



CONNECTICUT COMMISSION on HUMAN RIGHTS & OPPORTUNITIES
Office of Public Hearings

November 15, 2000

Mr. Nestor Rosado
15 Hamilton Street
Bridgeport, CT 06608

Mr. Charles Ringel
District Employment Manager
United Parcel Service, Inc.
90 Locust Street
Hartford, CT 06114

Attorney Margaret Nurse-Goodison
Assistant Commission Counsel II
21 Grand Street, 4th Floor
Hartford, CT 06106

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Hand Delivered

RE: Commission on Human Rights and Opportunities ex rel. Nestor Rosado v. United Parcel Service, Inc.;
PH Case No. 0020469; EEOC #16aa02319

FINAL DECISION and ORDER OF RELIEF

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Officer's Memorandum of Decision upon the complaint.

The decision is being sent to you by certified mail. The return post office receipt shall be proof of such service.

Very truly yours,

Ann Galer-Pasternak
Public Hearing Administrator

Enclosure

cc: Hon. Lisa B. Giliberto, Human Rights Referee
Attorney Raymond P. Pech, Deputy Commission Counsel



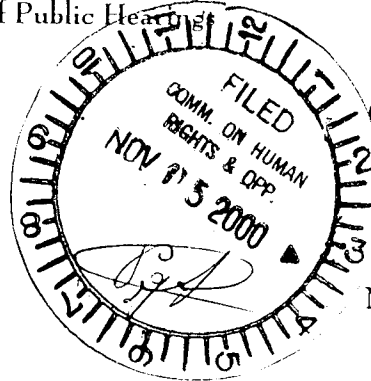




Commission on Human Rights
And Opportunities, *ex rel.*
Nestor Rosado, **Complainant**

v.

United Parcel Service, Inc.
Respondent



CHRO No. 0020469

November 15, 2000

ORDER OF RELIEF

This matter involves a former truck loader's claim that he was discriminated against by his former employer due to his ancestry and national origin. The Complainant, Nestor Rosado (hereinafter, the "Complainant"), alleges that the Respondent, United Parcel Service, Inc. (hereinafter, the "Respondent"), violated General Statutes §§ 46a-58(a), 46a-60(a)(1) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* (hereinafter, "Title VII").

This Order of Relief is the result of a Hearing In Damages conducted on November 1, 2000.

I. PARTIES

The Complainant is Nestor Rosado. His address is 15 Hamilton Street, Bridgeport, Connecticut 06608. The Complainant did not appear at the Hearing In Damages. The Connecticut Commission on Human Rights and Opportunities (hereinafter, the "Commission") is located at 21 Grand Street, Hartford, Connecticut 06106. The Commission was represented at the Hearing In Damages by Margaret Nurse-



Goodison, Assistant Commission Counsel II, 21 Grand Street, 4th floor, Hartford, Connecticut 06106. The Respondent is United Parcel Service, Inc., with an address of 90 Locust Street, Hartford, Connecticut 06114. The Respondent did not appear at the Hearing In Damages.

II. PROCEDURAL HISTORY

The Complainant filed an Affidavit of Illegal Discriminatory Practice (hereinafter, the "Complaint") with the Commission on June 20, 2000. Exhibit CHRO-1.¹ The Respondent was served the Complaint via certified mail and was informed of its obligation and deadline for filing an Answer to the Complaint. It was also informed that a consequence of failing to file an Answer could be a default judgment. Exhibit CHRO-2. Because the Respondent failed to file its Answer as well as its responses to Schedule A to the Complaint, on August 4, 2000 a second letter was sent to the Respondent from the Commission, granting the Respondent an additional eleven (11) days to comply. The Respondent was also warned a second time of the consequence of default. Exhibit CHRO-3. On August 15, 2000, the Commission forwarded a Memorandum to its Executive Director, Cynthia Watts Elder requesting a default order and notice for a hearing in damages, which memorandum was forwarded to the Respondent via certified mail. Exhibit CHRO-4. On September 6, 2000, the Executive Director's designee, Donald E. Newton, Chief of Field Operations, issued a default order against the Respondent. A Notice of Hearing In Damages was sent via certified mail to the Complainant and the Respondent, informing the parties of the date, time and place of the Hearing In Damages, as well as the assignment of the undersigned as the presiding Human Rights Referee. Exhibit CHRO-5. The Hearing In Damages was conducted on

November 1, 2000. (Transcript² 1-9) Neither the Complainant nor the Respondent appeared. (Tr 3-4) On November 7, 2000 the Commission filed a Prayer for Relief. The transcript of the Hearing In Damages was filed on November 14, 2000. Therefore, the record was closed on November 14, 2000.

III. FINDINGS OF FACT

Because this is a Hearing In Damages resulting from an order of default, the hearing is limited to the relief necessary to eliminate the discriminatory practice and make the Complainant whole. General Statutes § 46a-83(i); Regulations of Connecticut State Agencies (hereinafter, "Regulations") § 46a-54-95(d). Based on the record and the exhibits admitted into evidence, including the Complaint, the following facts are found:

1. The Respondent was served by certified mail a copy of the Complainant's Complaint and failed to file an Answer. Exhibits CHRO-2, CHRO-3, CHRO-4; Record Exhibit entitled "Entry of Default Order," dated September 6, 2000.
2. Both the Respondent and the Complainant each received notice via certified mail of the Executive Director's designee's Order of Default and Notice of Public Hearing and were each thereby informed of the scheduled date, time and place of the Hearing in Damages. Record Exhibit entitled "Entry of Default Order," dated September 6, 2000; Exhibit CHRO-5; Record Exhibit entitled "Notice of Hearing In Damages" dated September 7, 2000, with attached green cards containing signatures of the Respondent's agent, Maria Balfour, and the Complainant.
3. The Complainant worked for the Respondent as a truck loader from September 8, 1999 through May 25, 2000. Complaint ¶¶ 5, 10.
4. The Complainant's national origin and ancestry is Puerto Rican. Complaint ¶ 4.
5. The Respondent discriminated against the Complainant in the terms and conditions of his employment based on his national origin and ancestry. Complaint ¶¶ 10, 15.

¹ Abbreviation to be used for Commission Exhibit #1, and subsequent exhibits.

² Hereinafter, "Tr".

IV. ANALYSIS

On September 6, 2000, Donald E. Newton, Chief of Field Operations, as the designee of the Executive Director of the Commission, Cynthia Watts Elder, entered a default order against the Respondent due to its failure to file an Answer to the Complaint. Record Exhibit, "Entry of Default Order." General Statutes § 46a-83(i) expressly permits the executive director or her designee to enter a default order against a respondent: "(1) who, after notice, fails to answer a complaint. . ." Also, Section 46a-54-64 of the Regulations provides the Executive Director with authority to enter an order of default against a respondent that fails to answer a complaint upon request by the Commission and after 10 days from the mailing of the request to the parties.

This Respondent did receive notice that a complaint had been filed against it by the Complainant, and that it was required to respond by filing an Answer. Exhibit CHRO-2. This notice was sent via certified mail by letter dated June 28, 2000, and the return receipt or "green card" was signed by a representative of the Respondent on June 29, 2000. Exhibit CHRO-2. This notice provided that an Answer was required within 30 days of receipt of the Complaint. Exhibit CHRO-2. A second letter was sent to the Respondent over 30 days later, warning that no Answer had been received by the Commission as of July 31, 2000, and that an extension of time until August 11, 2000 would be provided. Exhibit CHRO-3. On August 15, 2000, the Commission formally requested the Executive Director to issue a default order due to the Respondent's failure to file its Answer. Exhibit CHRO-4. This letter, also, was forwarded via certified mail to the Respondent and the green card signed by one of its representatives on August 16,

2000. Exhibit CHRO-4. Consequently, the Executive Director's designee issued a default order on September 6, 2000.

It is here determined that the Respondent was provided legally sufficient notice of the existence of the Complaint and its obligation to file an Answer. The Executive Director's designee had the authority to enter the Order of Default on September 6, 2000 based on the Respondent's failure to file an Answer. General Statutes § 46a-83(i) and Regulations § 46a-54-64.

Upon entry of the default order, a document entitled "Notice of Hearing In Damages Pursuant To An Order of Default Entered by the Executive Director" was mailed via certified mail to the Complainant and the Respondent. This notice informed both parties of the date, time and place that the Hearing In Damages would take place, as well as the name of the Presiding Human Rights Referee, and attached the Order of Default. Exhibit CHRO-5. The green cards were returned with the signatures of a representative of the Respondent, as well as the Complainant. Record Exhibit. Therefore I find that the Respondent and the Complainant received legally sufficient notice of the Order of Default and the Hearing In Damages.

The entry of the default order established the Respondent's liability for violations of Connecticut General Statutes §§ 46a-58(a), 46a-60(a)(1) and Title VII, as alleged in the Complaint. General Statutes § 46a-83(i); § 46a-54-95(d). Specifically, the Respondent is liable for discriminating against the Complainant in the terms and conditions of his employment based on his national origin and ancestry. Complaint

¶¶ 10, 15. Consequently, I am authorized to award damages to eliminate the Respondent's discriminatory practices and make the Complainant whole. General Statutes § 46a-83(i); Regulations § 46a-54-95(d).

“[T]he victim of a discriminatory practice is to be accorded his rightful place in the employment scheme, that is, he has a right to be restored to the position he would have attained absent the unlawful discrimination.” *State v. CHRO*, 211 Conn. 464, 478, 559 A.2d 1120, 1128 (1989). The General Statutes provide a starting point in the damage analysis. General Statutes § 46a-86(b) states that for findings of discriminatory employment practice, “. . .the presiding officer may order the hiring or reinstatement of employees, with or without back pay. . .” It is the Complainant's burden to prove damages. *Ann Howard's Apricots Restaurant, Inc. v. CHRO*, 237 Conn. 209, 228; 676 A.2d 844, 855 (1996). “In order to recover damages, a claimant must present evidence that provides the finder of fact with a reasonable basis upon which to calculate the amount of damages.” *Sands v. Runyon*, 28 F.3d 1323, 1330 (2d Cir.1994)

Although the Complainant had notice of the Hearing In Damages, he did not appear for it. As a result, there is no testimony or evidence relating to any damages suffered by the Complainant, such as the wages he would have earned had he continued to work for the Respondent, which could be used to compute a back pay award. There was no testimony or evidence submitted by any other witnesses as to any damages at all. As a result, I have no basis upon which to calculate any damages that would restore him to the position he had been in prior to his termination of his employment with the Respondent and therefore cannot award the Complainant any damages.

In its Prayer for Relief, the Commission seeks an order: (1) directing the Respondent to post Commission posters forbidding discriminatory employment practices; and (2) directing the Respondent to cease and desist any further discriminatory conduct alleged in the Complaint. General Statutes 46a-86(a) supports such orders. It provides:

If, upon all the evidence presented at the hearing . . . the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall state his findings of fact and shall issue and file with the commission and cause to be served on the respondent an order requiring the respondent to cease and desist from the discriminatory practice and further requiring the respondent to take such affirmative action as in the judgment of the presiding officer will effectuate the purpose of this chapter.

General Statutes § 46a-86(a). In addition to the cease and desist order, I find the “affirmative action” mandated by the statute to be taken by the Respondent to encompass the posting of posters, thereby attempting to eliminate the discriminatory practices for which they have been found liable.


V. CONCLUSIONS OF LAW

1. The Respondent was provided legally sufficient notice of the existence of the Complaint and its obligation to file an Answer.
2. The Executive Director’s designee had the authority to enter the Order of Default on September 6, 2000 based on the Respondent’s failure to file an Answer.
3. The Respondent and the Complainant received legally sufficient notice of the Order of Default and the Hearing In Damages.
4. The Respondent is liable for violations of General Statutes §§ 46a-58(a), 46a-60(a)(1) and Title VII.
5. The “affirmative action” mandated by General Statutes § 46a-86(a) to be taken by the Respondent encompasses the posting of posters forbidding discrimination supplied by the Commission.

VI. ORDER OF RELIEF

- A. The Respondent is hereby directed to cease and desist from any discriminatory action in violation of General Statutes §§ 46a-58(a), 46a-60(a)(1) and Title VII with regard to the Complainant and with regard to all of its employees; and
- B. The Respondent shall place posters, to be supplied by the Commission, at all of its Connecticut business locations in conspicuous places visible to all employees and applicants for employment, specifying employees' rights regarding employment discrimination pursuant to General Statutes §§ 46a-58(a), 46a-60(a)(1) and Title VII. The signs shall be installed at all such locations not later than thirty (30) days after receipt of the posters from the Commission.

It is so ordered this 15th day of November, 2000.


Hon. Lisa B. Giliberto
Presiding Human Rights Referee

C:

Nestor Rosado (Certified Mail: #7099 3400 0009 0404 4872)

Margaret Nurse-Goodison, Assistant Commission Counsel II

United Parcel Service, Inc. (Certified Mail: #7099 3400 0009 0404 4889)