

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**ROBERT M. CULGAN, Complainant**

**v.**

**UNITED STATES STEEL CORPORATION HOMESTEAD WORKS, SAXONBURG  
PLANT, Respondent**

**DOCKET NO. E-26103**

**STIPULATIONS OF FACT**

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**OPINION**

**RECOMMENDATION OF HEARING PANEL CHAIRPERSON**

**ORDER**

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**ROBERT M. CULGAN, Complainant**

**v.**

**UNITED STATES STEEL CORPORATION HOMESTEAD WORKS, SAXONBURG  
PLANT, Respondent**

**DOCKET NO. E-26103**

**STIPULATIONS OF FACT**

1. A complaint was received by the Human Relations Commission from Culgan on June 13, 1983.
2. On or about July 26, 1983 an amended complaint was filed. This was the only charge filed by Culgan.
3. A fact finding conference was held on October 3, 1983 at the Pittsburgh Regional Office of the Pennsylvania Human Relations Commission.
4. A probable cause finding was approved by counsel on or about July 17, 1985. Respondent was notified by letter of July 23, 1985.
5. Respondent declined to participate in conciliation efforts.
6. On or about May 4, 1987 a request for a public hearing was approved by the Commission.
7. On March 16, 1989, the Commission scheduled a pre-hearing conference for April 6, 1989. At the April 6, 1989 conference, which the parties attended, a hearing was scheduled for July 17, 1989.
8. Culgan's last position with the respondent was as a General Foreman at the Saxonburg Sintering Plant at a rate of \$3,222.00 per month.
9. Culgan's birth date is April 18, 1924.
10. Culgan was replaced as General Foreman by Peter Yanief, Jr.
11. Yanief's birthdate is August 29, 1945.
12. Culgan's retirement was effective April 30, 1983.
13. In 1983, Culgan had roughly \$3,000 in outside income working for his son in an asbestos removal company located outside of Cleveland, Ohio.
14. In 1984, Culgan reported \$4,889.63 in outside income ("wages, salary, tips") on his 1040 income tax return form.
15. In 1985, Culgan reported \$7,837.88 as outside income ("wages, salary, tips") on his Pennsylvania Form 40.
16. In 1986, Culgan did not report any outside income.
17. In 1987, Culgan reported on his 1040 \$3,363.75 as outside income.
18. In 1988, Culgan did not report any outside income.

19. As a result of Culgan's retirement on April 30, 1983, he was granted the following pension payments:

Culgan received a special Initial Pension Payment of \$5,468.31. In addition, he received a monthly non-contributory pension of \$1,082.82. This amount is payable for the remainder of his life. In addition, commencing with the first month following retirement, he received a \$400.00 a month pension supplement. This pension supplement was payable until age 62, at which time it was replaced by Social Security benefits which Culgan received commencing at age 62. Culgan also is currently receiving a contributory monthly pension of \$473.75. This pension began May 1, 1983 and will be payable for the remainder of Culgan's life. The total amount of monthly pension currently payable to Culgan is \$1,556.57. This figure does not include Social Security benefits.

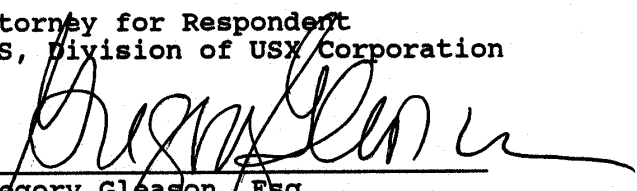
20. As opposed to retirement on April 30, 1983, if Culgan had continued in employment at the same rate of pay that was in effect in April, 1983, and had retired on April 30, 1986, when he would have been 62 years of age, the non-contributory pension of \$1,082.82 would have been increased to \$1,248.30, representing an increase of \$165.48 a month. Culgan's contributory pension of \$473.75 would have increased to \$623.55 or a monthly increase of \$149.80. In total, Culgan's regular monthly pension payments had he continued employment to age 62 would have been increased from \$1,556.57 to \$1,871.85, or \$315.28 per month more than he is currently receiving. The Special Initial Pension Payment would have been payable in the same amount as he received in 1983 and, of course, since he would have been eligible for Social Security benefits in 1986, he would not have been eligible for the \$400.00 a month pension supplement.
21. Based on the same salary assumption, that is, Culgan's rate of pay as of April 30, 1983, if Culgan had retired on September 30, 1984, Culgan's total pension of \$1,556.57 would have been increased to \$1,717.15, or \$160.58 per month increase. This increase is made up of an increase in the non-contributory pension of \$92.03 and an increase in the contributory pension of \$68.55. The Special Initial Pension Payment would have remained the same as in 1983 and if he had retired coincident with a force reduction, he would also have been eligible to receive the \$400.00 a month pension supplement until attainment of eligibility of social Security benefits at age 62.
22. In August, 1984, the General Foreman position at the Saxonburg Sintering Plant was eliminated and Yanief was reassigned as Shift Area Manager-Command Center, No.3 Blast Furnace at USS' Edgar Thomson Plant, Braddock, Pennsylvania.
23. The Saxonburg Sintering Plant continued to operate until July 25, 1986. On August 1, 1986, the United Steelworkers of America engaged in a six-month nationwide work stoppage against USS. As a result the Saxonburg Sintering Plant did not operate from August 1, 1986 to February 1, 1987. After the work stoppage ended on February 1, 1987, the Saxonburg Sintering Plant did not reopen.

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Dated: July 17, 1989

## **FINDINGS OF FACT**

1. 1. The Complainant is an adult individual residing in the Commonwealth of Pennsylvania. (N.T. 11)
2. At all times relevant to the instant complaint, the Respondent employed more than four employees. (N.T. 240)
3. The Complainant was first employed by the Respondent in 1947 as a laborer in the Blast Furnace Department. (N.T. 12)
4. At the time relevant to this complaint, the Complainant was employed by the Respondent as a General Foreman at the Saxonburg Sintering Plant. (N.T. 15)
5. In March of 1983, the Complainant became aware of a Temporary Retirement Incentive Program ("TRIP") instituted by the Respondent. (N.T. 15)
6. The Complainant was aware that he was eligible for the TRIP program, which had a service requirement of 30 years of service. (N.T. 15)
7. The Complainant had a two-week period in which to decide whether he wished to participate in the program. (N.T. 16)
8. During the two-week period, the Complainant had several conversations with John St. Vincent, Division Superintendent at the Edgar Thomson Works. (N.T. 16)
9. The Complainant indicated to Mr. St. Vincent that he could not participate in the TRIP program because he "can't afford to." (N.T. 17)
10. The TRIP program was created in response to requests from Respondent employees who were interested in an early retirement program which included incentives. (N.T. 234)
11. In 1983, the Respondent offered its employees the option of participating in two TRIP programs. (N.T. 235)
12. The first TRIP program, in February of 1983, was for those employees age 62 or above. (N.T.235)
13. The second TRIP program, in March of 1983, was for those employees age 58 or above. (N.T. 235)
14. In the conversations between Mr. St. Vincent and the Complainant, Mr. St. Vincent indicated that there was a reorganization to be effectuated at the Saxonburg Plant. (N.T. 27)
15. During one of these conversations, the Complainant was told by Mr. St. Vincent that he would be reassigned to the position of Turn Foreman. (N.T. 26)
16. Mr. St. Vincent retired from the Respondent's employ in April of 1983, through the TRIP program. (N.T. 138)
17. The Complainant was replaced by Peter Yanief, Jr., General Foreman. (S.F. 10)
18. Mr. Yanief had more experience in blast furnace operations than the Complainant. (N.T. 154)
19. When the Complainant, earlier in his work career in 1982, was reassigned from Superintendent to General Foreman, he did not suffer a loss of pay. (N.T. 166)
20. In prior situations with the Respondent, when individuals were reassigned to different positions, they did not suffer a loss in pay. (N.T. 188)
21. The Complainant, after he was told of his pending reassignment to Turn Foreman, elected to retire from U.S. Steel. (N.T. 26)

## CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties and PHRC have complied with all procedural prerequisites to a public hearing.
3. The Complainant is an individual within the meaning of the Pennsylvania Human Relations Act ("PHRA").
4. The Respondent is an employer within the meaning of PHRA.
5. The Complainant bears the burden of establishing a prima facie case of discrimination.
6. The Complainant has met its burden of establishing a prima facie case by showing that:
  - 1) he is a member of a protected class;
  - 2) he was qualified for the position;
  - 3) he was rejected;
  - 4) he was replaced by a younger person.
7. The Respondent has met its burden of producing evidence of a legitimate, non-discriminatory reason for its replacement of the Complainant.
8. The Complainant has not met his ultimate burden of showing that the proffered explanation of the Respondent is unworthy of credence.

## OPINION

This case arises from a complaint filed by Robert M. Culgan, ("Complainant") against U.S. Steel Corporation, Homestead Works, Saxonburg Plant ("Respondent"), Docket No. E-26103, with the Pennsylvania Human Relations Commission. On July 23, 1983, the Complainant filed a complaint with PHRC alleging that the Respondent forced the Complainant to resign his position of General Foreman due to his age, 59.

PHRC staff conducted an investigation of the allegation and found probable cause to credit the allegation of discrimination based on the Complainant's age. Thereafter, the Commission endeavored to conciliate this matter, and efforts were unsuccessful. The Respondent did not participate in the conciliation efforts, therefore, a Public Hearing in this matter was approved on May 4, 1987.

The Public Hearing was held on July 17 and 18, 1989 before a panel of Commissioners consisting of: Carl E. Denson, Hearing Panel Chairperson, and Thomas L. McGill, Commissioner. The Hearing Panel Advisor was Phillip A. Ayers, Esquire. Gregory Gleason, Esquire, appeared on behalf of the Complainant, Diane Blancett-Maddock, Assistant Chief Counsel, appeared on behalf of the Complaint, and S. G. Clark, Esquire, appeared on behalf of the Respondent. Both parties submitted post-hearing briefs.

At the Public Hearing, the focus was appropriately placed on a disparate treatment analysis of the allegations made and the evidence received. The order and allocation of proof in a disparate treatment case was first defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). and recently clarified by the PA Supreme Court in Allegheny Housing Rehabilitation Corp. V. PHRC, 516 PA 124, 532 A.2d 315 (1987) No. 32 W.D. Appeal Docket 1986. The PA Supreme

Court's guidance indicates that the Complainant must first establish a prima facie case of discrimination. If the Complainant establishes a prima facie case, the burden of production then shifts to the Respondent to "simply...produce evidence of a 'legitimate. non-discriminatory reason' for...[its action]." Id at 320. If the Respondent meets this production burden, in order to prevail, a Complainant must demonstrate that the entire body of evidence produced demonstrates by a preponderance of the evidence that the Complainant was the victim of intentional discrimination. Id at 318.

A Complainant may succeed in this ultimate burden of persuasion either by direct persuasion that a discriminatory reason more likely motivated a Respondent or indirectly by showing that a Respondent's proffered explanation is unworthy of credence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). In order to do so, the Complainant need not necessarily offer evidence beyond that offered to establish a prima facie case. Id. at 255 n.10. The trier of fact may consider the same evidence that a Complainant has introduced to establish a prima facie case in determining whether a Respondent's explanation for the employment decision is pretextual. Diaz v. American Telephone & Telegraph, 752 F.2d 1356, 1358-59 (9th Cir. 1985).

In McDonnell Douglas the Court noted that a Complainant in a race-based refusal to hire case could establish a prima facie case by showing:

- (1) That the Complainant belongs to a racial minority;
- (2) That the Complainant applied for a job for which the Respondent was seeking applicants;
- (3) That, despite the Complainant's qualifications, he was rejected; and
- (4) That, after the rejection, the position remained open and the Respondent continued to seek applicants from persons of Complainant's qualifications.

This general four-step process was later adopted for use by Pennsylvania Courts in General Electric Corp. v. PHRC, 469 Pa. 202, 265 A.2d 649 (1976).

The present matter differs from the refusal to hire circumstances in McDonnell Douglas. In McDonnell Douglas, the allegation was race-based, the Complainant's application was rejected and the Respondent continued to seek applicants of equal qualifications.

The McDonnell Douglas Court wisely anticipated that facts of different cases will necessarily vary and that the four prong prima facie requirement articulated will not be applicable to differing factual situations. McDonnell Douglas at 802 n. 13. The Court made it clear that the general process it was creating would appropriately need adaptations to adjust the process to the facts presented. Accordingly, some adaptation of the required prima facie showing must be done in this instance.

At the outset, several things should be noted. First, in Burdine at 250, the U.S. Supreme Court declared, "The burden of establishing a prima facie case of disparate treatment is not onerous." The PA Supreme Court has adopted this standard in Allegheny Housing Rehab. Corp., Slip at 8. Second, it is apparent that the U. S. Supreme Court intended that the four parts of the prima facie showing are non-subjective and susceptible to objective proof. In other words, the elements set

forth in McDonnell Douglas are intended to be flexible, and formulated with the particular facts of the matter.

With this in mind, in the instant case the Complainant must meet his burden of a prima facie case. In order to make a prima facie showing, the Complainant must show:

- 1) He is a member of a protected class;
- 2) He was qualified for the position;
- 3) He was not chosen for the position, and
- 4) He was replaced by a younger person, outside the protected class.

Firstly the Complainant, age 59, is clearly a member of the protected class, individuals between the ages of 40-70, under the Pennsylvania Human Relations Act.

Secondly, a review of the record indicates that the Complainant is qualified to perform the job in dispute. The Complainant had been at Sintering Plant for over twenty-five years. During that time he had been previously employed as a General Foreman.

The last two elements of the prima facie showing are fairly clear. The Complainant was not chosen for the position, and the person who replaced the Complainant was younger than him.

As indicated above, once the Complainant has established a prima facie case, the burden of production then shifts to the Respondent to “simply...produce evidence of a 'legitimate non-discriminatory' reason for [its action].” Allegheny Housing Rehabilitation Corp. supra. Essentially, this point is the crux of the matter before the Commission. The Respondent has articulated a reason for its actions. The Respondent has asserted that it was consolidating its operations which meant a reduction in staff. The Respondent was phasing out their sintering plants and was relying more on its blast furnace operations. In fact, the Respondent had gone from between fifteen and eighteen sintering plants to only two, one of which was part-time. Furthermore the Respondent closed the Saxonburg Sintering Plant in 1986. Consequently, Respondent alleges it was prudent to hire someone as a General Foreman who had experience in blast furnace operations. Therefore, the Respondent's reason for not hiring the Complainant was, quite simply, that he did not have necessary blast furnace experience. The Respondent also, contended that, because of the industry trend, the blast furnace experience was essential.

Since the Respondent has met its burden of producing evidence of a legitimate non-discriminatory reason for its action, the Complainant in order to prevail, must show that the Respondent's reasons for its actions are not worthy of credence. Stated differently, the Complainant still has the ultimate burden of proving discrimination. A review of all of the evidence before the Commission indicates that the Complainant has not met that burden. The evidence clearly shows that the Respondent was in fact going through a reorganization. As part of the reorganization the number of operating General Foremen, under John St. Vincent, Division Superintendent was going to be reduced from five to four. The Complainant was the foreman who was going to be reassigned to the position of Turn Foreman. The Respondent alleges that the decision to reassign Complainant was three-fold;



- 1) that sintering operations were being phased out and the Complainant had no management experience in blast furnace operations;
- 2) the other individuals had broader blast furnace experience whereas the Complainant's experience was in sintering, and
- 3) Mr. St. Vincent had not been pleased with the Complainant's performance as General Foreman.

The essence of the Complainant's case is that he was pressured into accepting retirement, effective April 30, 1983, by Mr. St. Vincent, Division Superintendent. It is necessary to review the contacts that Mr. St. Vincent had with the Complainant regarding the TRIP program in order to discern whether pressure was put upon the Complainant. Mr. St. Vincent, on two occasions, asked the Complainant whether he was going to take advantage of the retirement opportunity. Mr. St. Vincent had in fact asked several eligible individuals whether they were going to take advantage of the TRIP program. There is nothing in the record that would indicate that undue pressure was put on the Complainant by Mr. St. Vincent to accept the TRIP program. On the contrary, the record indicates that the conversations were completely innocent, and Mr. St. Vincent was only interested in what the Complainant's decision was.

A third conversation occurred between the Complainant and Mr. St. Vincent. It is undisputed that during this conversation the Complainant asked Mr. St. Vincent what was going to happen to him if he did not take the retirement option. He was told that he [Complainant] would be reassigned as a Turn Foreman. Furthermore Mr. St. Vincent explained to the Complainant why he was going to be reassigned as a result of the reorganization. The Complainant was informed that his experience was in sintering which was "on its way out;" the General Foremen who were retained had more experience with blast furnaces, and that reorganization was to be blast furnace oriented. Mr. St. Vincent also told the Complainant that his work performance was not at the level of the other individuals who were General Foremen. It is undisputed that the Complainant did not indicate at this time that he was being pressured to retire.

The Respondent also proffered another reason for wanting to reassign the Complainant as Turn Foreman. That reason was that the individual chosen [Peter Yanief] had superior qualifications in the required area, blast furnace operations. The record is clear that the individual chosen had received higher evaluations than the Complainant and had more experience in the blast furnace area than the Complainant. In contrast, the record indicates that the Complainant had some weaknesses in his areas of responsibilities and needed to "develop leadership." (Joint Exhibit D)

In conclusion, the Complainant simply has not met his burden of showing that the explanation of Respondent is unworthy of credence. Not only has the Complainant not shown that he was unduly pressured into retiring, the record indicates that the reassignment to Turn Foreman would not have resulted in a loss of pay. As a matter of fact, there is evidence in the record that the Complainant may have earned even more money as a Turn Foreman.

Accordingly, since Complainant has failed to prove he was a victim of discrimination by a preponderance of the evidence, this case should be dismissed. An appropriate Order follows:

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**ROBERT M. CULGAN, Complainant**

**v.**

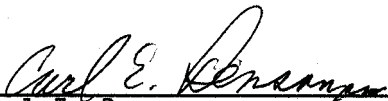
**UNITED STATES STEEL CORPORATION HOMESTEAD WORKS, SAXONBURG  
PLANT, Respondent**

**DOCKET NO. E-26103**

**RECOMMENDATION OF HEARING PANEL CHAIRPERSON**

Upon consideration of the entire record in the above captioned case, it is the Hearing Panel's recommendation that the Complainant has failed to prove discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Hearing Panel's Recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion and Order be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Hearing Panel recommends issuance of the attached Final Order.

By:

  
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Carl E. Denson  
Hearing Panel Chairperson

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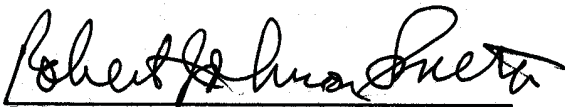
FINAL ORDER

AND NOW, this 20<sup>th</sup> day of December, 1990, after a review of the entire record in this case, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves and adopts the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion and Final Order recommended by the Hearing Panel and hereby

ORDERS

that the instant complaint be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:   
Robert Johnson Smith, Chairperson

ATTEST:

  
Raquel Otero de Yiengst, Secretary