

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICES

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BERNADETTE L. FULTZ, :
Complainant :
V. : DOCKET NO. E-13832
J.A. SLEZAK, LTD., :
Respondent :

FINDINGS OF FACT*

1. Complainant is an adult individual residing at R.D. 5, Box 265, Mt. Pleasant, PA 15666. (N.T. 7)
2. Respondent J.A. Slezak, M.D., Ltd., is a professional corporation with offices at 603 Church Street, Mt. Pleasant, PA. (N.T. 8)
3. Complainant began her employment with Respondent as a Secretary/ Receptionist on or about August 13, 1971. (N.T. 8)
4. Complainant informed Respondent on or about January 26, 1978 that she was pregnant and that she was certified by her physician as being able to work until May 1, 1978. (N.T. 8, 9, 16)
5. Complainant's employment was terminated by Respondent on February 3, 1978. (N.T. 16, C.E. A)
6. On or about May 1, 1978, Complainant filed with the Pennsylvania Human Relations Commission a verified complaint alleging that her termination by Respondent violated the Pennsylvania Human Relations Act.

*The following abbreviations will be utilized throughout:

N.T. - Notes of Testimony
C.E. - Complainant's Exhibit
R.E. - Respondent's Exhibit

7. A copy of the complaint was served upon Respondent on or about May 11, 1978. (N.T. 9)

8. On or about April 7, 1981, the finding of probable cause which was entered by Commission staff after investigation was served upon Respondent. (N.T. 9)

9. At all times relevant to this action Respondent employed four or more persons within the Commonwealth of Pennsylvania. (N.T. 117)

10. Respondent hired someone to perform the duties performed by Complainant before her termination. (N.T. 117, 133, 134, 135)

11. Respondent terminated Complainant because of her pregnancy. (N.T. 18, 105, 107)

12. Complainant received Unemployment Compensation benefits in 1978 in the amount of \$2,040.00. (N.T. 99)

13. Complainant's lost wages in 1978 totalling \$4,019.20 as a result of her unlawful discharge. (N.T. 97, C.E. C)

14. Respondent offered Complainant part-time employment in her old position a few days after terminating her; she declined the offer. (N.T. 18)

15. Complainant did not actively seek employment after February 3, 1978. (N.T. 39)

CONCLUSIONS OF LAW

1. Complainant is an individual within the meaning of the Act.
2. Respondent is an employer within the meaning of the Act.
3. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.
4. The Commission has jurisdiction over the parties and subject matter of this case.
5. Complainant has made out a prima facie case by proving that:
 - a. She was a member of a protected class;
 - b. She was qualified to perform her duties;
 - c. She was terminated from her position; and
 - d. Respondent sought someone with similar qualifications to perform the work.
6. Respondent has failed to establish any legitimate, nondiscriminatory reason for terminating Complainant.
7. Respondent terminated Complainant from her position because she was pregnant, in violation of Section 5(a) of the Act.
8. Following a finding of discrimination, a prevailing party is entitled to relief which includes wages lost as a result of the unlawful discrimination.

OPINION

This case originated with a complaint filed by Bernadette L. Fultz ("Complainant") against J.A. Slezak, M.D., Ltd. ("Respondent") with the Pennsylvania Human Relations Commission ("Commission") at Docket No. E-13832, on or about May 1, 1978. Ms. Fultz alleged that she was discharged from her position because of her sex, in violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act"). Respondent filed an answer denying any violation of the Act.

Commission staff conducted an investigation and found probable cause to credit the allegations of discrimination. The case was approved for public hearing when efforts to resolve the matter through conference and conciliation were unsuccessful. A hearing was held in Pittsburgh, Pennsylvania on March 16, 1984 before Commissioner Elizabeth Scott, who chaired the panel, and Commissioners Carl Denson and Robert Johnson Smith. Briefs and reply briefs were received from both parties.

Complainant bears the initial burden of proving a prima facie case of discrimination under the Act. General Electric Corp. v. Pennsylvania Human Relations Commission, 469 Pa. 202, 365 A.2d 649 (1976); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If she meets this burden, Respondent may prevail by showing a legitimate, nondiscriminatory reason for the challenged conduct. Philadelphia Electric Co. v. Pennsylvania Human Relations Commission, Pa. Cmwlth. 448 A.2d 701 (1982).

In this case Complainant may establish a prima facie case by proving that:

1. She is a member of a protected class;
2. She was qualified to perform her job duties;

3. She was terminated from her position; and
4. Respondent sought someone with similar qualifications to perform the work.

Sutton v. Atlantic Richfield Co., 646 F.2d 407 (9th Cir. 1981).

Complainant has met this burden. She was terminated from her position in February of 1978, at which time she had just informed Respondent that she was pregnant; she was, on that basis, protected by the Act from discrimination. Anderson v. Upper Bucks County Area Vocational Technical School, 373 A.2d 130 (1977); Cerra v. East Stroudsburg Area School District, 299 A.2d 277 (1973). There was no issue raised as to her qualifications to perform her job duties. Finally, the record clearly establishes that Respondent sought and found someone to perform the same duties.

Respondent argues that her termination was due to a decreased work load which made her services unnecessary. We are not persuaded by his own testimony that this was so. First, Dr. Slezak testified that he hired someone to replace Ms. Fultz. Second, his testimony about the offer of part-time employment which he made to her shortly after terminating her was couched entirely in terms of his assessment of her ability to work, in view of her pregnancy; he made no mention of any assessment or reassessment of the work load in his office which caused him to reconsider her employment. Finally, the record evidence of decreased patient load in early 1978 was inconclusive at best, and did not establish that anything other than some predictable decrease due to bad weather took place during January of 1978, the time period in question. We therefore conclude that she was terminated because of her pregnancy, in violation of the Act, and must consider appropriate relief.

Complainant does not request reinstatement. She asks only for the

wages she would have earned between her termination on February 3, 1978 and December 1, 1978, less the three month period during which she gave birth, in other words for a time period which is coextensive with the period during which she received Unemployment Compensation benefits.

Respondent raises a number of arguments relating to the proper scope of relief, based on the following facts, which are not contested. As already noted, Dr. Slezak offered part-time employment to Ms. Fultz in her old job only a few days after she was terminated. She declined the offer, and did not seek employment at any time after February of 1978. Finally, she did receive Unemployment Compensation benefits during the same period for which she requests back wages.

Respondent first argues that any back pay liability should be cut off by the offer of part-time employment made to the Complainant by Dr. Slezak shortly after her termination. Ford Motor Co. v. EEOC, 458 U.S. 219 (1982), where an unconditional offer of the position originally sought (without retroactive seniority) was held to cut off back pay liability under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., is cited in support.

We find Ford Motor Co., to be distinguishable from the case at hand. That case involved the same position originally sought; the plaintiff lost only a certain measure of seniority. We think the result would have been different had the offer been one of part-time employment. In any event, we have previously decided that the holding of Ford Motor Co., is inimical to the Act's purpose of making victims of discrimination whole, and declined to follow it. See General Electric Corp. v. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A.2d 649 (1976); Anderson v.

Upper Bucks Co. Area Vocational Technical School, Pa. Cmwlth., 373 A.2d 126 (1977).

Respondent further argues that any back pay award to Ms. Fultz should be reduced, either by the amount she could have earned in part-time employment with Dr. Slezak or by the amount she received in Unemployment Compensation benefits, or by an unspecified amount which it is claimed she could have somehow earned by the exercise of reasonable diligence.

The Act and cases interpreting it give us wide discretion in fashioning remedial orders following findings of discrimination.

Pennsylvania Human Relations Commission v. Transit Casualty Insurance Co., 20 Pa. Cmwlth. 43, 340 A.2d 624 (1976). We do not think that the Act's purposes would be served in this situation by penalizing Complainant for declining to accept part-time employment in the wake of a discriminatory termination. Nor are we convinced that Respondent has carried its burden of proving the amount which Ms. Fultz could have earned by the exercise of reasonable diligence. Sprogis v. United Airlines, 517 F.2d 387 (7th Cir. 1975). As our purpose is to return Ms. Fultz to the position in which she would have been absent Respondent's discriminatory conduct, we agree that her back pay award should be offset by the amount of her Unemployment Compensation benefits. We therefore direct entry of the final order which follows.

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICES
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BERNADETTE L. FULTZ, :
Complainant :
V. : DOCKET NO. E-13832
J.A. SLEZAK, LTD., :
Respondent :

RECOMMENDATION OF HEARING PANEL

Upon consideration of the entire record in this case, the Hearing Panel concludes that Respondent violated Section 5(a) of the Pennsylvania Human Relations Act, and therefore recommends that the foregoing findings of fact, conclusions of law, and opinion, be adopted and ratified by the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Act.

January 28, 1985

DATE


ELIZABETH M. SCOTT
PANEL CHAIRPERSON

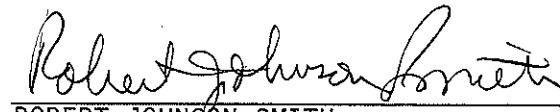
January 28, 1985

DATE


CARL DENSON
HEARING COMMISSIONER

January 28, 1985

DATE


ROBERT JOHNSON SMITH
HEARING COMMISSIONER

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICES
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BERNADETTE L. FULTZ, :
Complainant :
V. : DOCKET NO. E-13832
J.A. SLEZAK, LTD., :
Respondent :

FINAL ORDER

AND NOW, this 28th day of January, 1985, the Pennsylvania Human Relations Commission hereby adopts the foregoing findings of fact, conclusions of law, and opinion, in accordance with the recommendation of the hearing panel, pursuant to Section 9 of the Act, and therefore

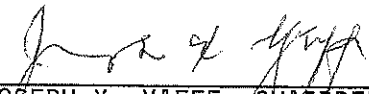
O R D E R S

1. Respondent shall cease and desist from discriminating on the basis of sex;
2. Respondent shall pay to Complainant within thirty days of the effective date of this Order a lump sum of \$1,979.20, representing her lost wages between February 3, 1978 and May 1, 1978 and between August 1, 1978 and December 1, 1978, less the sum received by her in Unemployment Compensation benefits.


Respondent shall likewise pay to Complainant 6% interest per annum calculated from December 1, 1978 on the lump sum specified above.

Payment shall be by check payable to Bernadette Fultz and delivered in care of William R. Fewell, Esq., at this Commission's Pittsburgh Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 
JOSEPH X. YAFFE, CHAIRPERSON

ATTEST:

BY: 
ELIZABETH M. SCOTT, SECRETARY