

12-11-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS
HLH-CLOS

BRUCE ST. HILLAIRE,

EEOC Case No. 15DA200468

Petitioner,

FCHR Case No. 21-02721

v.

AT

DOAH Case No. 03-1741

DEPARTMENT OF CORRECTIONS,

FCHR Order No. 04-055

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Bruce St. Hillaire filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1999), alleging that Respondent Department of Corrections committed an unlawful employment practice on the basis of Petitioner's race (white) by transferring Petitioner and subjecting Petitioner to different terms and conditions of employment than Black co-workers.

The allegations set forth in the complaint were investigated, and, on March 11, 2003, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Daytona Beach, Florida, on August 27, 2003, before Administrative Law Judge Harry L. Hooper.

Judge Hooper issued a Recommended Order of dismissal, dated December 11, 2003.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

Because the Administrative Law Judge's Recommended Order addresses the merits of Petitioner's claim and we have adopted findings of fact which find against Petitioner, we conclude it unnecessary to either accept or reject the Administrative Law Judge's conclusions of law that hold the complaint in this matter was not timely filed. Accord, Kalmbacher v. Department of Environmental Protection, 23 F.A.L.R. 3377, at 3378 (FCHR 2001), Olivera v. City of Hallandale, FCHR Order No. 02-025 (FCHR 2002), and Jones v. Coastal Maritime Services, FCHR Order No. 03-013 (FCHR 2003).

The Administrative Law Judge makes several references describing Petitioner's race discrimination claim as a claim of "reverse discrimination." See Recommended Order, ¶ 23, ¶ 25, and ¶ 38.

We note that a Commission panel has stated, "In a case in which a claim of race discrimination brought by an individual who was white was categorized as a 'reverse discrimination' case by an Administrative Law Judge, a Commission panel explained that the Florida Civil Rights Act of 1992, 'does not recognize the concept of 'reverse discrimination.' The law simply prohibits discrimination in employment on the basis of race and color (among other bases)...a race discrimination case brought by a person who is white is to be analyzed the same way as a race discrimination case brought by a person who is not white.' Bert v. Department of Education, 20 F.A.L.R. 155, at 157 (FCHR 1995)." Serwas v. Volusia County Government, 23 F.A.L.R. 4085, at 4086 (FCHR 2001).

With this explanatory comment regarding the concept of "reverse" discrimination, we clarify/correct the indicated conclusions of law.

In so doing, we find: (1) that the Administrative Law Judge's conclusions of law we are correcting are within the substantive jurisdiction of the Florida Commission on Human Relations, namely the interpretation of the applicability of the concept of "reverse" discrimination under the Florida Civil Rights Act of 1992; (2) the reason the correction is being made is that the conclusions of law as stated by the Administrative Law Judge run contrary to previous Commission statements on the issue; and (3) that in making this correction the conclusions of law we are substituting are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2003).

We also note that the Administrative Law Judge concluded that one of the elements Petitioner must show to establish a prima facie case of discrimination is that he is a member of a "minority." Recommended Order, ¶ 22.

A Commission panel has stated, "People of all races are entitled to establish race discrimination claims under the Florida Civil Rights Act of 1992, not just those belonging to a 'protected minority.' The Commission has adopted conclusions of law that reflect that to establish a prima facie case of discrimination...the first element Petitioner must demonstrate is 'that he belongs to a group protected by the statute...' See Martinez v. Orange County Fleet

The Administrative Law Judge concluded, “The evidence establishes that operating the bakery-type machines used to make biscuits is a part of the job duties of a crew member, that crew members are often required to work after 11:00 p.m., and that it is highly impractical to give crew members 30-minute breaks every four hours because of the small number of crew members on each shift. The evidence further establishes that these duties are part of the ‘essence’ of the duties of crew members and of Respondent’s fast-food business. Because the child labor laws prohibit minors from operating bakery machines, working after 11:00 p.m., and working more than four hours without a 30-minute break, it is concluded that minors are not able to perform all of the duties required of crew members and, therefore, Respondent met its burden to prove that being 18 years of age is a BFOQ for crew members.” Recommended Order, ¶ 72. In addition, the Administrative Law Judge concluded, “Respondent’s decision to fire Petitioner is not an unlawful employment practice based on Section 760.11(8)(c), which permits employers to take employment action based upon laws which, like the child labor laws, are designed to benefit persons of a particular age group.” Recommended Order, ¶ 73.

It is clear from the facts found by the Administrative Law Judge that there were duties performed by crew members that did not violate child labor laws. For example, cleaning the interior and exterior of the store, working with cash registers, and washing dishes. Recommended Order, ¶ 6. Thus, a determination that crew members under the age of 18 could not somehow be accommodated would to us seem to depend on a case by case basis, looking at such factors as how many minors were scheduled on any given shift or employed at any given location, and the job assignments within the shift or location that could be made to accommodate the minor. As indicated, above, we note that the Administrative Law Judge concluded “that crew members are *often* required to work after 11:00 p.m., and that it is *highly impractical* to give crew members 30-minute breaks every four hours because of the small number of crew members on each shift [emphasis added].” Recommended Order, ¶ 72. While that may be the facts found in this instance, we do not see how this could be said to be true of other of Respondent’s work locations, without fact finding as to the factors we have suggested.

Indeed, the fact that Respondent did not immediately terminate all minors upon deciding not to employ minors further, but rather, upon adopting the policy on August 6, 2001 (Recommended Order, ¶ 21), required that all minor employees be “phased out” by December 1, 2001 (Recommended Order, ¶ 25), begs the question as to whether not being a minor is a BFOQ to serve as one of Respondent’s crew members. Respondent appears to have conducted business for nearly four months between the establishment of the policy and the policy’s final implementation with minors in its employ.

We limit the finding that not being a minor is a BFOQ for serving as a crew member for Respondent to the facts relating to the Petitioner in this case.

Exceptions

Neither party filed exceptions to the Administrative Law Judge’s Recommended Order.



Violet Crawford, Clerk
Commission on Human Relations
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NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

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2601 Blair Stone Road
Tallahassee, FL 32399-2500

Harry L. Hooper, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 2nd day of June, 2004.

By: 
Clerk of the Commission
Florida Commission on Human Relations