

FINDINGS OF FACT*

1. On or about March 17, 2006, Complainant, Sonjia Steiner-Westfall, (hereinafter "Steiner-Westfall"), filed a PHRC Complaint against Charlie O's Hardwood Grill and Lounge, in which Steiner-Westfall alleged sex-based unequal pay and a termination because she is a female. (N.T. 6).
2. On or about August 7, 2006, Steiner-Westfall amended her complaint to change the name of the Respondent to Danvic Management, Inc., d/b/a Charlie O's, (hereinafter "Charlie O's"). (N.T. 7).
3. Under cover letter date January 12, 2007, the PHRC's Pittsburgh regional office filed a Petition for Rule to Show Cause. (N.T. 7).
4. On January 18, 2007, PHRC Motions Commissioner David A. Alexander issued a Rule to Show Cause which, in effect, notified Charlie O's that it had until February 20, 2007 to file an answer to Steiner-Westfall's complaint. (N.T. 7).
5. Charlie O's did not file an answer. (N.T. 7).
6. On March 5, 2007, Motions Commissioner Alexander recommended to the full PHRC that Charlie O's be found liable for Steiner-Westfall's allegations. (N.T. 7).
7. By Order dated March 27, 2007, the PHRC found Charlie O's liable for unequal pay and terminating Steiner-Westfall because of her sex, female. (N.T. 5-6).
8. A public hearing on the issue of what, if any, damages are appropriate was held on August 23, 2007 in Greensburg, Pennsylvania.
- To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit

9. Steiner-Westfall began working for Charlie O's as a Line Cook in early November 2005. (N.T. 11).
10. Steiner-Westfall's wages were \$8.25 per hour. (N.T. 11).
11. Steiner-Westfall worked approximately 40 hours per week. (N.T. 12).
12. In Mid-December 2005, Steiner-Westfall's wages were increased to \$8.50 per hour. (N.T. 13).
13. In early January 2006, Charlie O's hired Greg Hess at the rate of \$14.00 per hour. (N.T. 12, 13).
14. In mid-January 2006, Charlie O's hired another male Line Cook, Drew Nemick, who was paid \$10.50 per hour. (N.T. 13).
15. On February 25, 2006, Charlie O's terminated Steiner-Westfall. (N.T. 15).
16. On February 28, 2006, Steiner-Westfall began working as a Line Person at Panera Bread earning \$8.50 per hour. (N.T. 16).
17. Steiner-Westfall worked approximately 30 to 40 hours a week for only two weeks with Panera Bread. (N.T. 16, 17).
18. In the beginning of March, 2006, Steiner-Westfall began working 40 hours a week as a Line Cook for Ladies Restaurant earning \$8.50 per hour. (N.T. 18).
19. In May 2007, Steiner-Westfall began working at Dingbats where she earned \$8.50 per hour to start. (N.T. 19).
20. On August 20, 2007, Steiner-Westfall received a raise to \$9.75 per hour at Dingbats. (N.T. 19, 21).
21. Steiner-Westfall incurred travel-expenses as she pursued her PHRC claim. (N.T. 20, 21).
22. Steiner-Westfall does not seek either reinstatement or front-pay. (N.T. 25, 26).

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission ("PHRC") may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, Charlie O's failure to answer or respond to a Rule to Show Cause resulted in the entry of a judgment for Steiner-Westfall on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. The Commission may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.

OPINION

This case arose on a complaint filed by Sonjia Steiner-Westfall, against Danvic Management, Inc., d/b/a Charlie O's. The Complainant's complaint alleged that Steiner-Westfall was not paid equally, and was terminated because of her sex, female. Steiner-Westfall's complaint states claims under Sections 5(a) of the Pennsylvania Human Relations Act ("PHRA").

Steiner-Westfall's verified complaint was filed on or about March 17, 2006, and was subsequently amended on or about August 7, 2006. By correspondence dated January 12, 2007, the Pennsylvania Human Relations Commission ("PHRC") Pittsburgh regional office petitioned Motions Commissioner Alexander for a Rule to Show Cause, indicating that Charlie O's had not answered Steiner-Westfall's complaint. The petition declared that Charlie O's had been served with the amended complaint on August 23, 2006. The petition further indicated that by letter dated October 12, 2006 an effort had been made to obtain an answer from Charlie O's.

On January 18, 2007, a Rule to Show Cause was issued, directing Charlie O's to respond on or before February 20, 2007. After no response was filed, on March 5, 2007, Motions Commissioner Alexander recommended a finding of liability to the full PHRC. On March 27, 2007, the full PHRC determined that Charlie O's paid Steiner-Westfall less than similarly situated male employees and on February 25, 2006 terminated Steiner-Westfall because of her sex, female.

After the finding of liability in this case, conciliation efforts were unsuccessfully attempted. Subsequently, this matter was approved for the public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held August 23, 2007, in Greensburg, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Diane Blancett-Maddock, PHRC Assistant Chief Counsel. Charlie O's failed to attend public hearing.

Since liability had been found after Charlie O's failed to file an answer, the only question at the public hearing was what damages Steiner-Westfall could establish.

Section 9(f) of the PHRA provides in pertinent part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to reimbursement of certifiable travel expenses in matters involving the complaint, hiring reinstatement...with or without back pay...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice...as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

The function of the remedy in employment discrimination cases is not to punish the Respondent, but simply to make a Complainant whole by returning the Complainant to the position in which she would have been, absent the discriminatory practice. See Albermarle Paper Co. v. Moody, 422 U.S. 405, 10 FEP Cases 1181 (1975); PHRC v. Alto-Reste Park Cemetery Association., 306 A.2d 881 (Pa. S. Ct. 1973).

The first aspect we must consider regarding making Steiner-Westfall whole is the issue of the extent of financial losses suffered. When complainants prove an economic

loss, back pay should be awarded absent special circumstances. See Walker v. Ford Motor Company, Inc., 684 F2d 1355, 29 FEP Cases 1259 (11th Cir. 1982). A proper basis for calculating lost earnings need not be mathematically precise but must simply be a “reasonable means to determine the amount [the complainant] would probably have earned...” PHRC v. Transit Casualty Insurance Co., 340 A.2d 624 (Pa. Commonwealth Ct. 1975), aff’d. 387 A.2d 58 (1978). Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. See Green v. USX Corp., 46 FEP Cases 720 (3rd Cir. 1988).

In this case, Steiner-Westfall’s claims involve two distinct periods: (1) while Steiner-Westfall was an employee of Charlie O’s and was paid unequal wages; and (2) loss of wages less interim earnings following her termination. Regarding the period of Westfall’s employment, the evidence reveals that in January 2006, two males were hired by Charlie O’s. One of these males was paid \$14.00 per hour and the other was paid \$10.50 per hour.

At the Public Hearing, the attorney representing the State’s interest in Steiner-Westfall’s complaint was asked what was her argument in this regard. She responded that it was her opinion that Steiner-Westfall’s damages with respect to her unequal pay claim should be calculated using the difference between her actual wages and \$12.25, the average of the two male co-workers hired in January 2006.

Using these figures, Steiner-Westfall is entitled to the following with respect to her unequal pay claim:

January 2006 – February 25, 2006
@ \$12.25 minus \$8.50 = \$3.75 per hour x
320 hours (8 weeks at 40 hours per week) = \$1,200.00

Following her termination, Steiner-Westfall has established that she made reasonable attempts to mitigate her damages. The evidence shows that only days after being terminated by Charlie O's, Steiner-Westfall began working as a Line Cook at Panera Bread for \$8.50 per hour for 30 to 40 hours per week. It appears that Steiner-Westfall held that job for only two weeks.

Had Steiner-Westfall remained at Charlie O's and been paid equal wages, she would have earned \$490.00 per week. (40 hour x \$12.25 per hour). Steiner-Westfall's wages while an employee for 2 weeks at Panera Bread were \$580.00. (C.E. 2). Accordingly, in that period, Steiner-Westfall lost \$400.00.

Next, Steiner-Westfall worked as a Line Cook from March 2006 to May 2007 for Ladies Restaurant. While there, she worked 40 hours a week at the rate of \$8.50 per hour. During this 14 month period, Steiner-Westfall's approximate lost earnings would be:

56 weeks @ 40 hours per week=

2,240 hours x \$3.75 (\$12.25 minus \$8.50)= \$8,400.00.

Beginning in May 2007 Steiner-Westfall next worked as a Line cook at Dingbats. Until August 20, 2007, Steiner-Westfall earned \$8.50 per hour and worked 40 hours a week. During that 15 week period, her approximate lost earnings would be:

15 weeks @ 40 hours per week =

600 hours x \$3.75 (12.25 minus \$8.50)= \$2,250.

From August 20, 2007 until the Public Hearing on August 23, 2007, Steiner-Westfall earned \$9.75 per hour for 3 days. Accordingly, her lost earnings for that period would be: 24 hours x \$2.50 (\$12.25 minus \$9.75) = \$60.00.

The total lost earnings are as follows:

January 2006 – February 25, 2006 Unequal Pay	\$ 1,200.00
Late February 2006 – March 2006	\$ 400.00
March 2006 – May 2007 -	\$ 8,400.00
May 2007 – August 20, 2007 -	\$ 2,250.00
August 20, 2007 – August 23, 2007	\$ <u>60.00</u>
TOTAL:	\$12,310.00

Because Steiner-Westfall does not seek either reinstatement or front pay, we turn to Steiner-Westfall's claim for certifiable travel expenses. Steiner-Westfall testified that she made three trips to Pittsburgh and one trip to Greensburg regarding matters involving her PHRC claims. Each trip to Pittsburgh entailed 40 miles round trip and the trip to Greensburg to attend the Public Hearing entailed 30 miles round trip. In total Steiner-Westfall traveled approximately 150 miles to pursue her claims. Accordingly, she is entitled to \$.49 per mile which equals an award of \$73.50 for certifiable travel expenses.

An appropriate order follows:

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

SONJIA STEINER-WESTFALL,
Complainant

v,

DANVIC MANAGEMENT, INC., d/b/a
CHARLIE O'S,
Respondent

PHRC CASE NO. 200505227
EEOC Charge No. 17FA661438

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, I find that Sonjia Steiner-Westfall suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, I further recommend issuance of the attached Final Order

PENNSYLVANIA HUMAN RELATIONS COMMISSION

September 5, 2007
Date

By:


Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

SONJIA STEINER-WESTFALL, :
Complainant :
 :
v, : PHRC CASE NO. 200505227
 : EEOC Charge No. 17FA661438
DANVIC MANAGEMENT, INC., d/b/a :
CHARLIE O'S, :
Respondent :

FINAL ORDER

AND NOW, this 26th day of September, 2007 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby.

ORDERS

1. That Charlie O's shall cease and desist from: (a) paying female Line Cooks less than male Line Cooks; (b) terminating employees because of their sex; and (c) failing to answer PHRC complaints against it.

2. That Charlie O's shall pay Steiner-Westfall the lump sum of \$12,310.00 which amount represents both unequal pay received by Steiner-Westfall in January and February 2005, and lost wages following Steiner-Westfall's termination.
3. That Charlie O's shall pay additional interest of 6% per annum on the back pay award calculated from January 2005 until payment is made.
4. That Charlie O's shall reimburse Steiner-Westfall \$73.50, which represents certifiable travel expenses incurred by Steiner-Westfall in matters involving her complaint.
5. That, within thirty days of the effective date of this Order, Charlie O's shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Diane Blancett-Maddock, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 11th Floor State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222-1210.

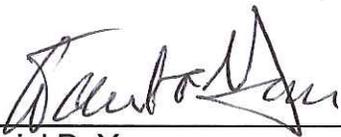
PENNSYLVANIA HUMAN RELATIONS COMMISSION

By:



Stephen A. Glassman
Chairperson

Attest:



Daniel D. Yun
Secretary