

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

STEPHEN L. SOFFER,  
Complainant

v.

BROWN TRANSPORT CORPORATION,  
Respondent

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Docket No. E-30889-D

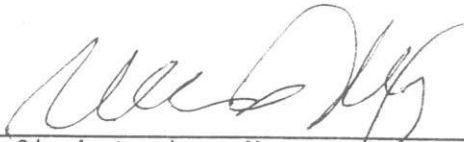
STIPULATIONS  
FINDINGS OF FACT  
CONCLUSIONS OF LAW  
OPINION  
RECOMMENDATION OF HEARING EXAMINER  
FINAL ORDER



7. On June 7, 1982, Complainant received a pay increase of fifty dollars (\$50) per week.
8. On April 11, 1983, Complainant received a pay increase of twenty-five dollars (\$25) per week.
9. On April 30, 1984, Complainant received a pay increase of thirty-five dollars (\$35) per week raising his salary to \$460 per week.
10. On June 29, 1984 Respondent discharged Complainant.
11. On September 25, 1984, Complainant made, signed and filed with the Pennsylvania Human Relations Commission a written verified complaint.
12. On or about December 20, 1984 Respondent submitted a statement of its position in response to the complaint in which it denied discriminating against Complainant on the basis of his religion.
13. The complaint was amended on December 31, 1984 and was served upon Respondent on or about January 30, 1985.
14. After investigation, the Pennsylvania Human Relations Commission determined that probable cause existed for crediting the allegations of the complaint and notified Respondent of this finding in correspondence dated April 8, 1986.

15. Conciliation efforts have failed.

16. The Pennsylvania Human Relations Commission approved this matter for public hearing. The parties were notified of this action by letter dated May 4, 1987 from Homer C. Floyd, Executive Director.



N. Christopher Menges  
Attorney for Complainant

Dated 3-1-89



Walter O. Lambeth, Jr.  
Attorney for Respondent

Dated 2/24/89



Patricia A. Miles  
Attorney for Commission in Support of the Complaint

February 21, 1989  
Dated

FINDINGS OF FACT\*

1. In 1946, Claude Brown, (hereinafter "Brown") founded the motor carrier company that is now Brown Transport Corporation, (hereinafter "BTC"). (C.E. 3)
2. By 1984, BTC had grown from a small motor carrier company operating in Georgia, to an independently owned motor carrier operation servicing the contiguous 48 states. (C.E. 3)
3. In 1984, BTC had 69 full service truck terminals throughout the United States. (C.E. 3)
4. BTC's York Pennsylvania terminal generally operated Monday through Friday and not only received freight for delivery to but also picked up freight for shipment from companies in the York terminal service area which included the Lancaster, Harrisburg, Camp Hill, Mechanicsburg, Hanover, Gettysburg, and, of course, York areas. (N.T. 56, 223, 225, 233)
5. On April 9, 1981, BTC hired the Complainant, Stephen L. Soffer, (hereinafter "Soffer"), as the York terminal night operations supervisor. (N.T. 56, S.F. 3)

\* The foregoing "Stipulations" are hereby incorporated herein as if fully set forth. To the extent that the Opinion which follows develops facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony  
S.F. Stipulations  
C.E. Complainant's Exhibit  
R.E. Respondent's Exhibit

6. BTC's York terminal operations were directly managed by a terminal manager and under the terminal manager's supervision were two operations supervisors: the day supervisor, Bob Heltebride, (hereinafter "Heltebride") and Soffer, the night supervisor. (N.T. 59, 60, 69, 164, 221, 283)

7. Both the daily start and finish of BTC's York operations fluctuated depending upon the quantity of freight in-bound and out-bound. (N.T. 58, 221, 223)

8. At the time of Soffer's hire, the York terminal manager was Michael Dansic. (N.T. 69, 159-160, 269)

9. Approximately May, 1982, Thomas Wilson, (hereinafter "Wilson") became York's terminal manager. (N.T. 69, 269)

10. In June 1983, BTC paychecks began to include Bible verses on the face of employee paychecks. (N.T. 72, C.E. 2, S.F. 6)

11. When the Bible verses first appeared on Soffer's checks, Soffer expressed his disapproval to Wilson and asked Wilson to take steps to have the verses removed from his paychecks. (N.T. 74, 90, 238, 280)

12. Wilson told Soffer he would look into the matter. (N.T. 74, 238)

13. Approximately 4 months later, Soffer checked with Wilson regarding the status of Soffer's prior request to have the Bible verses removed from his checks. (N.T. 74)

14. In effect, Wilson indicated to Soffer, "Be happy you have a job and are getting a paycheck." (N.T. 74, 239, 281). Wilson had checked into the matter with Wilson's supervisor, Don Pries, (hereinafter "Pries"), who simply confirmed that it was a senior management decision. (N.T. 280).

Pries also instructed Wilson to suggest to Soffer that he write to Brown expressing his displeasure. Wilson then conveyed this to Soffer. (N.T. 281)

15. The Bible verses continued to be printed on employee paychecks throughout the remainder of Soffer's employment with BTC. (N.T. 75, C.E. 2)

16. Beginning in January, 1984, BTC reestablished a company newsletter, (hereinafter "Brownie Sez"), which had previously been discontinued in July/August 1970. (N.T. 75, C.E. 3)

17. Being offended by the perceived religious content of certain articles in the "Brownie Sez" publication, Soffer approached Wilson complaining with respect to being offended by the religious aspects of some portions of the January, 1984 publication. (N.T. 78)

18. Wilson acknowledged the Complainant's complaint regarding "Brownie Sez." (N.T. 79)

19. Subsequently, the March, April, and May 1984 editions of "Brownie Sez" contained matters Soffer perceived as religious and was offended thereby. (N.T. 76)

20. Soffer's main contention with the sporadic religious connotations in the "Brownie Sez" and continual Bible verses being typed on his checks was that, in his opinion, religion should not be part of business affairs. (N.T. 211)

21. Soffer also would have been offended if the same perceived religious matters he found objectionable had discussed or highlighted aspects of his own religion. (N.T. 184, 210, 242, 246)

22. Soffer also formed an impression from the perceived nature of the verses and Brownie Sez materials that BTC wanted and perhaps required its employees to be Christians. (N.T. 212)

23. Being Jewish, Soffer reflectively questioned his job security and felt uneasy to a degree as he queried whether one needed to be a Christian to proceed into upper management within BTC. (N.T. 73, 237, 247)

24. At no time did either the verses on paychecks or articles in the Brownie Sez hinder Soffer's job performance. (N.T. 236, 237)

25. Approximately January/February 1984, Wilson was promoted to District Manager but remained at the York facility. (N.T. 69, 269, 288)

26. Wilson had the responsibility to hire his replacement as the York facility terminal manager. (N.T. 287). Wilson hired Paul Timmens, (hereinafter "Timmens"), as his replacement. (N.T. 161, 269, 287, 310)

27. Soffer testified that he brought up the issue of the verses on paychecks and Brownie Sez articles with Timmens, (N.T. 239), but Timmens testified that he could not recall Soffer ever mentioning it. (N.T. 369). In a prior deposition, Soffer indicated he had not told Timmens about being offended by the checks or articles in Brownie Sez. (N.T. 250, 251, 252)

28. However, Timmens did "recall hearing something about it", but testified that he "in all honesty" could not recall from whom. (N.T. 369)

29. On June 29, 1984, Timmens abruptly terminated Soffer. (N.T. 62, 244, 294, 336, R.E. 6, S.F. 10). Soffer was instructed to get his personal possessions, take them, and do not come back on the property. (N.T. 244)

30. Soffer testified that at the time of his discharge Timmens advised him that he was being terminated because he was not able to complete his job functions. (N.T. 61, 187)

31. Timmens testified that he told Soffer he was being terminated because of inconsistent job performance and attitude. (N.T. 336)

32. During the week of March 19-23, 1984, Soffer was sent to Edison, New Jersey to train a new BTC night operations supervisor. (N.T. 100)

33. On May 1, 1984, Timmens submitted an evaluation of Soffer in which Timmens marked Soffer excellent in job proficiency, and good in employee and customer relations. (C.E. 12)

34. The remarks column of the May 1, 1984 evaluation states:

"Steve does an excellent job, is always here when he is needed (weekends), good work on phone, knows his responsibilities, and performs them. I feel he merits this raise." (C.E. 12)

35. In April 1984, Timmens had contemplated giving Soffer a \$25 per week raise, but raised it to \$35 per week after Soffer persuaded Timmens to raise it an additional \$10 per week. (N.T. 392, C.E. 12)

36. Soffer was never given less than an excellent rating regarding job proficiency his entire tenure with BTC. (C.E. 12)

37. In January 1984, Wilson's performance evaluation of Soffer outlined Soffer's strong areas in pertinent part:

"Operationally very adept. Has remarkable ability to co-ordinate and simplify complex operational duties ..."

Wilson outlined areas needing improvement by stating in pertinent part:

"Performance is inconsistent ... instances where it appears that little or no forethought was given ...needs to develop a more "diplomatic thought train" and stronger desire to work well and alongside others ..." (C.E. 12)

38. In December 1983, Wilson sent an internal memo to his supervisor, Gary Morrison; Wilson stated in pertinent part:

"... Numerous instances of either acting or vocalizing before thinking have been contributing factors in stunting the career growth of this otherwise skillful individual. Operationally speaking, Steve has an almost wizard level of intelligence of the mechanics of industry. I have witnessed first hand his completion of technically complex logistical problems which would stump many a transportation professional. Yet in many instances this level of proficiency was overshadowed by Steve's inability to relate and get along with other people in his work environment. I have witnessed a change for the positive in his attitude and he more readily allows the quality of his work to announce his ability. He has shown a lesser hunger for constant demonstration of recognition and realizes the importance of consistency and follow through. Steve's promotional potential is almost totally dependent upon a continued level of personal growth such as he has shown this year." (N.T. 279, R.E. 3)

39. In April 1983, Soffer received a \$25 per week merit increase. (N.T. 91, C.E. 12, S.F. 8)

40. On May 1, 1982 Soffer was given a \$50 per week raise. (C.E. 12, S.F. 7)

41. Soffer's complaint alleged other religious-based disparate treatment in the conditions of his employment generally as follows:

- (a) BTC omitted newsletter recognition of Soffer's attainment of three years of employment;

- (b) Soffer's supervisor opened his mail;
- (c) Soffer was not afforded an opportunity to drive BTC equipment to make pickups and deliveries;
- (d) Soffer was responsible to handle the night operation alone;
- (e) Soffer was given difficulty regarding taking time off;
- (f) Soffer had to pull bills; and
- (g) Soffer was asked to arrive at work 1 to 2 hours early so the day supervisor could perform pickup and delivery duties.

42. Soffer's testimony directly concedes that in April 1984 his name was not intentionally omitted in the recognition section of Brownie Sez. Like Soffer, BTC employees with an April anniversary date were recognized in the May issue. (N.T. 189, 194, C.E. 3)

43. The mail opened by the terminal manager, which Soffer contended was an act of discrimination, was BTC business mail over which the terminal manager had the ultimate responsibility and had every right to open. (N.T. 70, 229-230, 281-282)

44. Heltebridle, the day supervisor, was initially assigned driving duties as an interim measure after a driver had quit, and remained driving on occasion due to significant increases in business. (N.T. 70, 82, 161, 228, 232, 298)

45. Heltebridle drove for both BTC and an independent owner operator who had extra equipment. (N.T. 283-285)

46. When Heltebridle drove for the independent owner operator he did so after his shift ended. (N.T. 283, 286, 370)

47. When Heltebridle drove a BTC vehicle, Soffer would be required to come in early to share the additional duties this arrangement generated. (N.T. 70, 87, 162, 164, 228)

48. Soffer's testimony hesitantly acknowledged that both BTC's failure to assign him driving duties and BTC's assignment of additional duties was not because of Soffer's religion. (N.T. 191-192)

49. Regarding Soffer taking time off, Soffer was told when he was hired there would be no problem with Soffer taking off on religious holidays. (N.T. 160)

50. Throughout his employment at BTC, Soffer was given paid days off for Jewish holidays without affecting his taking off all other holidays. (N.T. 160, 244)

51. On the morning Timmens began as terminal manager, Soffer casually approached Timmens and told Timmens that he takes off Jewish holidays. (N.T. 240, 312). Timmens responded by telling Soffer that he would look into it. (N.T. 313)

52. Neither Wilson's nor Timmens' testimony regarding BTC's rationale for Soffer's dismissal was wholly credible.

53. Soffer testified that he would not want to return to BTC under any circumstances. (N.T. 192)

54. Following Soffer's discharge, Soffer immediately made reasonable attempts to find employment. (N.T. 104-133, C.E. 9, 10)

## CONCLUSIONS OF LAW

1. Stephen L. Soffer is an individual within the meaning of the PHRA.
2. Brown Transport Corporation is an employer within the meaning of the PHRA.
3. The PHRC has jurisdiction over the parties and the subject matter of this case.
4. The parties have fully complied with the procedural prerequisites to a Public Hearing.
5. The provisions of the PHRA must be construed liberally for the accomplishment of the purpose of the PHRA.
6. Liberally construed, Soffer's complaint alleged retaliation as well as a religion-based discharge.
7. Bible verses on company paychecks and religious references and content in a company newsletter were objectionable to Soffer thereby constituting a discriminatory condition of employment.
8. Soffer's other allegations that his conditions of employment were adversely affected because of his religion, Jewish, were without merit.
9. BTC's right to practice religious activity are subject to reasonable governmental regulation because the PHRC has an overriding compelling state interest in assuring a workplace free from religious influences which might become objectionable to an employee who holds contrary beliefs.

10. It was insufficient that BTC made only minimal efforts to accommodate Soffer's religious-based objections to Bible verses on his paychecks and religious matters being published in the company newsletter.

11. Employers have an obligation to make reasonable attempts to accommodate an employee's objection to religious materials the employee finds offensive.

12. At the Public Hearing, BTC responded to Soffer's allegations by offering legitimate non-discriminatory reasons for Soffer's dismissal.

13. Weighing the totality of the evidence in this case, BTC's rationale for Soffer's dismissal is not worthy of credence.

14. BTC terminated Soffer because of his religion, Jewish, and because he complained about the Bible verses on his checks and religious matters in the company newsletter.

15. The PHRC has wide discretion in fashioning remedies where unlawful discrimination have been shown.

## OPINION

This case arises on a complaint filed by Stephen L. Soffer (hereinafter "Soffer") against Brown Transport Corporation (hereinafter "BTC") on or about September 25, 1984, at Docket Number E-30889-D. The complaint was subsequently amended on or about December 31, 1984. Soffer alleged that BTC discriminated against him by dismissing him because of his religion, Jewish. The complaint also alleged disparate treatment regarding conditions of employment because of Soffer's religion. Soffer's complaint claimed that both BTC's dismissal of him and being subjected to disparate working conditions violated Sections 5(a) of the Pennsylvania Human Relations Act, Act of October 25, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. (hereinafter the "PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegations of the discrimination. The PHRC and the parties then attempted to eliminate the alleged unlawful practices through conference, conciliation, and persuasion. The efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on March 2 and 3, 1989 in York, PA, before Carl H. Summerson, Hearing Examiner.

The case on behalf of Soffer was presented by N. Christopher Merges, Esquire. Walter O. Lambeth, Jr., Esquire appeared on behalf of BTC, and the PHRC interest in this matter was overseen by Patricia A. Miles, Esquire, Assistant Chief Counsel, PHRC. Post-hearing briefs were simultaneously submitted by the parties during the first full week of June, 1989.

During the Public Hearing, a question arose regarding whether Soffer had alleged a claim of retaliatory discharge. Mr. Menges, Soffer's private attorney, submitted a Motion to Amend paragraph 4 of the complaint. As originally submitted, paragraph 4 of Soffer's amended complaint states: "The allegations in paragraph 3 hereof constitute(s) an unlawful discriminatory practice or unlawful practice and is in violation of: [PHRA] Section 5 Subsection(s) (a)." Soffer's proposed amendment simply sought to add (d) as another subsection alleged to have been violated besides Subsection 5(a).

Simply amending to add the letter "d" under paragraph 4 of Soffer's amended complaint was deemed an unnecessary action insomuch as the substance of the allegations under paragraph 3 of the complaint are sufficient to stand or fall on their own regarding the question of whether a retaliation allegation had been raised. See ie. Curry v. U. S. Postal Service, 36 FEP 1312, 1320 (S.D. Ohio 1984). Here we are guided by the mandate of Section 12(a) of the PHRA which states: "The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof . . ."

Section 12(a) of the PHRA is consistent with a long-standing principle well recognized by federal courts: In civil rights actions, pleadings are to be liberally construed. See, Windsor v. Bethesda General Hosp., 10 EPD ¶10,407 (8th Cir. 1975) citing, Cody v. Union Electric, No. 75-1093 (8th Cir., July 17, 1975), slip op. at 3; Cruz v. Cardwell, 486 F.2d 550, 551-52 (8th Cir. 1973); Escalera v. New York City Housing

Authority, 425 F.2d 853, 857 (2d Cir.), cert. denied, 400 U.S. 853 (1970; Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968); Barnes v. Merritt, 376 F.2d 8, 11 (5th Cir. 1967). See also, Galvan v. Bexar, 40 FEP 710 (5th Cir. 1986).

Paragraph 3 of Soffer's complaint states in pertinent part:

"The Complainant alleges that on . . . June 29, 1984 the Respondent . . . dismissed him . . . On at least one occasion the Complainant expressed to the Respondent his being offended by the religious propaganda he was subjected to, and Tom Wilson, a superior employee of Respondent told the Complainant, "be glad you get a paycheck" and, further, told the Complainant not to ever discuss the matter ever again."

Section 5(d) of the PHRC states in pertinent part:

"It shall be an unlawful discriminatory practice . . . [f]or any . . . employer . . . to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act ..."

In my opinion, reviewing Soffer's allegations liberally, Soffer sufficiently put BTC on notice Soffer was asserting a retaliatory reaction by BTC in the form of Soffer's dismissal because of Soffer's prior complaint that he was being subjected to "religious propaganda." The PHRC refuses to exalt form over substance and eschews rigid construction of the PHRA's procedural mandates when strict insistence upon technical compliance would defeat the fundamental purpose of the PHRA, ie, ensuring that employment discrimination is redressed. See eg, McCarthy v. Cortland County Cap., 24 FEP 809 (N.D.N.Y. 1980).

Before turning to the questions which surround Soffer's discharge, we shall review the issues which relate to both the alleged disparate treatment in Soffer's conditions of employment and Soffer's allegation that during his employment at BTC, he was harassed because of his religion, Judaism. First, we note that Soffer emphatically indicated that under no circumstances would he want to return to BTC. Soffer's posture on this point does not wholly moot the allegations of disparate treatment and harassment. If BTC would be found to have engaged in either disparate treatment or harassment, a cease and desist order would still be a viable remedial measure despite the fact that such a measure would never directly benefit Soffer.

Soffer's amended complaint generally contends that he was treated differently because his name was omitted in the April issue of Brownie Sez; his mail was opened; he was denied an opportunity to drive; he had to handle the night operation alone; BTC gave him trouble about taking time off; he had to pull bills; and he had to come to work early so the day supervisor could drive.

Remarkably, Soffer specifically conceded BTC's motive behind much of what occurred with regard to Soffer's conditions of employment was in no way related to religious discrimination. Instead, Soffer acknowledged that in 1983 and 1984, an upswing in BTC's business caused additional responsibilities to be heaped on Soffer. Even if Soffer intended to seriously contend his working conditions were made more difficult because of his religion, Soffer's effort would be hindered by his testimony that he

had no knowledge of the extent of the quantity and exact types of duties performed by the day supervisor-the only individual with whom Soffer could reasonably compare himself.

Regarding the allegations unrelated to perceived additional duties, Soffer's name was not omitted from Brownie Sez. Like other BTC employees with April anniversary dates, his name properly appeared in the recognition section in the May issue. Soffer's complaint that mail was opened is misplaced because the evidence revealed that Soffer's supervisor, the one who did open mail designated for Soffer, was specifically authorized to open the mail at BTC.

Perhaps the least understood allegation of disparate treatment was Soffer's allegation that he was given a rough time about taking time off. On the contrary, the evidence revealed that while employed at BTC, Soffer was given extra time off for Jewish holidays over and above the regularly scheduled holidays given to all employees. Rather than being given a hard time, BTC more than reasonably accommodated Soffer's request for time off for religious holidays.

Clearly, before Soffer was terminated, he carried additional duties, however, as he himself concedes, any additional responsibilities given to Soffer were not added because of an unlawful religious-based motivation. Considering the record as a whole, excluding the harassment allegation, remaining separate alleged religious-based disparate condition of employment cannot be supported. Accordingly, we find Soffer's enumerated disparate conditions of employment allegations to be wholly without merit.