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Jerry Baker v. State of New Hampshire

EC 0073-00
EEOC: 16DA00063

DECISION

This charge of employment discrimination based on color was filed with the Commission for Human Rights on January 12, 2000. Probable cause was found by investigating Commissioner Coughlin November 6, 2001. Conciliation having failed, a hearing was scheduled and took place on January 8, and February 19, 2002. Commissioners Manning, Hilson, and Allen sat as the hearing panel.

The following witnesses presented testimony during the hearing: Jeffrey Stratton, complainant's "nephew" through marriage; Marguerite A. Lee, complainant's partner; Jerry Baker, the complaining party; Peter Goodwin, Administrator of the State Bureau of Court Facilities; Jean Dezainde, Maintenance Mechanic I at Hillsborough County Superior Court North; Gail A. Stickland, Administrative Assistant to the Administrator, Bureau of Court Facilities; JoAnn Bunten, Supervisor of Certification, State Division of Personnel; Jeffrey Kellett, State Police, Department of Safety; and Kevin Crutchfield, head of maintenance, Manchester District Court.

Both parties were represented by counsel.

Based on the documentary evidence and the testimony presented, the Commission finds in favor of the complainant.

Background

In early October 1999, Jeffrey Stratton submitted an application for employment as a cleaner at Hillsborough County Superior Court North, in Manchester, New Hampshire. At the time, Stratton was still in high school, but had approximately 6 months part time experience as a cashier at Walgreens. Stratton was certified as meeting the qualifications for a Laborer and was offered a job within two to three days. His application is dated 10/04/99 and was certified 10/08/99.

Stratton learned from his supervisor, Jean Dezainde, that there were other vacancies on the maintenance staff at the court. He inquired whether his "uncle" could get a job. Stratton testified that Dezainde told him they needed a full crew, gave him an application form, and told him "Bring it in as soon as possible, we'll start him right up." Stratton, who is white, did not tell Dezainde that his "uncle" was black.

Marguerite Lee, Stratton's grandmother, and the complaining party's female companion, testified that she went in to her grandson's workplace and was there when her grandson asked Dezainde whether there were other positions available. She testified that Dezainde said "Yes", and that she got the application form and was told by Dezainde to bring it back first thing next morning. Lee testified that she and Baker went in the next day and asked for the Maintenance I person (Dezainde). Dezainde came out and asked if he could help Lee, who stated, "Yes, we're here about the job - you told me to bring the application in first thing in the morning." Lee testified that at that point Dezainde asked her, "You're together?" indicating Baker.

Lee testified that she knew from the look on Dezainde's face that Baker wasn't getting the job. Dezainde looked at the application and found things wrong with it, (an address missing), and told them it needed that information. They asked how they could get the information and he told them to go to the library. Lee testified that when she said, "Okay, we'll bring it right back," Dezainde said, "You don't have to bring it back until next week." Lee and Baker went to the public library, got the information, and returned to the Court by nine or nine-thirty that same morning. Lee states that Dezainde said to her then, "You didn't have to bring it back right away."

Stratton testified that he repeatedly asked Dezainde about Baker's application and was told it was up in Concord. Lee testified that she asked her grandson about Baker's application and that he told her he had heard nothing. Stratton also testified that Dezainde questioned him about his relationship with Baker, saying, "Is he really your uncle?"

Jerry Baker was born in New Orleans and has finished the ninth grade in school. He testified that he has worked in the fast food business (Popeyes, Wendy's), in construction, a paper company, and has cleaned at night for Burger King. His application for employment with the State listed only that he worked as a machine operator in Louisiana from 1980 to 1988. Baker testified that he and his family moved to New Hampshire in November 1995, and that he had not worked since 1995, receiving Social Security Disability because of depression. He had been married and had a daughter, whom he stayed home with while his wife worked. Baker testified that he felt good enough to think about going back to work in the fall of 1999, and found out about a job at the Court through Stratton.

Baker testified that he filled out the application, which is dated 10/14/99, and brought it to Dezainde, who told him the application did not have an address and phone number on it [for a previous employer]. Baker confirmed Lee's testimony that Dezainde told him to go to the library and bring the application back the next week. Baker testified that he brought the

application back the same day, because he thought there was someone else there applying. When Baker submitted the application a second time, Dezainde asked him, "Have you ever been convicted of something?" The application form asks whether the applicant has a criminal record, and Baker, who had no record, had checked "No."

Baker testified that Dezainde told him to call, and he did call, about the job. Dezainde told him the application was in Concord, and that when it came back he would have a job. Then Dezainde began telling complainant to stop calling, and finally told him there was no job. Baker describes Dezainde's tone as rude.

At that point, Baker contacted an attorney, who called Frank Monahan, then the Administrator in the State Bureau of Court Facilities, and the person responsible for reviewing applications for maintenance positions and authorizing hiring. Baker testified that Monahan called him sometime after that and they had a conversation about the gap in complainant's employment record. Complainant explained that he was a stay-at-home dad. Monahan instructed complainant to go to Manchester District Court and talk to Kevin Crutchfield about a job. Complainant interviewed with Crutchfield sometime in mid to late December, was hired for 12 hours per week and started work at the District Court on January 7, 2000.

Baker testified that he became very angry when Dezainde began giving him "the run around." He was qualified for the maintenance position and had seen the State act very quickly on Stratton's application. He felt his depression becoming worse and he became angry at everyone. Lee testified that Baker became angry and difficult to be around.

Jean Dezainde is a Maintenance Mechanic I for Hillsborough County North. He has been there three years and was put in charge of the crew in the fall of 1999. Part of his job is to take applications. He testified that he looks at applications to see that they are complete and then mails them to Concord, usually at the end of the day. Dezainde confirmed that Baker applied for a job and that they were looking for help at that time. They wanted a 6 person part time crew (20 hours per week) for evenings, and already had four either working or lined up.

Dezainde denied telling complainant he did not have to return the application until the next week, but did confirm that he asked complainant whether he had a record. He stated that he told Baker it would be checked, and said that he told the others [the same thing] too, even if they answered the question on the form. Dezainde testified that he did not have complainant sign a form authorizing a criminal records check. Dezainde remembered a woman coming in with Baker and that she was white, but denied that he was surprised. He denied telling Baker not to call anymore, but admitted that it was possible that he had told Stratton not to ask anymore.

Dezainde testified that it is his duty to recruit for maintenance positions and that he does this at high schools and through word of mouth. Dezainde stated that it was not unusual for

him to call Monahan regarding applicants, and that he told Monahan to act as quickly as possible because he needed people. He also testified that Stratton had quit his job in December 1999 and that he was looking for someone to replace him. Dezainde testified that Baker called him several times about his application and that he told him it was in Concord. Baker's application was the first one he had ever received from a black person.

Monahan's assistant, Gail Stickland, testified that her normal procedure was to open the mail and take any applications for employment down to Personnel for certification. Applications were only considered after they had returned from Personnel. Stickland said Monahan generally did not see applications until they returned from Personnel. Stickland testified that she read applications in order to make sure they were complete so they would not get rejected by Personnel, but she stated that she did not read complainant's application, recall the date on which it arrived in Monahan's office, or notice the gap in complainant's employment history. She testified that the next time she saw Baker's application was the date it returned from Personnel. Complainant's application shows that it was certified by Personnel on December 3, 1999.

Stickland indicated that criminal records checks were required for court employees, and that sometimes Monahan would do the criminal records check first before deciding to hire someone, and sometimes he would do it afterward. Later, when questioned by Commissioner Hilson, Stickland clarified that if her office was not considering hiring someone, they would not do a criminal records check. But she was consistent that her normal procedure, which was not deviated from, was to send all applications first to Personnel, because an employee who could not be certified as meeting all the requirements for the position, could not be hired. Once they were certified, applicants would be hired in the order their applications were certified and then on their qualifications.

Stickland recalled her former boss, Monahan, receiving a telephone call from an attorney representing Baker sometime in late November or early December. She was not present when the attorney called, but she recalled Monahan's angry reaction to the call. She testified Monahan told her that it was the first time he knew that Baker was black. She recalled that part of the discussion after the call was whether there were any openings on Dezainde's crew and Monahan saying there weren't any.

Stickland testified that Dezainde called Monahan's office frequently but she did not recall him ever calling about complainant's application.

Monahan also discussed with her the 11-year gap in complainant's employment history. Stickland confirmed that Monahan called Baker after the call from the lawyer and questioned him about the gap in his employment history. Stickland could not explain why complainant's application was not certified until December 3, but she stated that she knew Monahan had made a phone call and did a check on Mr. Baker. She testified that a decision was made to do a nationwide criminal record check because of the gap in Baker's employment history, the first time, to her knowledge, that such a check was done. Although Stickland would not

confirm whether that check would have been done after the December 3 certification of complainant's application by Personnel, she confirmed that that would have been the normal process and she had no recollection of the normal process not being followed. Stickland denied ever telling the Commission investigator that a second, nationwide check had been done on Baker because the first one "came back clean," as had been reported in the Investigator's Report. (Complainant Exhibit #2)

JoAnn Buntin, Supervisor of Certification for the Division of Personnel, testified that her role is to review applications in comparison to the experience and education required by job descriptions and specifications in the State's classified personnel system. There are two positions for maintenance workers: Building Service Worker II and Laborer. The only difference between the requirements for these two positions is that building service worker requires one year experience, and laborer requires no work experience. Both positions require an eighth grade education. Pay is the same for both positions.

Buntin testified from examining a copy of the complainant's application that she had reviewed it on December 3, 1999. She stated that she did not know when she got it on her desk. She stated that she did not always certify the same day, but that if she were at work that day she would certify it, and that she did not recall any hold-up on complainant's application. She received no calls from Monahan's office wondering where the complainant's application was. She confirmed that she had certified the applications of two other applicants for maintenance positions at the Hillsborough County Court North, Daniel Dube and Roger Gosselin, on October 20, 1999. Their applications were dated October 14, and October 15, 1999, respectively. Buntin testified that she could not explain why they were certified on that date and the complainant's, which was dated October 14, 1999, was not certified the same day. She testified that in order to certify complainant for a laborer position, she only had to establish that he had an eighth grade education, i.e. she only had to check the education line on his application.

Peter Goodwin, current Administrator of the Bureau of Court Facilities, testified about practices within his Bureau. Goodwin replaced Monahan approximately a year ago, after Monahan passed away. He confirmed that like Monahan, he has ultimate hiring authority within his department. Goodwin testified that applications for maintenance positions at the courts are submitted to the maintenance mechanics there and then forwarded to him. He indicated that his usual practice is to submit applications to Personnel for certification before taking further action.

According to Goodwin, maintenance mechanics call and tell the administrator that they need to fill a position. They ask if they can start searching for another person. Goodwin testified that it was hard to find good candidates for maintenance positions when the unemployment rate was low and that, as a result, they would recruit at high schools. To some extent it was the responsibility of the maintenance mechanic to take the initiative and look locally to find candidates. They have a difficult time filling the positions, and look "high and low" without finding people. Goodwin testified he expected applicants to have an

employment history, but agreed that no prior employment was required for the position of Laborer.

Goodwin testified that it is the policy of the State that all applicants for court work should have a criminal background check and that all are given a state check. He testified that he believed there was a policy in Monahan's time, but stated he did not know whether it was followed or whether checks that were done were state or nationwide. Goodwin stated that he had never done a national criminal records check, but that if an applicant came from out of state, he would have to run some kind of national check in order to find out. He indicated that you had to get signed authorization for a criminal records background check and the form should be signed by the applicant at the time the application is sent in.

Goodwin testified that there was a process for maintenance mechanics to provide their input into the hiring decision, such as recommending someone. Goodwin stated that he called to notify them of the decision and would ask whether they had a problem with the candidate he selected. If a mechanic stated that he knew a candidate, Goodwin would take that as part of the process.

Jeffrey Kellett, an officer with the NH Department of Safety, is the commander of State Police Criminal Records Unit. This unit handles all criminal records for the state of New Hampshire, as well as national incident-based reporting (IBIS), and finger prints (APIS). Kellett testified that if a "statewide" criminal records check is requested, it shows crimes and arrests which have occurred in NH only. The State can also access nationwide "triple I" checks through the FBI.

Kellett testified that he had been asked by the State's attorney to determine whether a criminal record check had ever been done on the complainant between October 1999 and January 2000. Kellett testified that he had researched records and checked with FBI, and found that no state or nationwide criminal background record check had ever been done on Baker.

Kevin Crutchfield is the head of maintenance for the Manchester District court. He is a full time employee and has been there five and one-half years. Crutchfield testified that he received a call in December 1999 from Monahan, who told him Baker was coming in and asked him to interview him and show him around. Crutchfield interviewed Baker and got the impression Baker wanted a job. Crutchfield called Monahan and informed him the interview had taken place. Baker called about a week after that, but Crutchfield was still waiting to hear from Monahan. Crutchfield testified that he again called Monahan, who asked if Baker seemed like a good worker and if Crutchfield needed another worker. Crutchfield testified that Monahan never mentioned Baker's race.

Crutchfield testified that he did not have complainant sign an authorization for a criminal records check because he had applied at the other court. Crutchfield, who does not have final say on hiring, testified that he thought the ultimate decision to hire Baker at 12 hours

was Monahan's. He testified that he was told to call Baker and tell him he was hired at 12 hours per week. Crutchfield testified that he has started only two employees, Baker and one other, and that both started at 12 hours during their probationary period. He testified how complainant had asked for more time and he [Crutchfield] had called Monahan to request more time. Monahan made the decision to increase complainant's hours. Crutchfield described complainant as a good worker who seemed to like his job and who he would recommend to others.

Complainant was hired on January 7, 2000, for 12 hours per week at Manchester District Court.

Issues

Baker alleges that he was treated differently than white applicants for employment with the State, in that his application was not acted on in a timely fashion because of his race. He was not selected for the 20-hour per week job for which he applied and was qualified, had to hire an attorney to advocate for him when he received no answers to his inquiries regarding his application, and was ultimately hired for fewer hours.

Respondent denies discriminating against complainant. Respondent's verified Answer to the Charge of Discrimination (Respondent's Exhibit #17) asserts that the State hires on a rolling basis from completed and certified applications. The Answer states that:

"Prior to hiring Baker, the State hired one person whose application had previously been submitted and certified. The State hired another person who submitted an application on the same day as Baker and whose application had been certified. When that person was terminated several days later, he was replaced by someone who submitted an application the day after Mr. Baker submitted his application, and whose application had been certified. Due to the fact that Mr. Baker's application was initially incomplete and was re-submitted - and not due to discrimination by the State, it may not have been at the top of the chronological pile. Due to the fact that Mr. Baker had not worked for approximately eleven years prior to submitting this application, the application was reviewed more thoroughly prior to being submitted to the Division of Personnel for certification. Mr. Baker was hired for the next available position."

Respondent's Response to numbered paragraphs in the Charge (Respondent's Exhibit #18), states: "The application was certified on the day it was submitted, December 3, 1999."

At the hearing, respondent articulated a different non-discriminatory answer to the charge. While admitting that respondent took an inordinately long time to process complainant's application, compared to the applications of other employees hired around that time, the State asserts that bureaucratic incompetence is the explanation for those delays. The respondent argues that Monahan did not know Baker's skin color and therefore could not have discriminated against him on that basis. The State argued at the hearing that, contrary

to its initial position statement, complainant had **not** been subjected to a nationwide criminal background check, and thus had not been subject to treatment that was different from that of white applicants. Monahan had made an effort to obtain employment for complainant after the call from his lawyer, increased complainant's hours at Manchester District Court, and did what he could do to make up for his initial oversight.

After the record was closed, the Commission received a Motion from the State to Reopen and Correct the Record. The testimony which had been provided showing that no criminal record background check had been done on complainant had been discovered to be inaccurate, through no fault of the State or its witness. The Commission granted the State's Motion, and the record now shows that two "triple I" checks were done on Baker at the request of the Hillsborough County Sheriff's Office, one on November 24, 1999, and the second on December 7, 1999. (See: Affidavit of Jeffrey R. Kellett, February 25, 2002, received February 26, 2002.)

Legal Standard

New Hampshire RSA 354-A:6 and 7 prohibit employment discrimination based on race and/or color. RSA 354-A:7,I provides that "it shall be an unlawful discriminatory practice for an employer, because of the . . . race, color . . . of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification."

RSA 354-A:2,XV(b) provides that "unlawful discriminatory practices" include practices prohibited by the federal Civil Rights Act of 1964, as amended (PL 88-352). Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on race and color. Where appropriate, the Commission relies on federal caselaw under Title VII.

In 1973, the Supreme Court established general rules regarding the burdens of production and proof in discrimination suits by individuals under Title VII. In order to show intentional discrimination a complaining party usually must establish a prima facie case by showing:

(i) that he belongs to a racial minority;

(ii) that he applied for and was qualified for a job for which the employer was seeking applicants;

(iii) that despite his qualifications, he was rejected; and

(iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 5 FEP Cases 965 (1973).

If a prima facie case is made, the employer has the burden of articulating some legitimate, nondiscriminatory reason for the employee's rejection.

The ultimate burden of proof is on the complaining party to show that discrimination was the reason for the employer's actions. Once an employer produces sufficient evidence to support a nondiscriminatory explanation for its actions, the complainant is afforded the opportunity to prove by a preponderance of the evidence that the reasons offered by the respondent were not its true reasons but were a pretext for discrimination. The complainant may do this by showing that the employer's offered explanation is unworthy of credence.

While the presumption of discrimination which arises from the establishment of a prima facie case is no longer present once the employer meets its burden of production, a trier of fact may still consider the evidence establishing the prima facie case and inferences properly drawn therefrom on the issue of whether the defendant's explanation is pretextual. While finding that the employer's reasons are pretextual does not compel judgment for the complainant, it is permissible for the trier of fact to infer discrimination from the falsity of the employer's explanation. A complaining party's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated. Reeves v. Sanderson Plumbing Products, 82 FEP Cases 1748, US Supreme Court 2000.

Findings and Discussion

The testimony of the parties and witnesses, together with the documentary evidence, show the following with respect to complainant's prima facie case:

(1) The complainant is a member of a protected category: African American. He submitted his application in person to Jean Dezainde, Maintenance Mechanic I, therefore Dezainde knew complainant was a member of a protected category. His application is the only one ever received from an African American, according to Dezainde. Dezainde agreed that as Maintenance Mechanic I he has responsibility for recruiting, had some input into the hiring process, and would often call Monahan to speed up the processing of applications.

(2) Complainant submitted an application for employment as a maintenance worker at the Hillsborough County Superior Court North on October 14, 1999. Although the application was incomplete when it was initially submitted to Dezainde early on the morning of October 14, complainant and Lee went to the Public Library and obtained the missing information. Baker re-submitted his completed application to Dezainde no later than 9:00 or 9:30 a.m. that same day.

At the time Baker submitted his application, the Hillsborough Court had two openings for maintenance workers as either Laborer or Building Service Worker II. Baker met the qualifications for Laborer, having at least an 8th grade education.

(3) Sabrina Curtis had submitted her application on October 8, 1999, but it had not been sent to Personnel and she had not been hired as of October 14, 1999. (Complainant's Exhibit #5) A third application was submitted on October 14, 1999, that of Daniel Dube. A fourth application was submitted on October 15, 1999, that of Roger A. Gosselin. Completed applications are supposedly sent to Concord by Dezainde at the end of the day and Dezainde says he sent complainant's application to Concord. The usual practice of the Concord office was to submit all applications to Personnel for certification upon receipt and before considering them further.

(4) Curtis', Dube's, and Gosselin's applications were sent to Personnel and certified on October 20, 1999. Gosselin started work on October 25, 1999, and Dube started work on October 28, 1999. Gosselin terminated his employment with the State on October 28, 1999, thus opening another position. Stratton, complainant's nephew, quit his job on December 2, 1999, opening a second position on the crew of six part-time workers. Curtis started on November 1, 1999, apparently replacing Gosselin.

Complainant heard nothing from the State, although he and Stratton repeatedly contacted Dezainde to check on the application. Dezainde reacted with surprise when he saw that complainant was black, and immediately suggested that complainant take his application back in order to provide complete information. Dezainde, who had encouraged Stratton to get his "uncle" right in, now told complainant he did not have to bring the application in until the following week. [The Commission takes judicial notice of the fact that October 14, 1999 was on a Thursday.]

Complainant's application was not sent to Personnel for certification until December 3, 1999, after Monahan received a call from complainant's lawyer questioning what had happened to his application. Monahan did a nationwide criminal record check on complainant on November 24, before sending the application to Personnel for certification. Then, although the check came back clean, Monahan requested a second nationwide check, completed on December 7, 1999. Complainant was offered a 12-hour per week job at a different court, although Stratton had left his position on December 2, 1999, opening a sixth position on Dezainde's crew.

The Commission finds that complainant has met his initial burden of establishing a prima facie case. He has shown that as an applicant he was treated differently than white applicants for the same open position for which he was qualified and that as a result, certification of his application was delayed, resulting in his not being hired for an open position.

The State argues that complainant can not meet his burden because he can not show that Monahan knew Baker's race. State applications do not contain pictures or ask for an applicant's race. As noted above, however, Dezainde did know complainant's race, and, after Baker's attorney called him, Monahan, too, knew complainant's race. Monahan treated complainant's application differently after that time, focusing on the 11-year gap in

employment, instead of simply processing the application as he would have processed any other. Monahan also requested a nationwide criminal record check, something he had never done before.

Respondent has offered alternative explanations for the delay of 50 days before sending Baker's application to Personnel for initial certification: bureaucratic incompetence and time for extra scrutiny because of an eleven-year gap in complainant's employment history. After consideration of the evidence put before it, the Commission finds that neither of these explanations is credible.

Because of the death of Mr. Monahan, the Commission was unable to hear testimony from him. However, with regard to the first non-discriminatory defense, the Commission only heard evidence that Monahan was busy, as is his successor, and no evidence that he was incompetent. Moreover, the evidence shows that applications of other, white individuals were handled with efficiency and speed by Dezainde and Monahan, thus it is inconsistent to argue that efficiency and speed did not apply in the case of complainant's application, especially without a credible explanation of why such inconsistency existed.

As for respondent's second defense, where no experience is required for a position as Laborer, a gap in someone's employment record is not relevant and should not hold up the application process. While such a gap could indicate incarceration, which would exclude an individual from employment in the courts, the evidence submitted in this case shows that criminal background checks were routinely done on all individuals after certification (if they are being considered), therefore the necessity of a check is not a valid explanation for the delay in certifying complainant's application. If Monahan desired an explanation for the delay, all he had to do was call complainant and ask him. However, he did not do so until after a lawyer contacted him. Then Monahan still did not send complainant's application to Personnel for certification. He ran a nationwide criminal record check first, not his office's usual practice. There is no evidence that any scrutiny of Baker's application was taking place at all until after complainant's lawyer contacted Monahan. Further, the only evidence on this point was that generally applications were not scrutinized until after certification, except for the brief review for completeness that Stickland would usually do before sending applications to Personnel.

The State offers that if an applicant were from another state, they would have to run a nationwide check in order to discover any criminal record existing in another state. The State ran two such checks on complainant, both "clean". Stickland testified that this was the first time that any national check had been done. Goodwin, Monahan's successor, has never run a nationwide check.

If we look at other employment applications submitted at or around that time, we see that the State is not consistent on this issue, however. Sabrina Curtis submitted an application on October 8, 1999, which was certified on October 20. She began work November 1, 1999. Ms. Curtis' application for employment shows that most of her prior employment was in

Maine, her last employment having ended in August 1999. The application indicates that the reason she left that position was : "moved to New Hampshire." (Respondent's Exhibit #2) Curtis was not subjected to a nationwide records check, even though she had resided outside New Hampshire for at least two and a half years prior to applying to the Court.

The Commission finds that the State's explanations for the delay in processing complainant's application are not credible. The Commission also finds based on all the evidence, that, more probably than not, the reason for the delay was complainant's race. The Commission is required to make a finding based on a preponderance of the evidence that it is given. Considering the evidence, the only conclusion the Commission can reach to explain the delay in sending complainant's application to Personnel for certification is it is more likely than not that Dezainde did not send it to Concord when he says he did. If he had, Baker's application would have been with the other applications certified on October 20, 1999.

In making this finding the Commission notes that it found the testimony of Dezainde regarding his handling of Baker's application inconsistent and not credible. While Dezainde testified on direct examination that he sent Baker's application to Monahan, on cross-examination he said he was "pretty sure" he did so. On direct, Dezainde said he had no conversation with Monahan about complainant's application until Monahan called one and one-half months later. Later in his cross-examination Dezainde testified that it was not unusual for him to call Monahan regarding other applications. When asked whether he would follow up when Baker called to ask about his application, Dezainde said he would follow up. He said he would call Monahan and that Monahan told him he was "still looking at it." When pressed at that point to say definitely what Monahan told him about Baker's application when he called, Dezainde said he didn't recall. Stickland recalled no calls from Dezainde regarding Baker's application.

Dezainde denied any discriminatory motive. However, bias is often subtle and those influenced by it are often not aware that they are acting on that basis. While admitting that he handed complainant's application back to him, Dezainde said it was incomplete and he checked all applications for that purpose. Another application submitted to him has no answer to the question whether the applicant has ever been convicted of a felony. Yet Dezainde accepted that application. (Complainant's Exhibit #11) This may be because the applicant is a high school student, however the application is incomplete without the answer, and Dezainde stated that he asked all applicants if they had ever been convicted, regardless of the answer on the application form.

Conclusion

The preponderance of evidence shows the respondent discriminated against the complainant, Jerry Baker, on the basis of his color/race in violation of NH RSA 354-A:7, I and II, by not affording his application the same treatment and consideration as applications of white persons during October, November, and December 1999. Had his application been

forwarded to Concord on time, he would have been certified. He was also subjected to two nationwide criminal background checks, even though the first check showed no record. No action was taken on complainant's application until a lawyer called to question its status. All this delayed complainant's application. Even then, although the evidence shows a position was open at Hillsborough County Superior Court North, Monahan placed complainant at a different court which was not even seeking personnel. Complainant was hired for fewer hours.

Award of Damages

Having determined that the respondent engaged in unlawful discriminatory practices, the Commission is authorized to order the respondent to pay damages to the complainant. RSA 354-A:21,II(d); E.D. Swett, Inc. v. New Hampshire Commission for Human Rights and Leonard Briscoe, 124 N.H. 404 (1983)

A. Lost Wages

The Commission finds that the complainant has suffered lost wages as a result of the discrimination by respondent. The parties stipulated to the amount of lost wages, should the respondent be found liable for discrimination in this case. That amount, which the Commission accepts, is \$3521.12.

B. Compensatory Damages

Respondent's differing treatment of his application caused the complainant embarrassment, frustration, and humiliation. He became angry and moody. The evidence shows that this lasted over a relatively short period of time and that there were no lasting effects on complainant's relationship with Lee. In addition, there is no evidence that complainant took additional medication or sought treatment for the sadness he felt over his unfair treatment. He liked and enjoyed the position he did get, and he was not affected in his ability to work.

Based on the above, the Commission orders respondent to pay the sum of \$15,000.00 to compensate the complainant.

C. The complainant has prevailed on his claim of race discrimination. The Commission may exercise its discretion to award attorney's fees to a complainant who prevails. The Commission orders the respondent to pay complainant's reasonable and necessary attorney's fees and costs incurred in connection with this charge. Complainant's counsel shall submit a detailed, itemized statement of fees and costs within 20 days of service of this Decision, and the commission will then issue a final order.

D. Complainant's Motion for Sanctions is denied.

Total Damages

Respondent is ordered to pay complainant the sum of \$18,521.12, plus interest on the amount of back pay in accordance with NH RSA 336:1. Loeffler v. Frank, 486 U.S. 549 (1988).

So Ordered.

6-4-02
Date



Maureen Raiche Manning, Esq.
Chair, for the Hearing Commission

Commissioner Arthur Hilson
Commissioner Nancy C.R. Allen

COMPLAINANT'S REQUESTED FINDINGS OF FACT AND
RULINGS OF LAW

A. Findings of Fact

1. Granted
2. Granted
3. Granted
4. Denied
5. through 30: Granted
31. Denied, the Commission adopts the parties' Stipulation as to Lost Wages
32. Denied, the Commission adopts the parties' Stipulation as to Lost Wages
33. Denied, no evidence
34. Granted, as follows: "The first step of the process of State of New Hampshire hiring after receipt of the application by the hiring office is certification of the application which means that the minimum standards have been met.
35. Granted
36. Granted
37. Granted, as follows: "There were 50 days between the date of Mr. Baker's application on October 14, 1999 and the date his application was certified on December 3, 1999.
38. Granted
39. Granted
40. Granted
41. Granted, as follows: "The length of time for the same period for Mr. Baker was 85 days."
42. Granted
43. Granted, as follows: "The State has **not proved** a valid non-discriminatory reason for the much greater length of time taken to act upon Mr. Baker's application compared to the applications of the Caucasian applicants and the failure to take any action upon it until after Mr. Baker retained an attorney."
44. through 47: Granted

Rulings of Law

- A. through G. Granted

COMPLAINANT'S SUPPLEMENTAL REQUEST FOR
FINDINGS OF FACT

48. Granted
49. Granted
50. Granted
51. Granted, as follows: "It was the responsibility of the Maintenance Mechanic for each courthouse to **assist in recruiting** qualified candidates for janitorial positions."

52. Granted

53. Granted, as follows: "In response to Complainant's phone calls about the inaction on his application, Mr. Dezainde testified that he may have called Mr. Monahan to determine the status of Complainant's application."

54. Granted, as follows: "Mr. Dezainde testified he has no recollection of what was said in that conversation."

55. Granted

56. Granted

57. Granted

58. Granted

59. Granted

60. Granted

RESPONDENT'S REQUESTED FINDINGS OF FACT AND RULINGS OF LAW

Findings of Fact

1. Granted

2. Granted

3. Denied

4. Denied

5. Granted

6. Denied

7. Not determined

8. Not determined

9(a) Not determined

9(b) Granted

10. Denied

11. Granted

12. Granted

13. Granted

14. Granted

15. Granted

16. Granted

17. Denied. See Parties Stipulation on Wages

Rulings of Law

1. Granted

2. Denied

3. Denied

4. Denied

5. Denied