



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

215 PROFESSIONAL BUILDING  
1036 QUARRIER STREET  
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.  
Governor

June 3, 1986

Betty Jo Kinder Rider  
114th Street, #6  
Chesapeake, WV 25315

Cynthia Turco  
Spilman, Thomas, Battle & Klostermeyer  
P. O. Box 273  
Charleston, WV 25321-0273

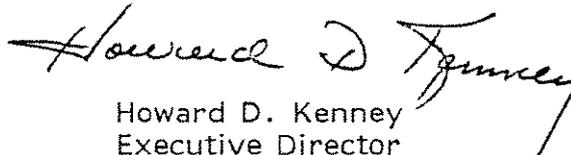
RE: Betty Jo Kinder Rider V  
Laury's, Inc./Docket No. EA-330-79

Dear Ms. Rider and Ms. Turco:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Betty Jo Kinder Rider V Laury's, Inc./EA-330-79.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

  
Howard D. Kenney  
Executive Director

HDK/kpv  
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

BETTY JO KINDER RIDER,

Complainant,

vs.

Docket No. EA-330-79

LAURY'S, INC.,

Respondent.

O R D E R

On the 7th day of May, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Theodore R. Dues, Jr. After consideration of the aforementioned, 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 Examiner's Recommended Findings by deleting therefrom Conclusions of Law Nos. 3 and 4 and substituting therefor the following Conclusions of Law:

"3. The Complainant established a prima facie case of age discrimination in employment by proving that she was a member of a protected class (over age 40); that she was qualified to perform the duties of her job as a waitress; and that her hours were reduced and her employment was later terminated while younger employees with similar qualifications were retained without reductions in work hours."

"4. The respondent articulated legitimate non-discriminatory reasons for complainant's work reduction and

termination in that there was a reduction in business leading to her reduction in hours and that she was terminated because her performance was not of the quality of the employees that were retained."

"5. Complainant failed to establish by means of any credible evidence that the reasons articulated by the respondent set forth above were pre-textual. All credible evidence shows that there was a reduction in business and that complainant's work, while generally satisfactory, was not of the quality of the employees who were retained considering the fact that Mr. Laury was attempting to change the nature of the business to a higher quality establishment upon his purchase of it (Tr. 106)."

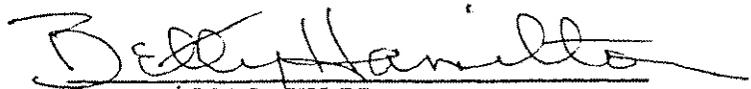
"6. Accordingly complainant has failed to meet her burden to establish a violation of the West Virginia Human Rights Act."

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, except as amended by this Order.

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 DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 23 day of May, 1986.

Respectfully Submitted,

  
\_\_\_\_\_  
CHAIR/VICE-CHAIR  
WEST VIRGINIA HUMAN  
RIGHTS COMMISSION

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**RECEIVED**

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

FEB 05 1986

W.V. HUMAN RIGHTS COMM.

BETTY JO KINDER RIDER,  
Complainant,

vs.

Docket No. EA-330-79

LAURY'S, INC.,

Respondent.

EXAMINER'S RECOMMENDED FINDINGS  
OF FACT AND CONCLUSIONS OF LAW

This case matured for public hearing on July 17, 1985. The hearing was held at the Conference Room of the Daniel Boone Building, 405 Capitol Street, Charleston, WV. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner. The parties waived the presence of a Hearing Commissioner. The Complainant appeared in person and by her counsel, Roxanne Rogers. The Respondent appeared by its counsel, Cynthia L. Turco and by Otis Laury, its representative.

FINDINGS OF FACT

1. The Complainant, Betty Jo Kinder Rider, is a white female age 49.
2. The Complainant is experienced in performing the duties of a waitress.
3. The Complainant was hired by the Respondent as a waitress in 1978 as a waitress.
4. The Complainant's hours were reduced during the months of September 1978 to January 1979 as a result of a reduction in business.
5. The Complainant was laid off in January 1979 due to

the reason that her performance was not of the quality of those employees that were retained.

#### 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 the burden of proving the allegations of her complaint that the Respondent discriminated against her in its decision to reduce her hours of work in the latter part of 1978 and in laying her off in January 1979.

3. The Complainant failed to establish a prima facie case by failing to introduce evidence to establish that the reduction in her hours or the layoff were in any credible way connected to her age.

4. Accordingly, the Complainant has failed to establish a violation of the West Virginia Human Rights Act.

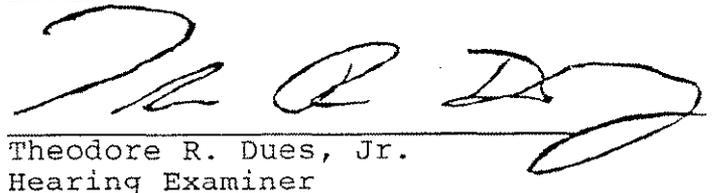
#### RELIEF

Judgement for the Respondent.

DATED

July 22, 1985

ENTER:

  
Theodore R. Dues, Jr.  
Hearing Examiner

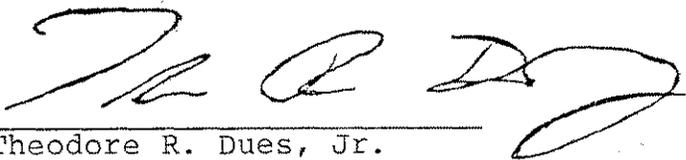
CERTIFICATE OF SERVICE

I, Theodore R. Dues, Jr., Hearing Examiner, hereby swear and say that I have served a true and exact copy of the foregoing EXAMINER'S RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW upon the following:

Roxanne Rogers  
West Virginia Human Rights Commission  
215 Professional Building  
1036 Quarrier Street  
Charleston, WV 25301

Cynthia L. Turco, Esq.  
Spilman, Thomas, Battle &  
Klostermeyer  
P.O. Box 273  
Charleston, WV 25321-0273

by mailing the same by United States Mail on this 4th day of February, 1986.

  
Theodore R. Dues, Jr.  
Hearing Examiner