

7-13-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

LOREAL BAILEY

Petitioner,

v.

MFS, d/b/a WENDY'S/EXXON TRAVEL CENTER,

Respondent.

EEOC Case No. 15DA300004

FCHR Case No. 23-01618

DOAH Case No. 04-0711

FCHR Order No. 04-114

AT

04 SEP 23 AM 9:17
FILED
ADMINISTRATIVE
HEARINGS
SFD
CWS

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

Petitioner, LOREAL BAILEY, filed a complaint of discrimination on March 27, 2003, pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent, MFS, d/b/a WENDY'S/EXXON TRAVEL CENTER, committed an unlawful employment practice by terminating her based on her race (black). The Petitioner filed her Election of Rights Form on September 24, 2003 indicating that her complaint was more than 180 days old and she desired to file a Petition for Relief. The Commission transmitted her desires to DOAH on January 5, 2004, and subsequently her Petition on February 26, 2004.

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated July 13, 2004, issued in the above-styled matter by Administrative Law Judge Stephen F. Dean.

Findings of Fact and Conclusions of Law

The Petitioner was employed by Respondent as a cashier. One of her tasks was to "close" out her register at the end of her shift and "drop" the receipts in the store safe. Under company procedures, this was to be done by her alone to keep the "chain of custody" for the moneys clear. On or about January 7, 2003, she ended her shift and, with the assistance of another employee, counted her receipts and dropped them in the safe. A subsequent accounting revealed that \$400 was missing from the Petitioner's "drop." Petitioner and the other employee who assisted her were terminated for violating company policy. Petitioner alleges discrimination based on her race (black); since she alleged that another employee (white) with "short" cash was not terminated at another time. The ALJ found that the termination was caused by her violating company policy prohibiting other employees handle a cashier's money and that there was no evidence to show that other employees similarly situated were not treated the same. He also found that the Petitioner presented no evidence that the Respondent's legitimate business reasons for her termination were pretextual.

We adopt the Administrative Law Judge's Findings of Fact and Conclusions of Law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal.

Dismissal

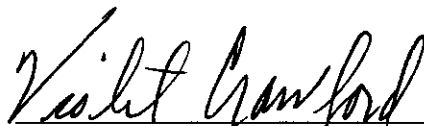
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 22nd day of September, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson
Commissioner John Corbett
Commissioner Dominique B. Saliba, M.D

Filed this 22nd day of September, 2004,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

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:

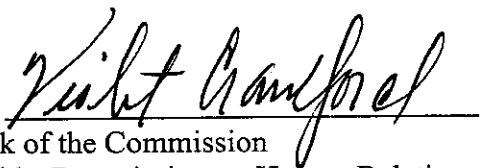
Petitioner:
Loreal Bailey
621 Smith Road
Monticello, FL 32344

Respondent:
Lorraine Maass Hultman, Esquire
KUNKEL, MILLER & HAMENT
Orange Professional Center
235 North Orange Avenue, Suite 200
Sarasota, FL 34236

Honorable Stephen F. Dean, Administrative Law Judge, DOAH

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 22nd day of September, 2004.

By: 
Clerk of the Commission
Florida Commission on Human Relations