

Commission on Human Rights
and Opportunities *ex rel.*

Isabel Gomez, Complainant

:

CHRO Case No. 9930490

v.

United Security, Inc., Respondent

:

January 28, 2000

FINAL DECISION AFTER HEARING IN DAMAGES

I. Procedural History

On March 26, 1999, Ms. Isabel Gomez (“Complainant”) filed a complaint with the Connecticut Commission on Human Rights and Opportunities (“Commission”). The Complainant alleges that United Security, Inc. (“Respondent”) illegally discriminated against her in violation of General Statutes §46a-60(a)(1) and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. on the basis of her female sex (gender), and Puerto Rican national origin and ancestry.

On August 10, 1999, the Commission’s Deputy Director for Enforcement entered an “Entry of Default Order and Notice of Public Hearing” against the Respondent pursuant to General Statutes §46a-83. Pursuant to General Statutes §§46a-83 and 46a-84 the undersigned was appointed as Presiding Human Rights Referee to determine the relief necessary to eliminate the discriminatory practice complained of and to make the Complainant whole. The Hearing in Damages was held on September 30, 1999. The Complainant and the Commission appeared to prosecute the action. The Respondent did not appear.

II. The Parties:

The Complainant is Isabel Gomez of 224 Oakville Avenue, Waterbury, Connecticut 06708.

The Commission representative is Attorney Raymond Pech. The Connecticut Commission on Human Rights and Opportunities is located at 21 Grand Street, Hartford, Connecticut 06106.

The Respondent is United Security, Inc., located at 27 Holmes Avenue, Waterbury, Connecticut.

III. Findings of Fact:

Based on the complaint, exhibits and testimony, the following facts relevant to this decision are found:

1. All procedural and jurisdictional prerequisites have been satisfied and this matter is properly before the Presiding Human Rights Referee to hear the complaint and render a decision.
2. The Complainant is a member of two protected classes because she is of the female sex (gender) and she is also of Puerto Rican ancestry and origin. CHRO Ex. 1.
3. The Respondent employs at least fifteen people. CHRO Ex. 1.
4. The Complainant began work for the Respondent on September 22, 1998 as a security guard. Tr. 10.
5. The Complainant worked at various job sites for the Respondent in Danbury, Meriden and Waterbury. Tr. 10.

6. Although the Complainant worked between thirty-five (35) and forty (40) hours per week for the Respondent, her typical work week consisted of a forty (40) hour week. Tr. 11, 31.
7. The Complainant's pay depended upon the site to which Respondent assigned her. Tr. 11.
8. When she worked in Danbury, the Complainant earned eight dollars (\$8.00) per hour. Tr. 11.
9. She worked at the Danbury work site during the latter part of September, most of October and the first week in December 1998. Tr. 11, 12, 13.
10. During the month of November of 1998 the Complainant worked at a job site in Meriden, directing traffic at a construction project. At this job she was paid seven dollars (\$7.00) per hour. Tr. 13, 14, 15.
11. The Complainant was assigned to various job locations by the Respondent during the month of December 1998. She earned six dollars (\$6.00) per hour during December. Tr. 15, 16, 17.
12. The Complainant always worked the second or third shift during her employment with the Respondent. Tr. 19, 31.
13. The Respondent terminated the Complainant from her employment in January 1999 because Respondent claimed there was a lack of work. However, only Puerto Rican females were discharged. No male employees were discharged. Tr. 12. CHRO Exhibit 1.
14. In all of her performance evaluations, the Respondent rated the Complainant as satisfactory or better. CHRO Exhibit 1.

15. At the time of her termination the Complainant earned weekly gross wages of \$280.00 for a 40-hour workweek. Tr. 15, 16, 17.
16. The Complainant tried, but was unable, to collect unemployment insurance. Tr. 20, 21, 22.
17. Using reasonable diligence, the Complainant applied for work at TNE Sewing, Railroad Salvage, Bernies, K-Mart and Dunhill Staffing. She was unsuccessful in her efforts to find employment. Tr. 22, 23, 24, 25, 26. CHRO Exhibits 6, 7.
18. At the hearing in damages, the Complainant testified she anticipated starting work at a factory job on October 4, 1999, which will pay her \$9.75 per hour. Tr. 27.
19. The Complainant was out of work from January 1, 1999, until October 4, 1999 - a period of approximately forty (40) weeks.
20. The Complainant is requesting an award of back pay and simple pre-judgment interest from the date of the discriminatory act, January 1, 1999, until the date of this decision and statutory post-judgment interest. The Complainant is not requesting reinstatement. Commission Prayer of Relief 11/3/99.

IV. Analysis:

A. Applicable Statutes and Regulations:

Upon the entry of a default order by the executive director, or his/her designee, the Presiding Human Rights Referee is authorized to issue an order eliminating the discriminatory practice complained of and making the Complainant whole. General

Statutes § 46a-83(i); Regulations of Connecticut State Agencies (“Regulations”) § 46a-54-95(d). Allegations in the complaint that are not answered by the Respondent are deemed admitted without the need for further proof. Section 46a-54-94(b) of the Regulations.

B. Applicable Case Law:

The presiding Human Rights Referee is authorized to award back pay to make a Complainant, who has suffered employment discrimination, economically whole. *Silhouette Optical Limited v. Commission on Human Rights and Opportunities*, Superior Court, Judicial District of Hartford/New Britain at New Britain, VC 92-520590, pp. 13, 16-17 (January 27, 1994); *State of Connecticut v. Commission on Human Rights and Opportunities*, 211 Conn. 464, 478 (1989). Respondent’s liability for back pay begins when the discriminatory act causes economic injury. The period during which the Respondent is liable for back pay ends when the Complainant obtains a comparable or higher paying job. *Harkless v. Sweeney Independent School District*, 466 F.Supp. 457, 469 (S.D. Tex) aff’d 608 F.2d 594, 22 FEP1571 (5th Cir.1979).

In *Silhouette Optical*, Judge Maloney states that the award of interest and the method of its calculation is within the discretion of the fact finder. *Silhouette Optical*, supra, at 21-22. In accord is *Saulpaugh v. Morre Community Hospital*, 4 F.3d 134 (2nd Cir.1993).

V. Conclusions of Law:

A. The Respondent received legally sufficient notice of the Notice of Hearing in Damages pursuant to an Order of Default (CHRO Exhibit 5; Tr. 9-10).

B. The Deputy Director for Enforcement had the authority to enter the “Entry of Default Order and Notice of Public Hearing” pursuant to General Statutes § 46a-83.

The entry of default established the Respondent’s liability for violation of General Statutes § 46a-60(a)(1) and Title VII of the Civil Rights Act of 1964.

C. The Respondent illegally discriminated against the Complainant on the basis of her national origin and ancestry, and her gender in violation of General Statutes §§ 46a-60(a)(1) and Title VII of the Civil Rights Act of 1964.

D. The Presiding Human Rights Referee has the authority to hear this case and to order relief, which will make the Complainant whole. General Statutes § 46a-84.

VI. Order of Relief:

1. The Respondent shall pay to the Complainant the sum of \$10,920.00 as back pay, calculated as follows:

Back Pay:

(39 hours was determined by averaging the hours the Complainant worked for the Respondent.)

$$\begin{array}{rclcl} 39 \text{ hours} & \times & \$7.00 \text{ per hour} & = & \$273.00 \text{ per week} \\ 40 \text{ weeks} & \times & \$273.00 \text{ per week} & = & \$10,920.00 \end{array}$$

2. The Respondent shall pay simple pre-judgment interest to the Complainant at the rate of 10% per year from the date of the discriminatory act, January 1, 1998, until the date of this decision.

3. Pursuant to General Statutes § 37-3a, postjudgment statutory interest is awarded on the \$10,920.00 award of back pay. Said interest shall accrue on the unpaid

balance at the rate of 10% per annum from the date of this decision until payment is made by the Respondent.

4. Should prospective employers seeking references concerning the Complainant ever contact the Respondent, it will provide only the dates of her employment, the last position she held, and her rate of pay. In the event additional information is requested in connection with any inquiry regarding the Complainant, the Respondent shall require written authorization from the Complainant before such information is provided, unless the Respondent is required by law to provide such information.
5. The Respondent shall post in prominent and accessible locations, visible to all employees and applicants for employment, such notices regarding statutory antidiscrimination provisions as the Commission shall provide. The notices shall be posted within three working days of the receipt of this decision.
6. The Respondent shall cease and desist from all acts of discrimination prohibited under federal and state law and shall provide a nondiscriminatory working environment for its employees pursuant to federal and state law.

Dated this 28th day of January 2000 in Hartford, CT.

Hon. Leonard E. Trojanowski
Human Rights Referee

cc: Isabel Gomez
United Security, Inc.
Attorney Raymond Pech, Deputy Commission Counsel
Attorney Philip A. Murphy, Jr., Commission Counsel
Ann Galer-Pasternak, Public Hearing Administrator