

5/26/81

Reggie Brown
New Hampshire Commission for
Human Rights

and

P. F. Avery Corporation

FINDINGS
and
ORDER

#EC-1653-605-55
E.E.O.C. #011781908

I. Procedural Background

1. Complainant, Reggie Brown, a black male, filed a timely charge of race discrimination in employment against Respondent, P. F. Avery Corporation, with the New Hampshire Commission for Human Rights (NHCHR) and the United States Equal Employment Opportunity Commission (EEOC) on July 19, 1978. EEOC deferred processing of the charge to the NHCHR under the provisions of Section 706(c) of Title VII of the United States Civil Rights Act of 1964 as amended (42 USC § 2000 e et seq).
2. The charge was investigated and Commissioner Robert J. Normandeau made a Finding of Probable Cause on December 5, 1979.
3. As all attempts at conciliation failed, a Public Hearing was held on November 21, 1980, before Commissioners Ivorey Cobb, Gail Paine, and Nancy Richards-Stower.
4. The complaint was presented at Hearing by Berel Firestone, Executive Director of the NHCHR, under the provisions of RSA354-A:9. Complainant was represented by counsel, Charles Cross, Esq.; Respondent was represented by counsel, John W. Susen, Esq.
5. Commissioner Ivorey Cobb resigned from the NHCHR after the Hearing but before the briefs were received by the Commissioners. Commissioner Cobb took no part in this decision.

II. Findings of Fact

1. Respondent, P. F. Avery Corporation, is located in Newington, New Hampshire, and is in the business of producing reactor internals for nuclear systems. The hourly employees are represented by Local 651 of the International Brotherhood of Boiler Makers, Iron Shipbuilders, Blacksmiths, Forgers, and Helpers. A Collective Bargaining Agreement covers wages, hours, and working conditions. According to the Bargaining Agreement all new hires are given a 90 day probation. During this 90 day period a new employee's performance is evaluated, and the employee receives formal evaluations at 30 and 60 days.
 2. Complainant applied for the skilled position of fitter or setup man at P. F. Avery Corporation in late January or early February of 1978. He was interviewed by Mr. Joseph Dube who accepted the application and forwarded it to Mr. Michael Gauntlett, the plant superintendent. Mr. Gauntlett administered a written examination for this job to ten or eleven applicants including Complainant. Complainant received a score of 16 out of a possible 19 on this test. Some time after taking the test Complainant was hired as a setup man and he began work on February 27, 1978.
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3. Before being hired by P. F. Avery Corporation, Complainant had no experience as a setup man and Mr. Dube was aware of this fact. Complainant's test results further underscored this point; the questions he answered correctly were solvable by mathematical skills while the questions he answered incorrectly required specific knowledge of setup work.
4. At that time it was not unusual for Respondent to hire inexperienced setup men. Of 11 setup men hired in 1977 and 1978, 7 had no prior experience in that job.
5. Respondent had no formal training procedure, per se, for new hires whether experienced or inexperienced; however, on-the-job training was provided by matching up new employees with more experienced employees.
6. Complainant was the only black setup man employed by Respondent throughout his employment.
7. During Complainant's first 30 days on the job he was assigned to the first shift. His foreman was Richard Reilly. There was a shortage of setup work on the first shift during that time. Thus, when it came time for Foreman Reilly to rate complainant's performance, he wrote: "Due to shortage of setup work, unable to check complete capabilities." Yet Mr. Reilly rated Complainant's performance in the following categories as "good": productivity, quality, job knowledge, initiative, attitude and potential. Mr. Reilly further

noted that Complainant was a "willing worker." Also written on the performance evaluation sheet was the notation "elevate up to \$6.75," a recommendation to increase Complainant's pay. Thus Complainant successfully completed the first one third of his probationary period.

8. Apparently new hires are rotated among the three shifts during probationary periods allowing them to experience the different shifts and allowing senior workers the opportunity to move to more favorable shifts. Thus, at the end of his first 30 days on shift one, Complainant was transferred to shift three, and came to be under the supervision of Foreman David Bascomb.
9. Soon after, Complainant began to experience difficulty. Although Foreman Bascomb was aware of Complainant's lack of experience, Complainant was often assigned to work alone on setup jobs beyond his capabilities.
10. Other inexperienced setup men were as a rule assigned to work with more experienced employees. A white employee, James Parison (Complainant's roommate), was hired as a setup man shortly before Complainant. Parison had no prior setup experience. Parison testified that he was regularly assigned to work with several different experienced setup men and was not left alone to do jobs beyond his skills.

11. When Complainant was assigned to work with an experienced employee, it was most often with a man named Ivan Prebble. Prebble did not try to help the Complainant, and in fact interfered with Complainant's efforts to learn. Prebble made it clear from the beginning that he did not like working with the Complainant, and he said to Complainant, "I don't know how you got here, but I'm going to do all I can to get rid of you." Although Complainant did not report this remark, he did tell Foreman Bascomb that there were problems between himself and Prebble. Complainant then asked to be assigned to work with someone else. Instead of granting this request, Bascomb assigned Complainant to work with Prebble regularly from then on whenever Complainant was assigned to work with someone.
 12. Bascomb also scrutinized Complainant's performance very closely. Bascomb testified that he kept a record or "book" on the performance of probationary employees, and that his "book" on Complainant was 3 or 4 pages long. None of these records were produced at the Hearing, although notes described as an extract from Complainant's "book" were submitted. From these notes, it appears that Bascomb took more interest in documenting Complainant's shortcomings than in attempting to remedy them.
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13. Other new setup men were not so closely scrutinized. Parison testified that "no foreman kept close track of what I did" and that he and Gene Poire, another inexperienced, white setup man, "made at least as many or more dumb mistakes" as Complainant. However, only Complainant's mistakes were regularly noted.
 14. P. F. Avery's employees normally received a second performance evaluation after 60 days. Complainant never received this second evaluation. When Complainant asked Bascomb about this, Bascomb said he was delaying the evaluation because Complainant was not doing well. Bascomb said that he proposed to give Complainant more time to upgrade his performance before being evaluated.
 15. Complainant worked only about a week more after this discussion with Bascomb. During this week Complainant was assigned to work with Ivan Prebble on the job of "tube rolling." Complainant testified that this job was not a fair test of his ability as a setup man because it did not require as much skill as most other setup tasks.
 16. One other experienced employee with whom Complainant worked was Kenneth Landgraf, a white setup man. Landgraf testified at Hearing that he had worked with Complainant once (for one day or less) on a project called "setting up half shells." According to Landgraf, Complainant was a good worker once he had the proper guidance.
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17. On April 28, 1978, Complainant was fired for inadequate job performance after working 2 months without ever having received a second written evaluation.
 18. Respondent has several federal contracts; accordingly, it is required to prepare documents and statistics relating to its affirmative action policy and goals, and is subject to review by the U.S. Labor Department's Office of Federal Contract Compliance Programs (OFCCP). Such a review was conducted on April 25, 1978, only 3 days before Complainant was fired.
 19. The OFCCP report on this April 25 review was submitted at the Hearing. This report expressed concern about the number of minorities in skilled craft positions, but found P. F. Avery Corporation "in compliance." The report states specifically: "Goals met so far this year (as of 4/78) include a minority setup person (crafts)..." This statement refers to the Complainant, who started in February, and who was the only minority setup person hired by Respondent between March 21, 1977, and June 26, 1978.
 20. During Complainant's period of employment, graffiti of a pointedly offensive and racist nature were present and allowed to remain on the walls of the men's bathroom at P. F. Avery Corporation.
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21. Respondent's witnesses suggested at Hearing that Complainant was at fault because he did not seek help more aggressively during his probationary period. The Commission rejects this contention. Complainant was subjected to a hostile and unpleasant working atmosphere because of his race. He acted reasonably and attempted to complete his probationary period. It is apparent that further attempts to seek out help would have been fruitless.
22. It is determined from the evidence that Complainant was hired because he was needed as a minority statistic for OFCCP compliance purposes and was fired as soon as his statistic was no longer needed.

The Commission therefore FINDS that Respondent, P. F. Avery Corporation, discriminated against Complainant by failing to provide him with the same training provided to white employees and by terminating him because of his race.

III. Damages

1. After he was terminated by Respondent, Complainant was available for full time employment elsewhere from his date of termination, April 28, 1978, through August 1979 when he began part time studies (16 months). Assuming he would have stayed on with Respondent during that time with no pay increase, he would have earned \$19,200 ($\$7.50 \times 40 \text{ hours} \times 4 \text{ weeks} \times 16 \text{ months}$).
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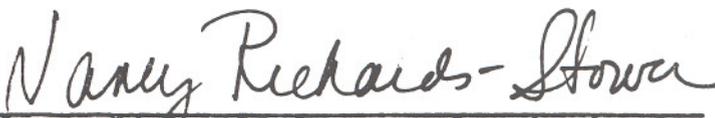
2. From September 1979 through August 1980, he was available for employment approximately 2/3 of the time. Had he worked for Respondent he would have earned during that time \$10,800 ($\$7.50 \text{ p/hour} \times 40 \text{ hours p/week} \times 4 \text{ weeks} \times 9 \text{ months}$).
3. From August 1980 through the Hearing date, Complainant was unavailable for employment as he pursued his studies full time.
4. Complainant testified that had he not been terminated he would not have returned to school, but rather would have stayed on at his job as it provided the kind of employment opportunity he now hoped to obtain after graduation.
5. Since his termination by Respondent, Complainant actually earned about \$17,000.
6. Complainant's calculable back pay would be \$13,000 ($\$19,200 \text{ plus } \$10,800 = \$30,000 \text{ minus } \$17,000 = \$13,000$).
7. As Complainant was subjected to an extremely humiliating experience of racial discrimination, above described, and by virtue of his use as a minority statistic for Respondent's affirmative action reports to the federal government, he is deserving of compensatory damages beyond his back pay award and his attorney's fees.

IV. Order

1. Respondent, P. F. Avery Corporation is ordered to pay the Complainant the amount of \$15,500, said amount representing \$13,000 in back pay and \$2,500 in compensatory damages.
2. The Attorney for the Complainant will supply the Commission and Respondent's Attorney with an itemized bill representing his attorney's fees and legitimate expenses in representing the Complainant to date. Upon approval by the Commission, Respondent will issue a check in like amount payable to the Attorney for the Complainant.
3. All awards contained in paragraphs 1 and 2 shall be paid by certified check, payable to Complainant for the award in paragraph 1, and to Charles Cross, Esq., for the award in paragraph 2, and forwarded to the Commission, 61 South Spring Street, Concord, New Hampshire, certified mail, return receipt requested.
4. Respondent is ordered to cleanse Complainant's personnel file of all performance evaluations and replace the same with a copy of these Findings and Order.

SO ORDERED.

A copy of these Findings and Order will be sent to the U.S. Labor Department Office of Contract Compliance Programs (OFCCP).



Nancy Richards-Stower, Commissioner



Gail F. Paine, Commissioner

STATE OF NEW HAMPSHIRE

Rockingham, ss.

Superior Court

April Term, 19

P. F. Avery Corporation

v.

New Hampshire Commission for Human Rights
and
Reggie Brown

MOTION TO FILE EXHIBITS

Now comes the petitioner and respectfully represents to this Honorable Court as follows:

(1) Commission's Exhibit C "Compliance Review Form Affirmative Action Plan" and the petitioner's Exhibit A "Union Agreement" are not contained within the transcript due to the size of the two exhibits and said original exhibits are in the possession of the Human Rights Commission.

(2) That the exhibits were not copied by the Commission with the transcript.

WHEREFORE, your petitioner requests additional time to obtain either the original or copies of the exhibits aforementioned to be filed with the Court, and for such other and further relief as justice and equity require.

Respectfully submitted,

P. F. AVERY CORPORATION

By Its Attorneys

BURNS, BRYANT, HINCHEY, COX & SHEA

By _____
Robert P. Shea

Reggie Brown)
New Hampshire Commission for)
Human Rights)

and)

P. F. Avery Corporation)
_____)

SUPPLEMENTARY ORDER

1. The itemized bill for attorney fees filed by complainant's attorney, Charles Cross, on June 8, 1981, is hereby approved.
2. Respondent P. F. Avery Corporation, is ordered to pay Attorney Charles Cross \$3,306 (Three thousand three hundred six dollars). This payment shall be made by check payable to Charles Cross and mailed certified, return receipt requested, to the Commission for Human Rights, 61 South Spring Street, Concord, NH 03301.

Nancy Richards Stower

Nancy Richards-Stower, Commissioner

Gail F. Paine

Gail F. Paine, Commissioner

July 30, 1981