

closed 8/16/78

James E. Connell)
New Hampshire Commission for)
Human Rights)
)
and)
)
Manchester Transit Authority)
_____)

DECISION

Sitting Commissioners, Paine, Rejimbai, Figueredo.

Finding for Connell, Commissioners Paine and Rejimbai.

Finding for Manchester Transit Authority, Commissioner Figueredo.

Complainant James E. Connell was employed as a bus operator by the Manchester Transit Authority (the Company) on February 14, 1973, was laid off June 1973, and reinstated to a position of bus operator April 22, 1974. During his employment Connell was an exemplary employee with no history of accidents. On October 2, 1976, Connell was involved in a hunting accident, resulting in loss of sight of left eye. Upon release by his physician, Connell applied for reinstatement as a bus operator with the Company. The Company refused the request, stating Connell constituted a safety risk and on November 15, 1976, transferred him to the Company's mechanical department with no loss of pay scale but at the bottom of the seniority track in the mechanical department. The Company made no effort to determine whether or not Connell was in fact a safety risk and on February 7, 1977, Connell filed a Charge of Discrimination with the Human Rights Commission, alleging discrimination because of handicap.

Public Hearing was held in this matter October 21, 1977, before the above noted Commissioners. At that time evidence was given to the effect that as part of Connell's duties in the Company's mechanical department, he has been, from time to time, required to drive busses on the streets of the City of Manchester and that such occasions have been without incident.

It is the opinion of Commissioners Paine and Rejimbak that Connell was not given a fair and reasonable opportunity by the Company to determine if he was qualified to drive, and therefore hold that the Company is in violation of NHRS354-A:8, I, in that it denied Connell conditions or privileges of employment based on his handicap without proving a bona fide occupational qualification.

Commissioner Figueredo, dissenting, holds that while the Company acted in an unfair manner toward Connell by relegating him to a position he neither wanted nor was trained for and one that to all intents and purposes was "dead-ended," feels Connell should not be in a position of a bus operator.

Remedy:

1. The Commission Orders that within thirty (30) days of this judgment Connell shall be given a series of reasonable professional tests, devised and conducted by a panel of qualified observers of no more than five (5) persons, of whom one shall represent the bus operators union, one shall represent management, and no more than three of whom shall be qualified outside observers. Such a panel will be subject to the Commission's approval.
2. Within fourteen (14) days of the time Connell has completed the above tests, the panel shall submit a complete report to the Commission.
3. In the event the panel finds Connell is qualified, he shall be reinstated with full rights and seniority to his former position of bus operator. The panel's decision shall be final and binding.
4. Before taking any adverse action against Connell, the Company shall submit in writing such action, its purpose, and its reasons, to the Commission in sufficient time as to allow the Commission to determine whether such action constitutes retaliation or harassment of Connell, in violation of NHRS354-A:8, VII.
5. The Company is ordered to pay reasonable attorney fees for the Complainant.

So Ordered.



Gail F. Paine
Chairperson

11/15/77