STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LESTER KNOTT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 04-1376
	)	
NATIONSRENT, INC.,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by and through its duly-designated Administrative Law Judge, Stephen F. Dean, held a formal hearing in the above-styled case on November 3-4, 2004, in Pensacola, Florida.

APPEARANCES

For Petitioner: Lester J. Knott, pro se
6312 Mockingbird Lane
Pensacola, Florida 32503

For Respondent: Steven A. Siegel, Esquire
Fisher & Phillips LLP
450 East Las Olas Boulevard, Suite 800
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

Whether the Petitioner was terminated because of his race, black, in violation of the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001) (hereinafter FCRA).

PRELIMINARY STATEMENT

On August 19, 2003, the Petitioner filed a charge of discrimination (Charge) with the Florida Commission on Human Relations (FCHR), alleging that he was discriminated against because of his race. The Charge was admitted in evidence at the hearing as Respondent's Exhibit 17. The FCHR issued a determination of no cause on April 8, 2004, a copy of which was admitted in evidence at the hearing as Respondent's Exhibit 18. At the hearing on November 3 and 4, 2004, the Petitioner presented his own testimony, and also called Larry Sutton as a witness. Two witnesses, whom the Petitioner unsuccessfully attempted to subpoena, Christopher Smith and Albert Frye, were called by the Respondent and cross-examined by the Petitioner. The Petitioner also submitted two exhibits, labeled the Petitioner's Exhibits 1 and 2, both of which were admitted into evidence.

At the hearing on November 3 and 4, 2004, the Respondent presented the testimony of (1) Larry Cook, Knott's store manager at the time of termination; (2) Thomas Rhoades, the field service technician; (3) Christopher Smith, the assistant store manager and safety coordinator during Knott's employment; (4) Albert Frye, a co-worker of Mr. Knott's; and (5) Sean O'Halloran, the Respondent's Regional Human Resources Manager. The Respondent also submitted thirty exhibits, labeled

Respondent's Exhibits 1 through 30. Respondent's Exhibits 1 through 19 and 21-30 were admitted into evidence.

FINDINGS OF FACT

1. The Petitioner, a black male, began his employment with Respondent in August 1999 as a truck driver. He was discharged on or about July 25, 2003.

2. The Petitioner's personnel file reflects that he had an accident on January 20, 2000, during which he hit the front gate at the store. The gate was damaged, as reflected in the picture.

3. The Petitioner's personnel file reflects an accident on May 22, 2001, in which he drove a forklift into power lines at a customer's jobsite and damaged the lines and the customer's satellite dish.

4. The Petitioner was warned on numerous occasions by the safety coordinator and store manager about his failures to follow company safety procedures and policies. The Petitioner received a written warning on June 21, 2002, for his failure to wear his safety harness.

5. All of the Respondent's employees are required to wear a safety harness when working on aerial work platforms because of fatalities suffered by employees working on aerial work platforms without wearing their safety harness. The Petitioner had been verbally warned on numerous previous occasions to wear

his safety harness, and it had been a topic at the safety meeting held on June 5, 2002.

6. The Respondent enforces its safety policies to protect its employees and the public.

7. The Petitioner continued to disregard company safety policies despite warnings. Larry Sutton, the Petitioner's supervisor, testified on cross-examination that he told the Petitioner several times that the Petitioner needed to start complying with the safety policies or his job would be in jeopardy.

8. On December 9, 2002, the Petitioner drove a truck into and ripped the side of the metal warehouse at the store. An incident report was placed contemporaneously in the Petitioner’s personnel file.

9. On January 16, 2003, the Petitioner drove over a scissor lift cover that was resting on the concrete pad next to the shop building. This pad was not supposed to be driven over. This accident was the result of the Petitioner’s failure to obey rules regarding vehicle operation on the premises.

10. The Petitioner was not denied any raises because of his race. The Petitioner was hired at a rate of $10.00/hour and was earning $12.50/hour by September 2000. The Petitioner presented no evidence of any similarly situated people being treated or paid differently than he.

11. On March 17, 2003, while attempting to pick up equipment from a customer’s worksite, the Petitioner got the equipment stuck in the mud and proceeded to try to winch it out of the mud by himself. His efforts caused the equipment to turn over, damaging the customer’s property, shearing a temporary power pole, spilling hydraulic fluid and fuel on the customer’s property and damaging the equipment. The store manager received a phone call from the customer complaining about what the Petitioner had done.

12. The Respondent's store manager sent Thomas Rhoades, a field service mechanic, to the customer’s property to repair the damage caused by the Petitioner and to deliver a generator to the customer free of charge. See Respondent’s Exhibit 24. Pictures of the scene taken by Rhoades were placed in the Petitioner’s personnel file. See Respondent’s Exhibit 22. A written statement of his findings was provided by Rhoades and placed in the Petitioner’s personnel file. See Respondent’s Exhibit 23.

13. During 2003, the Petitioner was entitled to three sick days, two personal days and 10 vacation days. The Petitioner had used up all of his sick, personal and vacation days by May 9, 2003, and yet missed an additional five days of work prior to his termination. See Respondent’s Exhibit 3.

14. The Petitioner rarely provided advance notice of his absences, which caused severe staffing problems at the store. The Petitioner told Mr. Frye that he intended to take off Mondays, the busiest day of the week, to inconvenience the store manager and dispatcher.

15. In addition to his attendance problems, the Petitioner also violated the Respondent's Absenteeism or Tardiness Policy. The Petitioner admitted that he had received and understood that policy. See Respondent's Exhibit 5 and 6. The Petitioner received a written warning for violation of the policy on June 18, 2003, which documented that the Petitioner had received verbal warnings in the past for violating this policy. See Respondent's Exhibit 4.

16. The Petitioner received a second written warning for safety violations on June 4, 2003. He was observed entering the store yard with equipment improperly tied to the bed of his truck and wearing his safety harness upside down. See Respondent's Exhibit 14. The Petitioner had been warned about this on numerous occasions, including a verbal warning from the safety coordinator on June 2, 2003.

17. The Petitioner frequently drove too fast through the yard and took poor care of the Company's equipment. The Petitioner's poor care of the equipment created additional work for the mechanics.

18. Despite repeated verbal and written warnings about failure to follow store safety procedures and guidelines, the Petitioner continued to refuse to take such safety maintenance seriously.

19. On Friday July 25, 2003, the Petitioner returned to the store at the end of the day with a load of equipment that he left on his truck. He did not report for work on Monday July 28, 2003, even though he was scheduled to work that day. When a service technician was sent to unload the Petitioner's truck, he discovered that the load had been improperly tied down in such a way that, not only did it pose a safety risk, but it also damaged the equipment. This was called to the attention of the store manager and safety coordinator. Pictures were taken of the way the equipment was tied down and the damage to the equipment. See Respondent's Exhibit 25. An Incident Report was prepared and placed in the Petitioner's personnel file. See Exhibit 16.

20. Following the incident on July 25, 2003, the store manager decided to terminate the Petitioner's employment because of his attendance problems, safety problems, numerous accidents to include the incident on July 25, 2003. Prior to making that decision, the store manager consulted with the Respondent's Regional Human Resources Manager, Sean O'Halloran. Mr. Cook and Mr. O'Halloran reviewed the Petitioner's personnel file and the

reasons for termination. Mr. O'Halloran approved of the termination decision. Mr. Cook also consulted with his assistant manager and safety coordinator, Chris Smith, who also approved the decision to terminate the Petitioner's employment.

21. Mr. Cook, the individual who terminated the Petitioner, had been the Petitioner's store manager since May 2002.

22. The Respondent demonstrated that it had a legitimate, non-discriminatory reason to discharge Knott.

23. The Petitioner did not establish that he was treated differently than other similarly situated non-black employees. Although the Petitioner testified that he was not given a gate key, both he and Mr. Sutton identified Mr. Frye, a black male, as someone who had received a gate key.

24. The Petitioner presented no evidence that the non-discriminatory reason for his discharge was pretextual.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case. § 120.57(1) Fla. Stat. and § 760.01 et seq., Fla. Stat.

26. The Petitioner brought this charge against the Respondent, pursuant to the Florida Civil Rights Act of 1992, Section 760.01 et seq. (FCRA), Florida Statutes.

27. Because the FCRA is modeled after the federal anti-discrimination statutes, federal caselaw is used to analyze claims under the FCRA. Florida Dep't of Community Affairs v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1991).

28. Discrimination cases are analyzed under the standard established by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under this standard, the Petitioner must first establish a prima facie case of discrimination.

29. A prima facie case of racial discrimination exists only if the Petitioner is able to show that: (1) he belongs to a racial minority; (2) he was subjected to an adverse employment action; Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997)); see also McDonnell Douglas Corp., 411 U.S. at 802.

30. The Petitioner established a prima facie case of discrimination because he establish that he was a member of a minority and he was terminated.

31. Although the Petitioner established a prima facie case of discrimination, the inquiry does not end there. The burden of proof shifted to the Respondent to articulate a legitimate, non-discriminatory reason for the employment action. McDonnell Douglas Corp., 411 U.S. at 802-03; Combs v. Plantation Patterns, 106 F.3d 1519, 1528 (11th Cir. 1997); Brown v. Sybase, Inc., 287 F. Supp. 2d 1330, 1339 (S.D. Fla. 2001). This intermediate burden is "exceedingly light." Meeks v. Computer Assocs.

Int'l., 15 F.3d 1013, 1019 (11th Cir. 1994). The Respondent's burden would be satisfied by producing evidence, which, "taken as true, would permit the conclusion that there was a nondiscriminatory reason for the adverse action." St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 509 (1993); Combs, 106 F.3d at 1528 (quoting Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254-55 (1981)) (the defendant "need not persuade the court that it was actually motivated by the proffered reasons. It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff."); see also Chapman v. AI Transport, 229 F.3d 1012, 1024 (11th Cir. 2000).

32. The Respondent produced evidence of safety issues going back several years leading up to the Petitioner's discharge. The Respondent met its burden of producing credible evidence that the Petitioner was terminated for a legitimate, non-discriminatory business reason.

33. Because the Respondent satisfied this burden, it was necessary for the Petitioner to prove by a preponderance of the evidence that the reason proffered by the Respondent was pretextual. Silvera v. Orange County School Bd., 244 F.3d 1253, 1258 (11th Cir. 2001); Holifield v. Reno, 115 F.3d 1555, 1565 (11th Cir. 1997) (citing Roberts v. Gadsden Memorial Hosp., 835 F.2d 793, 796 (11th Cir. 1988)); see also Brown, 287 F.

Supp. 2d at 1340 (quoting Silvera, 244 F.3d at 1261) (“Pretext means more than inconsistency; pretext is 'a lie, specifically a phony reason for some action.'”); Wolf v. Buss (America) Inc., 77 F.3d 914, 919 (7th Cir. 1996) (“Pretext means more than a mistake on the part of the employer; pretext means a lie, specifically a phony reason for some action.”).

34. The Petitioner failed to produce any evidence to demonstrate that the reasons given by the Respondent for his termination were pretextual. The Petitioner failed to carry his ultimate burden of proof of discrimination.

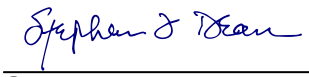
RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter its final order dismissing the Petitioner’s charge of discrimination.

DONE AND ENTERED this 10th day of December, 2004, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of December, 2004.

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.