

1-9-05

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

ALONZO C. BROWN,

Petitioner,

v.

HERITAGE PAPER, INC.,

Respondent.

AT

EEOC Case No. NONE 2005 MAR 10 A 11: 38

FCHR Case No. 23-03428 DIVISION OF ADMINISTRATIVE HEARINGS

DOAH Case No. 04-1319 DMK

FCHR Order No. 05-034 CWS

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

Preliminary Matters

Petitioner Alonzo C. Brown filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Heritage Paper, Inc., committed unlawful employment practices on the bases of Petitioner's race (Black) and relationship with a disabled person, by subjecting Petitioner to different terms and conditions than white employees and by terminating Petitioner from his position.

The allegations set forth in the complaint were investigated, and, on March 12, 2004, 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, alleging only race discrimination, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Orlando, Florida, on October 7, 2004, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated January 19, 2005.

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

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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.

We note that the Administrative Law Judge concluded that Petitioner failed to establish a prima facie case of discrimination because Petitioner did not prove the fourth element of the test for establishing a prima facie case of discrimination set out at Recommended Order, ¶ 33. That element is a showing that, "The position was filled by a person of another race or that he was treated less favorably than similarly-situated persons outside the protected class." *Id.* Specifically, the Administrative Law Judge concluded that "Petitioner has failed to show that similarly-situated persons outside the protected class received more favorable treatment under similar circumstances." Recommended Order, ¶ 38; and see, also, Recommended Order, ¶ 39.

We comment that it would seem to us that this element was met, since it appears that Petitioner was replaced by an individual outside his protected class. The Administrative Law Judge found that Petitioner is an African-American male (Recommended Order, ¶ 2); that the current warehouse supervisor, Denis Nieves, was hired three days after Petitioner's employment was terminated (Recommended Order, ¶ 16); and the transcript of the proceeding before the Administrative Law Judge contains Mr. Nieves' uncontroverted testimony that his "race" was Puerto Rican (Transcript, page 271, lines 22 and 23).

Nevertheless, we further note that whether this element was established does not impact the outcome of the case given the Administrative Law Judge's conclusion that even if a prima facie case of discrimination had been established, Respondent articulated a legitimate, nondiscriminatory reason for terminating Petitioner, and Petitioner failed to establish that the reason was a pretext for discrimination. See Recommended Order, ¶ 41 and ¶ 45.

With these comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

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

Dismissal

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

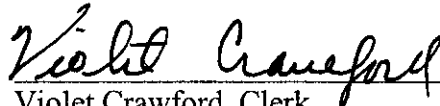
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 8th day of March, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Gilbert M. Singer; and
Commissioner Mario M. Valle

Filed this 8th day of March, 2005,
in Tallahassee, Florida.



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

Copies furnished to:

Alonzo C. Brown
7230 Plantain Drive
Orlando, FL 32818

Heritage Paper, Inc.
c/o Robert T. Devine, Esq.
c/o Alva L. Cross, Esq.
Coffman, Coleman, Andrews & Grogan, P.A.
Post Office Box 40089
Jacksonville, FL 32203

Daniel M. Kilbride, 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 8th day of March, 2005.

By: *Walter Crawford*
Clerk of the Commission
Florida Commission on Human Relations