

2

MIKE KELLY

ATTORNEY AT LAW

POST OFFICE BOX 246

CHARLESTON, WEST VIRGINIA 25321

(304) 344-3293

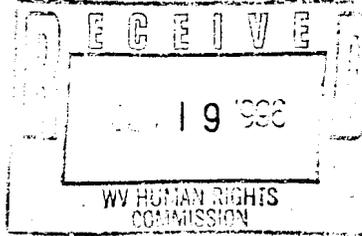
FAX (304) 344-8546

122 CAPITOL STREET

SUITE 200

MIKE KELLY

DENNISE SMITH - KASTICK



SANDRA K. MOLES
LEGAL ASSISTANT

TO: Vickie L. Smallwood
106 Bluestone Road
Beckley, WV 25801

Shane Southern
Southern Communications, Inc.
21 Airport Industrial Park
Beckley, WV 25801

Sharon M. Mullens
P. O. Box 20017
Charleston, WV 25362-1017
Counsel for complainant

Brian D. Yost
Holroyd & Yost
209 West Washington Street
Charleston, WV 25302
Counsel for respondent

NOTICE OF FINAL DECISION

PLEASE TAKE NOTICE that pursuant to W.Va. Code §5-11-8(d) and 6 WVCSR §77-2-10, any party aggrieved by the attached final decision shall file with the executive director of the West Virginia Human Rights Commission, **WITHIN THIRTY (30) DAYS OF RECEIPT OF THE DECISION**, a petition of appeal setting forth such facts showing that the party is aggrieved, stating all matters alleged to have been erroneously decided herein, the relief to which the party believes they are entitled and any argument in support thereof.

The filing of an appeal to the Commission from the final decision shall not operate as a stay of the decision unless specifically requested by the appellant in a separate application for the same and approved by the Commission or its executive director.

All documents shall be directed to:

Herman Jones, Executive Director
West Virginia Human Rights Commission
1321 Plaza East, Room 104-106
Charleston, WV 25301

Dated this 17th day of December, 1996.

WV HUMAN RIGHTS COMMISSION

BY: Mike Kelly
MIKE KELLY
Administrative Law Judge
Post Office Box 246
Charleston, West Virginia 25321
(304) 344-3293

cc: Herman Jones, Executive Director
West Virginia Human Rights Commission

**BEFORE THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION**

VICKIE L. SMALLWOOD,

Complainant,

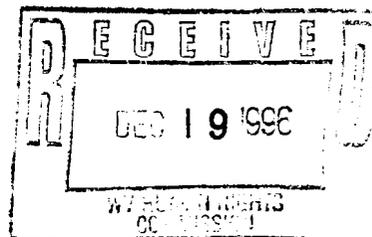
v.

**Docket Nos. ES-249-89
EREP-532-92**

SOUTHERN COMMUNICATIONS, INC.,

Respondent.

**FINAL DECISION OF THE
ADMINISTRATIVE LAW JUDGE**



This consolidated matter came on for public hearing on 1 December 1995 at the office of the Raleigh County Commission, Raleigh County, Beckley, West Virginia. The complainant appeared in person and by her counsel, Sharon M. Mullens. The respondent appeared by its representative, Shane Southern, and its counsel, Brian Yost and Holroyd & Yost.

I. ISSUES TO BE DECIDED

A. Whether Southern Communication, Inc. (hereinafter "Southern" or "SCI") violated W.Va. Code §5-11-9(1) by unlawfully discriminating against Vickie L. Smallwood in October 1988 by failing or refusing to extend to her equal terms, conditions or privileges of employment because of her sex.

B. Whether SCI violated W.Va. Code §5-11-9(7) by engaging in a form of reprisal against Ms. Smallwood in March 1992.

II. FINDINGS OF FACT

Based upon the credibility of the witnesses, as determined by the Administrative Law Judge, taking into account each witness' motive and state of mind, strength of memory, and demeanor and manner while on the witness stand; and considering whether a witness' testimony was consistent, and the bias, prejudice and interest, if any, of each witness, and the extent to which, if at all, each witness was either supported or contradicted by other evidence; and upon thorough examination of the transcript of the proceedings, the exhibits introduced into evidence and the written recommendations and argument of counsel, the Administrative Law Judge finds the following facts to be true¹:

A. Preliminary Facts

1. Complainant Vickie L. Smallwood (now Hylton) is a female and resides in Beckley, Raleigh County, West Virginia.

¹ To the extent that the findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and discussion 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 issue as presented. To the extent that the testimony of various witnesses is not in accord with the findings herein, it is not credited.

2. Respondent Southern Communication, Inc. owns and operates radio station WCIR in Beckley. SCI is an "employer" as that term is defined by W.Va. Code §5-11-3(d).

3. Ms. Smallwood was employed by SCI from October 1986 to October 1988. Her first position with respondent was as an "on air personality". In December 1986 she moved into marketing and sales.

4. When she assumed the sales position in December 1986, complainant was given a list of accounts from which to work. She would call on the advertisers, discuss their advertisement needs and options and then assure that their ads were given airtime.

5. At all relevant times, Shane Southern was respondent's general manager and president. In August 1988 Mr. Southern hired Steve Gregory as WCIR's sales manager. Mr. Gregory became complainant's immediate supervisor.

6. Ms. Smallwood's employment agreement with respondent states that ". . . policy changes may be implemented by the company at any time and [the employee] agrees to comply with any and all policy changes as brought forth by the company without exception." (Complainant's Exhibit 1). Respondent's 1986 and 1988 marketing manuals state that "account lists belong to the Company and accounts will be distributed at management's discretion." (Joint Exhibits 1 and 2).

B. Events of October 1988: Sex Discrimination Claim
HRC Docket No. ES-249-89

7. In October 1988 complainant was receiving a draw against commission of \$1,250.00 per month, plus eligibility for a bonus, and family health insurance coverage. She was in the process of a divorce and the mother of three children.

8. In October 1988 respondent employed six salespersons, three males and three females: complainant, Sharon Cross, Rick Lambert, Kathy Morris, Chuck Shaefer and Larry Dance. Ms. Cross was on maternity leave that month.

9. Again in October 1988, Mr. Gregory announced his intent to realign the accounts lists among his sales staff and to set the monthly draw for each person at \$1,000. Under the new plan, Ms. Smallwood, Ms. Cross and Mr. Lambert had their respective draws reduced. Draws were increased for Ms. Morris, Mr. Shaefer and Mr. Dance.

10. Mr. Gregory credibly testified that he realigned the accounts in order to achieve uniformity and efficiency and to give each salesperson an equal opportunity to make money. For example, he found that two or three different salespeople were working accounts in Nicholas County, with another two or three going to Mercer County or Wyoming County rather than one person working all of the accounts in a particular outlying county. He also believed that the experienced sales people should be assigned to new accounts that needed development rather than assigning new business and prospects to the inexperienced staff. Prior to realignment, the documents submitted by respondent appear to reflect that the revenue value of the accounts assigned to Ms. Morris, Mr.

Shaefer and Mr. Dance were less than half of those assigned to Ms. Cross, Mr. Lambert and Ms. Smallwood.

11. Respondent also offered credible testimony that the realignment of accounts resulted in each employee gaining some accounts and losing others. Mr. Gregory appeared credible when he testified that his goal was to increase revenue for the station and that, after a period of time, he expected the income of all sales people to go up.

12. At the time the realignment was announced, complainant was ranked third in total sales behind Ms. Cross (first) and Mr. Lambert (second). She admitted that more often than not she failed to bring in enough money in sales commissions to cover her draw. Under the realignment she lost some accounts to Ms. Cross and gained some accounts from Mr. Lambert.

13. Sometime after the realignment was announced, Ms. Smallwood spoke to Mr. Gregory about her unhappiness at losing some of her established accounts. She testified that Mr. Gregory responded that "There are men at the station that can't afford to support their families and you are doing just fine . . . You are a good sales rep and you can take accounts that make nothing and make them something." Based on an assessment of credibility as to this conversation, I credit complainant's testimony on this point as being true. However, I also find that this remark, under the undisputed circumstances of this case, must be considered stray comment that, in and of itself, does not create an inference of discrimination.

14. On 26 October 1988, Mr. Gregory met at 8:00 a.m. with his sales staff (absent Ms. Cross). The staff had been given a week to review the revised contracts and marketing manuals that reflected the changes discussed above. When Mr. Gregory asked if they had signed the revised contracts, Ms. Smallwood stated that her contract was in the possession of her attorney and that she would not sign it until he had a chance to review it. Mr. Lambert, who was also unhappy with the changes, stated "I cannot sign this," to which Mr. Gregory responded "Then you may leave." When Mr. Lambert asked "Are you telling me you're firing me?", Mr. Gregory replied "Yes, you're fired. Come back at 10:00 a.m. to pick up your things."

15. Immediately after Mr. Lambert was discharged, Ms. Smallwood stated "Steve, I cannot sign this either. I have not finished counseling with my attorney on the matter, I would rather wait." Their exchange then went as follows:

Mr. Gregory: "Then you may leave."

Ms. Smallwood: "Steve, are you telling me you're firing me?"

Mr. Gregory: "You can go now."

Ms. Smallwood: "But are you firing me?"

Mr. Gregory: "Yes, you are fired. Come back at 10:00 a.m. and pick up your stuff."

Ms. Smallwood then left respondent's premises.

16. Complainant and Mr. Lambert both returned at 10:00 a.m. to retrieve their belongings. Everything that belonged to them had been packed and was ready to go. While in the office, Mr. Lambert, but not complainant, was approached by Mr. Southern or Mr. Gregory and asked if he wanted to reconsider his actions. He responded "I am not signing the agreement." He was asked if

he was sure and he said "yes". Respondent did not offer to change the terms of the agreement for Mr. Lambert, but it was stated that "things can change down the road if they don't work out." After Mr. Lambert again refused to sign the agreement, he left the building and he was considered discharged.

17. Ms. Cross never signed the new agreement, but was not fired. The changes implemented by the realignment were applied to her regardless of the lack of her signature.

18. I find as fact that the changes implemented by respondent in October 1988 adversely effected, at least in the short term, both men and women, namely Ms. Smallwood, Ms. Cross and Mr. Lambert, and were to the immediate benefit of both men and women, i.e. Ms. Morris, Mr. Shaefer and Mr. Dance.

19. I find as fact that respondent did not discriminate on the basis of sex when it realigned the accounts among its sales staff and, in particular, did not unlawfully discriminate against complainant.

20. I find that the statement of Mr. Gregory set forth in Finding 13, while appearing discriminatory on the surface, cannot sustain a case of unlawful discrimination given that the facts clearly indicate that Mr. Gregory's changes as implemented were not in fact discriminatory.

21. Similarly, Ms. Smallwood's testimony that Mr. Gregory singled her out for criticism and derogatory comments about her sales results cannot, singly or in combination with Finding 13,

sustain a cause of action for discrimination given that her testimony on this point was largely undeveloped, conclusory and vague and gave the impression that his comments were at worst, isolated and perhaps misguided attempts to motivate her performance. There was no evidence that he ever spoke to Ms. Smallwood in a manner that would constitute sexual harassment or that a reasonable woman would consider embarrassing, degrading or humiliating and directed to her because of her sex.

22. I find as fact that respondent did not unlawfully discriminate against Ms. Smallwood by asking Mr. Lambert, but not complainant, if he would reconsider his refusal to agree to the new terms and conditions of his employment. Respondent never offered to change the terms and conditions for Mr. Lambert, and I credit Mr. Gregory's testimony that his post-discharge conversation with Mr. Lambert was simple happenstance occasioned by his running into Mr. Lambert as the latter was leaving the building with his personal belongings.

23. I find as fact that respondent did not violate W.Va. Code §5-11-9(1) in regard to complainant's discharge from work in October 1988.

C. Events of March 1992: Retaliation Claim
HRC Docket No. EREP-532-92

24. Upon being fired, complainant filed a civil action in the Circuit Court of Raleigh County, West Virginia charging respondent with breach of contract. Additionally, in December 1988

Ms. Smallwood filed an administrative complaint with the West Virginia Human Rights Commission, docketed as Case No. ES-249-89, which is the case discussed immediately hereinabove.

25. In February 1992 complainant was hired by Power In Education, Inc. ("PIE") a company based in Pittsburgh, Pennsylvania. While it remains unclear to me what service or product PIE actually sells, it was undisputed that among complainant's duties for PIE were to work with Shane Southern and WCIR.

26. In March 1992 Ms. Smallwood went to WCIR to see Mr. Southern about PIE. She did not have an appointment. He was not in, so she left her business card and a message that she was PIE's new area representative.

27. When Ms. Smallwood went to see Mr. Southern, her breach of contract action was scheduled for trial in the Circuit Court of Raleigh County that same month. It was later continued until June 1992 and was subsequently involuntarily dismissed. Ms. Smallwood's HRC complaint was still pending and being investigated. A finding of probable cause was not made until 10 August 1994 and the hearing resulted the following year.

28. In response to being informed of Ms. Smallwood's employment by PIE, Mr. Southern called PIE officials and cancelled whatever arrangements SCI had with it. Mr. Southern testified at hearing that he told PIE that the reason for his action was that "There's pending litigation". The testimony at hearing was unclear as to whether Mr. Southern, in using the words "pending litigation" meant to include or exclude the pending HRC case. While his testimony focused on the circuit court

case, he never specifically addressed or denied whether the HRC matter was also taken into account by him.

29. As a result of Mr. Southern's call to PIE officials, the company terminated its operations in the Beckley area and Ms. Smallwood was let go on or about 22 March 1992.

30. At PIE, Ms. Smallwood was scheduled to earn an \$18,000 annual draw against commission, plus bonuses. Due to her short tenure with PIE, there is no reliable record on which to base a decision as to whether or not she would have earned a bonus had she continued in PIE's employ.

31. Complainant was unemployed from March 1992 thru August 1992 when she enrolled as a full time student at the College of West Virginia.

32. Based on my assessment of the whole record and a determination as to credibility on this issue, and observing Mr. Southern's understandable anger at and displeasure with Ms. Smallwood, I find that more likely than not the pending HRC claim was a factor in his decision to call PIE and terminate SCI's relationship with it.

33. I find as fact that respondent engaged in an act of reprisal against complainant by cancelling its arrangement with PIE in that a factor in respondent's decision was the pending HRC litigation and that as a result thereof, Ms. Smallwood suffered a loss of income of \$9,000 for the

period of March thru August 1992 (\$18,000 annual commission divided by 12 months, times six months loss of income).

34. I find as fact that as a result of respondent's reprisal, Ms. Smallwood suffered embarrassment, humiliation, annoyance and inconvenience.

III. CONCLUSIONS OF LAW

1. Under the West Virginia Human Rights Act (HRA), it is unlawful for an employer to use an employee's sex as a reason to fail or refuse to extend to her an equal opportunity to be considered for a promotion. W.Va. Code §5-11-9(1).

2. This case having been heard in its entirety, with all evidence submitted and considered, it is not necessary to address whether the complainant established a *prima facie* case of sex discrimination. Once all the evidence has been heard, and the "defendant has done everything that would be required of him if the plaintiff had properly made out a prima facie case, whether plaintiff really did so is no longer relevant." *U.S. Postal Service v. Aikens*, 460 U.S. 711, 715, 103 S.Ct. 1478, 1482 (1983). The job of the factfinder, after taking all of the evidence, is to address "the ultimate question of discrimination *vel non*." 103 S.Ct. at 1481. *See, Barefoot v. Sundale Nursing Home*, ____ W.Va. ____, 457 S.E. 2d 152 (1995).

3. The burden on complainant was to show by a preponderance of the evidence that an unlawful reason, sex, was a motivating factor in the decision of respondent to discharge her or to adversely alter the terms and conditions of her employment. *Skaggs v. Elk Run Coal Co.*, ___ W.Va. ___, ___ S.E. 2d ___, 1996 W.Va. Lexis 107 (1996). It is not necessary to show that sex was the only factor causing the decision, but merely that complainant's sex entered into the decision making in any degree.

4. I conclude as a matter of law that complainant's sex did not enter, in any degree, into the decision to discharge her or to alter the terms and conditions of her employment. Respondent's decisions had an adverse affect on both men and women, and benefitted other males and females. Its changes were sex neutral and both a male and female were discharged after refusing to agree to the new terms and conditions.

5. W.Va. Code §5-11-9(7)² makes it unlawful "For any person [or] employer . . . to":

(C) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article. (Emphasis added).

² The anti-reprisal provision of the HRA appears considerably broader in scope than that contained in Title VII of Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a)(1). The use of the term "person", along with "employer", makes it clear that former employers, like the respondent, are also prohibited from engaging in retaliation. Thus, the debate regarding the liability of former employers for retaliatory acts now raging in the federal courts is unnecessary here. See, *Charlton v. Paramus Bd. of Ed.*, 25 F. 3d 194 (3rd Cir. 1994) and *Polsby v. Chase*, 970 F. 2d 1360 (4th Cir. 1992) vacated sub. nom. *Polsby v. Shalala*, 113 S. Ct. 1940 (1993), also *Robinson v. Shell Oil Co.*, 70 F. 3d 325 (4th Cir. 1995).

6. In making out a case of unlawful reprisal arising out of a prior complaint of discrimination filed with the HRC, it is not necessary for the complainant to litigate or prove the merits of the original claim. *Davis v. State University of New York*, 802 F.2d 638 (2nd Cir. 1986); *Berg v. LaCrosse Cooler Co.*, 612 F.2d 1041, 1043, (7th Cir. 1980); *Rogers v. McCall*, 488 F. Supp. 689, 697, (D. D.C. 1980); *Slotkin v. Human Dev. Corp.*, 454 F. Supp. 250, 257, (E.D. Mo. 1978). The ultimate burden on Ms. Smallwood in a reprisal case such as this, after the evidentiary framework has fallen to the wayside, is to prove by a preponderance of the evidence that a retaliatory motive played a part in an employment decision adverse to the complainant. *Davis, supra*; *Womack v. Munson*, 619 F.2d 1292 (8th Cir. 1980), cert. den. 101 S.Ct. 1513 (1981). *Mitchell v. Visser*, 529 F. Supp. 1034 (D. Kan. 1981). As the Second Circuit stated in *Davis*, an anti-reprisal provision is "violated if a retaliatory motive played a part in the adverse employment actions . . . even if it was not the sole cause." 802 F. 2d at 642.

7. It is unlawful for an employer to refuse to hire an applicant because he or she has a pending discrimination claim against the employer. As the Court stated in *Kirkland v. Buffalo Bd. of Ed.*, 487 F. Supp. 760, 772 (W.D.N.Y. 1979) aff'd, 622 F. 2d 1066 (2nd Cir. 1980):

However natural it may be for an employer to be reluctant to hire someone who has brought suit against him, it is every citizen's right to resort to the judicial system, and Title VII makes illegal an employment decision based on an applicant's exercise of this right as it applies to actual or perceived employment discrimination. Essentially, this is retaliation . . .

See also, Slotkin, supra.

If it is unlawful for an employer to refuse to hire a person who has civil rights litigation pending against it, logic dictates that it is similarly unlawful for an employer to refuse to continue a business relationship with a third party because the third party has hired the former employee and assigned her to work with her former employer.

8. I conclude as a matter of law that complainant met her burden of showing that a retaliatory motive played a part in an employment decision adverse to her. Respondent's president testified without hesitation that he called PIE and said that due to "pending litigation," which included an active HRC complaint, he would not continue to pursue a business relationship with PIE. While he may not have demanded that PIE discharge Ms. Smallwood, it can be fairly said that her termination was a natural consequence of and directly attributable to his actions and that PIE would not have discharged Ms. Smallwood in the absence of the phone call.

9. Once Ms. Smallwood proved that respondent violated W.Va. Code §5-11-9(7)(c), SCI could still escape liability by showing that PIE's adverse action toward complainant would have been taken even in the absence of the unlawful retaliatory act. *Ruggles v. California Polytechnic State University*, 797 F. 2d 782 (9th Cir. 1986). Here, respondent produced no evidence that PIE would have severed its relationship with complainant even if Mr. Southern had not made the phone call. Also, respondent did not convince me that Mr. Southern mentioned to PIE only the pending circuit court breach of contract action and made no mention whatsoever of the HRC action, or that he would not have made the phone call at all had only the HRC claim been pending.

10. I conclude as a matter of law that respondent violated W.Va. Code §5-11-9(7)(c) by engaging in an act of reprisal against Ms. Smallwood because she filed a complaint with the HRC.

11. The complainant having prevailed on her reprisal claim, Ms. Smallwood is entitled to the following relief:

(a) an award of backpay in the amount of \$9,000, plus prejudgment and postjudgment interest at the rate of 10% per annum, calculated quarterly from March 1992 until paid; and

(b) incidental damages in the amount of \$2,000.00 for the humiliation, embarrassment and loss of personal dignity suffered by complainant as a result of respondent's unlawful act.

12. I conclude as a matter of law that complainant's eligibility for back pay terminated as of 31 August 1992 when she opted to attend college full time for the purpose of enhancing her future income and professional opportunities, thus removing herself from the job market. *See, Miller v. Marsh*, 766 F.2d 490 (11th Cir. 1985).

13. Being the prevailing party, complainant is entitled to an award of attorney fees and costs. HRC Rule 9.3.3. Her fee affidavit requests the following:

	<u>Hours Claimed</u>	<u>Rate Claimed</u>	<u>Total</u>
Attorney	46	\$175 per hour	\$8,050.00
Paralegal	29	\$35 per hour	<u>\$1,015.00</u>
		TOTAL CLAIMED	<u>\$9,065.00</u>

I find the hours claimed as worked to be reasonable and the hourly rate requested for paralegal services to be well within the market rate for West Virginia. In the absence of supporting affidavits establishing a market rate of \$175.00 per hour for an attorney of Ms. Mullens' skill and experience, I decline to award the rate requested and, instead award a rate of \$125.00 per hour. The \$125.00 per hour rate, I believe, is "in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n. 11 (1984).

At the adjusted rate of \$125.00 per hour, the lodestar figure for counsel is \$5,750.00 and the total lodestar (attorney award plus paralegal award) is \$6,765.00. Given the limited recovery, however, an apportionment of attorney's fees is appropriate. I find that a reasonable reduction in the lodestar amount is 25%, resulting in a fee award of \$5,073.75. *State ex rel. v. W.Va. Highlands Etc. v. WVDEP*, 191 W.Va. 88, 458 S.E. 2d 88 (1995). Accordingly, complainant is awarded fees in the amount of \$5,073.75.

14. By Order entered on 8 September 1995, complainant was awarded fees in the amount of \$673.75 as a sanction for respondent's failure to provide discovery. A copy of the Order is attached hereto and made a part hereof. To the extent the amount ordered to be paid has not been paid, judgment for the outstanding amount is made part of this Final Decision, with postjudgment interest at the rate of 10% per annum, calculated quarterly, from 8 September 1995 until paid in full.

15. Finally, a cease and desist Order should be, and is hereby, directed against Southern Communication, Inc. requiring it to CEASE and DESIST from engaging in acts of reprisal and

retaliation in violation of the West Virginia Human Rights Act. Southern Communication, Inc. is further ORDERED to post a copy of this decision on a bulletin board at WCIR in a place fully accessible to employees, but not the public.

Consistent with this Final Decision, the complaint in Case No. ES-249-89 is DISMISSED, and the complaint in Case No. EREP-532-92 is SUSTAINED.

WV HUMAN RIGHTS COMMISSION

ENTER this 17th day of December, 1996.

BY: 
MIKE KELLY
Administrative Law Judge
Post Office Box 246
Charleston, West Virginia 25321
(304) 344-3293



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 108A

Charleston, WV 25301-1400

TELEPHONE (304) 558-2616

FAX (304) 558-0085

TDD - (304) 558-2976

TOLL FREE: 1-888-676-5546

Cecil H. Underwood
Governor

Herman H. Jones
Executive Director

**CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

January 9, 1998

Vickie L. Smallwood
106 Bluestone Rd.
Beckley, WV 25801

Sharon M. Mullens, Esq.
PO Box 20017
Charleston, WV 25362-1017

Shane Southern
Southern Communications, Inc.
21 Airport Industrial Park
Beckley, WV 25801

Brian D. Yost, Esq.
209 W. Washington St.
Charleston, WV 25302

Re: Smallwood v. Southern Communications, Inc.
ES-249-89 and EREP-532-92

Dear Parties and Counsel:

Enclosed please find the Final Order of the West Virginia Human Rights Commission in the above-styled matters. Pursuant to WV Code §5-11-11, amended and effective July 1, 1989, any party adversely affected by this Final Order may file a petition for review.

Sincerely

A handwritten signature in black ink, appearing to read "Herman H. Jones", is written over a horizontal line.

Herman H. Jones
Executive Director

HHJ/mst

Enclosure

cc: The Honorable Ken Hechler, Secretary of State
Mary C. Buchmelter, Deputy Attorney General

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

VICKIE L. SMALLWOOD,
Complainant,

v.

DOCKET NUMBERS: ES-249-89
EREK-532-92

SOUTHERN COMMUNICATIONS, INC.,
Respondent.

FINAL ORDER

On December 1, 1995 these consolidated matters came on for public hearing before Administrative Law Judge Mike Kelly. On December 17, 1996, after consideration of the testimony and other evidence, as well as the proposed findings and other written submissions of the parties, the administrative law judge issued his final decision.

With regard to case number ES-249-89, this decision ruled against the complainant, dismissing this charge, as complainant's sex did not enter, in any degree, into the decision to discharge her or to alter the terms and conditions of her employment.

With regard to case number EREP-532-92, this decision further found in favor of the complainant and directed the respondent to pay the complainant the sum of \$9,000 for an award of backpay; the sum of \$2,000 in incidental damages; the sum of \$5,073.75 for attorneys fees and costs; the sum of \$673.75 as a sanction for respondent's failure to provide discovery; and finally directed the respondent to cease and desist its discriminatory practices in acts of reprisal and retaliation in violation of the West Virginia Human Rights Act.

No appeal having been filed pursuant to WV Code §5-11-8(d)(3) and §77-2-10 of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission, the Final Decision of the Administrative Law Judge has been reviewed only as to whether it is in excess of the statutory authority and jurisdiction of the Commission, in accordance with §77-2-10.9. of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission. Other defects in said final decision, if there be any, have been waived. Finding no excess of statutory authority or jurisdiction, the Final Decision of the Administrative Law Judge, attached hereto, is hereby issued as the Final Order of the West Virginia Human Rights Commission.

By this Final Order, a copy of which shall be sent by certified mail to the parties and their counsel, and by first class mail to the Secretary of State of West Virginia, the parties are hereby notified that they may seek judicial review.

It is so ORDERED.

Entered for and at the direction of the West Virginia Human Rights Commission this 9th day of January, 1998, in Kanawha County, Charleston, West Virginia.

WV HUMAN RIGHTS COMMISSION

BY


HERMAN H. JONES
EXECUTIVE DIRECTOR