPONDENT.

ORDER

On the 18th day of July, 1985, the Commission reviewed Hearing Examiner Theodore R. Dues, Jr.'s. Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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

The Commission hereby ORDERS that this complaint be dismissed and that the Complainant take naught.

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

Entered this 15th day of July, 1985.

RESPECTFULLY SUBMITTED,



RUSSELL VAN CLEVE
CHAIRPERSON, WV HUMAN RIGHTS
COMMISSION

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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MAY 24 1985

CHRISTOPHER D. MARTIN,
Complainant,

W.V. HUMAN RIGHTS COMM.

vs.

DOCKET NO: ER-282-83

SMITH'S TRANSFER CORPORATION,
Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

This case came on for hearing on March 27, 1985. The hearing was held at the Conference Room of the West Virginia Human Rights Commission, 1036 Quarrier Street, Charleston, West Virginia. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner. The Hearing Commissioner was waived by the parties.

The Complainant appeared in person and by counsel, Nelson R. Bickley. The Respondent appeared by its representative, John Lucas and by counsel, Roger Wolfe and Gene Bailey. The West Virginia Human Rights Commission appeared by its counsel, John Richardson.

FINDINGS OF FACT

1. The Complainant, Christopher Martin, is a black male.
2. The Complainant was hired on October 5, 1976, as an operations clerk.
3. The Complainant was promoted to dock foreman on September 23, 1979, after serving approximately six (6) months as a trainee.
4. The Complainant's employment was not governed by a

collective bargaining agreement.

5. On August 30, 1982, the Complainant and three other foreman were given layoff notices effective September 4, 1982; the other foreman selected were white males.

6. The selection of these four foremen was based upon seniority.

7. The four foremen selected for layoff were junior in seniority to the other foremen employed during this period.

8. The Complainant was paid wages through September 4, 1982.

9. On September 3, 1982, the Complainant's sister called the Respondent's Belle terminal and reported the Complainant to be sick and unavailable for work.

10. Previous to this date, the Complainant had missed work for reasons other than health; including leaving for softball tournaments and other personal activities. The Complainant had been orally counseled on his absences and had received one written admonishment prior to the dates of his discharge.

11. Attempts were made by the Terminal Manager to reach the Complainant at home on September 3, 1982, but to no avail.

12. The Complainant was later seen on September 3, 1982, driving his automobile in Montgomery, West Virginia.

13. The Complainant's absences exceeded those of similarly situated whites.

14. The Complainant's treatment at the work place during two incidents of suspected theft on the worksite was not disparate as to his race.

15. Of the incidents of racial harassment of record only one incident was reported by the Complainant to management and management took that action most likely to sufficiently address that incident.

16. The Complainant was discharged for excess absenteeism on September 3, 1982.

CONCLUSIONS OF LAW

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

2. As in all cases, the Complainant bears a burden of proving the allegations of his complaint that the Respondent discriminated against him because of his race during his employment and affected the decision to discharge him.

3. In order to establish a prima facie case, the Complainant must show that:

- a. he is a member of a protected group;
- b. that his employment was terminated;
- c. that similarly situated persons not in the protected group were not terminated;

4. The testimony of the Complainant viewed in its most favorable light provides the proof needed for (a) and (b) of the above-referenced criteria.

5. The evidence in its totality clearly indicates that the Complainant was in fact discharged for excess absences from the job. There were no similarly situated whites with as many or

more absences than the Complainant.

6. That there was no credible proof that the Respondent condoned or acquiesced the use of racial slurs or racially motivated surveillance of the Complainant;

7. The Respondent articulated a legitimate nondiscriminate reason for the Complainant's discharge and took reasonable affirmative steps to address the one incident of racially motivated activity reported to it by the Complainant.

8. The Complainant in no way rebutted the reasons articulated by the Respondent as being pretextual.

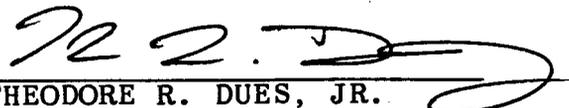
9. Accordingly, the Complainant has failed to meet his burden of establishing that he was treated differently than similarly situated whites in his employment conditions and that his discharge was in part motivated by his race.

RELIEF

Therefore, it is the recommendation of this Examiner that the Respondent is entitled to judgement and the Complainant take naught.

DATED 5-22-85

ENTER:


THEODORE R. DUES, JR.
HEARING EXAMINER