

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TYRONE WHITE,)
)
 Petitioner,)
)
 vs.) Case No. 04-1280
)
 ROAD MART, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing in the above-styled case was held before Florence Snyder Rivas, Administrative Law Judge, Division of Administrative Hearings, on November 16, 2004, in Marianna, Florida.

APPEARANCES

For Petitioner: Marva A. Davis, Esquire
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For Respondent: Robert E. Larkin, III, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent terminated Petitioner's employment on account of his race in violation of Florida law.

PRELIMINARY STATEMENT

By Petition for Relief dated April 9, 2004, Petitioner alleged he had been disciplined and terminated from employment in violation of Chapter 760 of the Florida Statutes, popularly known as the Florida Civil Rights Act (FCRA). The FCRA prohibits discrimination against an individual on the basis of, among other things, race.

The identity of witnesses and exhibits, and attendant stipulations and rulings are contained in the two-volume transcript of the proceedings, which was filed on February 21, 2005. The parties timely submitted Proposed Recommended Orders, which have been carefully considered.

References to statutes are to the Florida Statutes (2004).

FINDINGS OF FACT

1. Respondent, Road Mart, Incorporated, (Respondent or Road Mart) is a family-owned and operated tire sales and service company. Respondent is an employer within the meaning of Section 760.02(7), Florida Statutes.

2. Road Mart operates stores in North Florida and neighboring states, including the store at which all events relevant to this case occurred.

3. Petitioner, Tyrone White (Petitioner or White), is an African-American male. White was employed by Road Mart at one of its Florida stores at all times material to this case. White

held positions of trust from May 24, 1999, when he commenced employment, until October 1, 2001, when he was terminated.

4. While employed at Road Mart, White was offered a promotion to store manager. White declined the position because it would have required him to make other arrangements for his child's transportation.

5. On May 8, 2001, Petitioner was the subject of a disciplinary action report based upon three separate violations of company policy. Specifically, Petitioner charged merchandise to a customer's account without having an approved credit application on file; left work for a half-day without prior supervisor approval; and failed to take adequate measures to collect past due accounts assigned to him for follow-up.

6. On August 31, 2001, Petitioner was reprimanded for not completing daily duties.

7. Petitioner complained to a supervisor that a fellow employee, a Caucasian male, had engaged in substantially similar conduct yet had not been disciplined.

8. Upon investigation, Respondent concluded that the co-worker had in fact committed an infraction, and discipline was imposed upon that individual.

9. On September 18, 2001, Petitioner received two additional written reprimands. The first concerned merchandise that Petitioner had placed "on quote" and removed from the store

to show a customer. "On quote" is a term used at Road Mart to indicate that particular merchandise or services are to be made available to the customer at the "on quote" price for a reasonable length of time. "On quote" prices are to be reflected in the company computer under the customer's name. Merchandise held "on quote" is not to be removed from the store unless it is paid in full and documented in accordance with Road Mart's procedures for documenting specific transactions. Road Mart reasonably requires that this policy be followed unless other arrangements acceptable to management are made in advance.

10. After receiving the reprimand, Petitioner billed the parts under his own account, at the employee discount price of Road Mart's cost, plus ten percent. Road Mart policy limits the use of the employee discount to bona fide employee purchases. The employee discount is a significant savings over the retail price charged to the public at large.

11. The second reprimand was given because Road Mart learned that White had, approximately six weeks earlier, purchased parts from a Road Mart supplier at Road Mart's cost to be used on White's personal vehicle. White failed to re-bill these charges to his personal account, contrary to company policy.

12. Road Mart reasonably viewed this conduct as dishonest and could have terminated him for this violation, but elected not to.

13. Petitioner offered no persuasive evidence that any of the foregoing reprimands were improper, or racially motivated. To the contrary, all of the persuasive evidence, much of it provided by White himself, established that each of the foregoing reprimands was entirely proper.

14. On September 30, 2001, White committed multiple violations of company policy which resulted in his termination.

15. Unbeknownst to any Road Mart employee, and without authority to do so, White arranged to meet an individual he described as an "associate," one Robert Newkirk, on September 30, 2001, at the Road Mart store.

16. That date fell on a Sunday, a day when Road Mart is closed to the public. Trusted employees such as White have access to the store to serve the emergency needs of customers. However, as White knew at all material times, such access is only to be exercised under circumstances which did not exist here, and in accordance with specific procedures which White failed to follow.

17. White entered the store using another employee's security code number to de-activate the alarm system. Employees

with a valid reason to access the store when it is closed are required to use their own security code.

18. White, by his own admission, met Newkirk at the store for the purpose of installing two deluxe tires on Newkirk's Lexus GS300.

19. Previously, Road Mart had sold a pair of these tires, known as Toyo Proxy 200s, to Newkirk, and on September 30, 2001, Newkirk wanted the mates installed on his car.

20. At least one Toyo Proxy 200 tire was on display in the Road Mart showroom until September 29, 2001, when the store was closed for the balance of the weekend. At that time, this tire and all other showroom inventory were placed in the store's warehouse for the weekend.

21. White installed the display tire and one other on Newkirk's Lexus.

22. Road Mart renders a separate charge to customers who receive such after-hours service. In addition, Road Mart imposes upon all customers a charge for the installation and balancing of tires, as well as for disposing of the old tires. Each of these charges should have been billed to Newkirk and collected when the service was performed, absent other arrangements with White's supervisors. White did none of these things.

23. Newkirk paid White a portion of the retail value of the second pair of tires, in cash. White never informed anyone of this transaction, but, instead, pocketed Newkirk's money.

24. As previously noted, company policy reasonably requires that merchandise and services be paid for in full, and documented in the company computer unless other arrangements acceptable to the owners are made, before merchandise leaves the property and/or services are performed. Apart from protecting the company against theft, the policy is essential for the legal and financial protection of buyer and seller.

25. In this case, documenting the sale of the tires to Newkirk would have obliged the manufacturer to honor warranties in the event the tires proved defective. Additionally Road Mart's insurer would have been obligated to provide coverage if White had installed the tires in a negligent manner, resulting in injury to Newkirk or other parties.

26. Moreover, by giving Newkirk the tires without documenting what had been paid, the balance due, and what arrangements had been made with Newkirk to pay the balance, Newkirk was in a position to claim he had paid in full, which he had not.

27. White's activities on September 30, 2001, violated company policy, placed his employer in legal and financial jeopardy, and, standing alone, warranted termination.

28. When the store opened for regularly scheduled business on Monday, October 1, 2001, White's co-workers almost immediately noticed that the display Toyo Proxy 200 was missing and began to search for it. White, who arrived at work shortly after the store opened, was aware that his co-workers were seeking the missing tire, but said nothing.

29. Mid-morning, White registered the tires in the store computer, placing them "on quote," in his name, at his employee discount.

30. Apart from the fundamental dishonesty of attempting to rewrite the history of this transaction as his colleagues were expending efforts to locate Respondent's missing tires, White violated company policy by placing the tires "on quote" in his own name and on his own authority. As previously noted, White was not at liberty to extend the employee discount to Newkirk or anyone else.

31. Later that morning, White entered the tires into the computer as a sale to himself at the employee discount rate.

32. By the end of the morning, Road Mart's management had uncovered most of the details regarding White's unauthorized and improper activities of the previous 24 hours. Management confronted White with the results of its investigation, and terminated his employment.

33. White's termination was justified in fact and in law because it was based entirely upon White's multiple violations of company policy. There was no credible or persuasive evidence that race played any factor in Road Mart's decision to terminate White's employment.

CONCLUSIONS OF LAW

34. The Division of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to Sections 120.57 (1) and 120.569 and Chapter 760, Florida Statutes.

35. The burden of proof in this proceeding is on the Petitioner, who must establish by a preponderance of evidence that his termination from employment constituted unlawful discrimination within the purview of Chapter 760. See Florida Department of Transportation v. J.W.C. Company, 396 So. 2d 778, 788 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349, 350 (Fla. 1st DCA 1977). Petitioner has failed to meet this burden.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 1st day of April, 2005, in
Tallahassee, Leon County, Florida.

Florence Snyder Rivas

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 1st day of April, 2005.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.