

done 7/11/23

Tamra Kennedy)
New Hampshire Commission for)
Human Rights)
)
and)
)
Great Northern Demolition and)
Salvage Company)
)
_____)

FINDINGS
and
ORDER

Docket Numbers
ES-2153-1053-623
EEOC #011813679

Findings - Kennedy v. Great Northern Demolition and Salvage Company,
#ES-2153-1053-623, EEOC #011813679

I. Procedural Background

1. Complainant Tamra L. Kennedy filed a timely charge of sex discrimination in employment against Respondent Great Northern Demolition and Salvage Company with the New Hampshire Commission for Human Rights (NHCHR) and the United States Equal Employment Opportunity Commission (EEOC), on August 10, 1981. EEOC deferred processing of the charge to the NHCHR under the provisions of Section 706(c) of the United States Civil Rights Act of 1964 as amended (42 USC § 2000-e et seq.).
2. Complainant filed an amendment to her charge, alleging sexual harassment, on September 8, 1981.
3. The amended charge was investigated and a Finding of Probable Cause was made by Commissioner Gail F. Paine.
4. Respondent failed totally to cooperate with the Commission's procedures for investigation and conciliation. No reply was made to the many attempts by Commission staff to contact Respondent for purposes of investigation and conciliation. Respondent replied to the Charge only at the Public Hearing, at which Respondent appeared 45 minutes late.
5. As all attempts at conciliation failed, a Public Hearing was held on April 11, 1983, before Hearing Commissioners Nancy Richards-Stower, Lionel W. Johnson, and Robert J. Normandeau.

II. Findings

1. Respondent Great Northern Demolition and Salvage Company (IIIrd Wrecking Corporation, Ernest J. Thibeault, Jr., President, d/b/a Great Northern Demolition and Salvage Company) is an employer within the meaning of RSA 354-A:8.
2. In the summer of 1981, Respondent was engaged in a demolition project at the Sacred Heart Hospital site in Manchester, New Hampshire.
3. Complainant Tamra L. Kennedy, who is female, applied to Respondent at that site for a job as a laborer on July 7, 1981. Respondent did not hire her as a laborer but offered her an office job, which she accepted. Complainant started work for Respondent in the office on July 8, 1981, and was terminated

- (3) on July 10, 1981, after approximately two-and-a-half days' work. She was paid \$3.50 per hour.
4. On or about July 9, 1981, a male applicant, Donald Marcotte, was hired by Respondent as a laborer and on or about July 10, 1981, another male applicant, Joseph Larkin, was also hired as a laborer.
5. All laborers were paid \$10.02 per hour.
6. Complainant alleges that Respondent refused to hire her as a laborer because of her sex.
7. Ernest Thibeault, President of IIIrd Wrecking, denies discrimination and replies that he hired only laborers with previous experience in demolition work and did not hire Complainant because she did not have demolition experience.
8. Respondent provided no documentation regarding the experience of applicants hired for laborer jobs. When Thibeault was questioned about the previous experience of Marcotte and Larkin, he stated that Marcotte had demolition experience but was unable to remember anything specific about Larkin's experience.
9. Thibeault's statement that he hired only applicants with previous demolition experience was specifically contradicted by his own testimony that he had hired an inexperienced minority male applicant.
10. Thibeault stated that the total number of people he employed at Sacred Heart Hospital during the entire course of the project was approximately 80, and that the maximum number employed at any one time was about 30. He stated he could not recall the qualifications of all the employees.
11. Respondent has never hired a female general laborer. Thibeault stated that no female had ever applied who was interested in and qualified for work as a general laborer in demolition.
12. Thibeault further stated that demolition work is very hazardous and that he would not allow his own daughters to do such work. He stated that his sons work for him on demolition projects and were brought up in the business.

13. Complainant had no specific demolition experience, but was experienced as a construction laborer and as a mason tender.
14. Clarence Labbe testified that he worked at the Sacred Heart Hospital demolition project in a joint venture with Respondent and that his responsibilities required him to oversee certain aspects of the project but did not involve him in the hiring or firing of employees. Labbe testified that no particular background or qualifications are necessary for a general laborer to work in demolition.
15. The Commission finds that Complainant applied for and was qualified for a job as a general laborer at Respondent's Sacred Heart Hospital project, that Respondent failed to hire her as a laborer, and that after failing to hire Complainant, Respondent hired at least two male laborers.
16. The Commission further finds that Respondent's stated reason for failure to hire Complainant as a laborer is a pretext for illegal discrimination on the basis of sex.
17. Therefore, the Commission FINDS that Respondent discriminated against Complainant by failing to hire her as a laborer because of her sex.

III: Damages

1. Donald Marcotte was hired by Respondent as a laborer on July 9, 1981, and was paid at a rate of \$10.02 per hour.
2. Respondent's Sacred Heart Hospital project continued until October 30, 1981, and terminated on that date.
3. Complainant was employed by Respondent during this period on July 9, 1981, and July 10, 1981, for a total of 11 hours at a rate of \$3.50 per hour and earned a total of \$38.50 for her work on those dates.
4. Complainant had no interim earnings and received no unemployment compensation for this period.
5. Complainant's calculable back pay for the period from July 9, 1981, to October 30, 1981, is \$6,534.62 (8 hours per day at \$10.02 per hour, minus \$38.50 actually paid to Complainant for work done on July 9 and 10).

6. Interest for the period from October 30, 1982, to June 16, 1983, calculated at a rate of 10% annual interest compounded daily, totals \$1,154.82.

IV: Order

1. Respondent is ORDERED to pay Complainant \$6,534.62 in back pay plus \$1,154.82 in interest, for a total of \$7,689.44. This payment shall be made by certified check payable to the Complainant and forwarded to the Commission at 61 South Spring Street, Concord, NH, 03301, by certified mail, return receipt requested, within thirty (30) days of the date Respondent receives this Order.
2. Respondent is further ORDERED to pay Complainant's attorney \$483.02 in attorney's fees and expenses. The payment shall be made by certified check payable to R. John Roy, and forwarded to the Commission in the same manner as the payment in paragraph one, within thirty (30) days of the date Respondent receives this Order.

SO ORDERED.

June 21, 1983
Date

Nancy Richards-Stower
Nancy Richards-Stower, Commissioner

6-27-1983
Date

Lionel W. Johnson
Lionel W. Johnson, Commissioner

6/16/83
Date

Robert J. Normandeau
Robert J. Normandeau, Commissioner