

*closed 4/10/80*

Sherman C. Root )  
New Hampshire Commission for )  
Human Rights )  
and )  
Winchester Selectmen )  

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ORDER

Sitting Commissioners: Gail F. Paine, Acting Chairperson  
Commissioner Ivorey Cobb  
Commissioner James W. Donchess

Representing the Complainant: Douglas Green, Esquire, Keene, NH

Representing the Winchester Selectmen: Thomas Judd, Former  
Winchester Selectmen

Sherman C. Root was involved in an irreversible accident in 1968, resulting in a ruptured disc and subsequent operations, giving him a partial disability (handicap) as defined in RS354-A:3(13). The term "physical or mental handicap" means "handicap other than illness, unrelated to a person's ability to perform a particular job or position available to him for hire or promotion as long as the individual will not present a hazard to himself or other employees ---."

After a series of therapeutic treatments Complainant, with the assistance of the New Hampshire Division of Vocational Rehabilitation, established a taxi cab company in the Town of Winchester. In November 1976, in an effort to supplement his taxi cab income, Complainant applied for the position of a special police officer with the Winchester Police Department through the Winchester Selectmen, Respondent.

In testimony before the Commission, Complainant stated he had filled out the application for employment for Respondent, indicating in writing his handicap (Commission Exhibit C-5). In additional testimony, Complainant stated that on 13 April 1977 he signed a waiver at the request of Respondent's Town Counsel, absolving Respondent from any liabilities for his handicap or related injuries thereto (Commission Exhibit C-1).

In testimony before the Commission, William C. Ritchie, the then Chief of Police for Respondent, states that on 11 January 1977 he forwarded to the Respondent a recommendation for hire for two special police officers, including the Complainant, along with Complainant's application for employment. Complainant was sworn in for the position of special police officer for Respondent employer on 26 March 1977 with the understanding that he would receive approximately 20 hours of work per week at \$3.00 per hour. On 16 April 1977 Complainant received a letter from Respondent terminating his position as special police officer 18 April 1977. The Commission notes that Mr. Thomas Judd's signature was written for him by the then Chairman of the Respondent employer (Commission Exhibit C-2).

Complainant had by that time made an out-of-pocket expenditure of \$300 for a pistol, holster, and uniform.

Respondent offered no testimony on the record to subsequently disprove or refute Complainant's position that the letter of recommendation, as well as his application for employment, were received. In the testimony of Mr. William C. Ritchie, Complainant, with former police officer background, would have made an excellent addition to the Respondent's special police officer staff. Additional testimony from Mr. Ritchie was to the effect that no physical or mental examinations were required for the position of special police officer and that at no time was Complainant offered a physical examination.

No testimony on the record by the Respondent refutes or rebuts Complainant's position. Therefore, the Sitting Commissioners give credence to the testimony of the Complainant and find the Respondent in violation of RS354-A:8, I, which describes an unlawful discriminatory practice, "--- an employer because of age, sex, race, color, religious creed, national origin, marital status, or physical/mental handicap of any individual, to refuse employment or bar or discharge from employment such an individual ---."

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*Gail F. Paine*  
Gail F. Paine, Acting Chairperson

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*Ivory Cobb*  
Commissioner Ivory Cobb

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*James W. Donchess*  
Commissioner James W. Donchess

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Sherman C. Root )  
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AWARD

1. Respondent is Ordered to pay the Complainant \$3,416.40, arrived at in the following manner:

153 weeks (date of discharge to date of Hearing) @ \$3.00 per hour times 20 hours per week equals \$60.00 per week times 153 weeks equals \$9,180.00

Less C.E.T.A. income during like period of \$3.00 per hour times 40 hours per week times 52 weeks equals 6,240.00

Sub-total 2,940.00

Plus 6% interest 176.40

Sub-total \$3,116.40

Plus out-of-pocket expenses including pistol, holster, and uniform 300.00

Total - - - \$3,416.40

2. All awards contained in paragraph 1 are to be made payable to the Complainant and mailed certified, return receipt requested, to the New Hampshire Commission for Human Rights, 61 South Spring Street, Concord, New Hampshire.