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**PROTHONOTARY**

January 26, 2023

**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**JOSE RIVERA II,<sup>1</sup>** :  
 :  
 : **PHRC CASE NO. 201803194**  
 **v.** : **EEOC CASE NO. 17F202060475**  
 :  
 **CHASE LOGISTICS, LLC,** :  
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**JOSE RIVERA II,** :  
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 : **PHRC CASE NO. 201903162**  
 **v.** :  
 :  
 **CHASE ECKERT,** :

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**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
OPINION  
RECOMMENDATION OF PERMANENT HEARING EXAMINER  
FINAL ORDER**

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<sup>1</sup> The Complaints identified the Complainant as Jose Rivera. However, at the Public Hearing, Complainant identified himself as Jose Rivera II. See Tr. 11.

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**FINDINGS OF FACT<sup>2</sup>**

1. Complainant is Jose Rivera II (Rivera). Tr. 1.
2. Respondents are Chase Logistics LLC and Chase Eckert. Tr.5.
3. Chase Eckert is the owner of Chase Logistics LLC. O.D.
4. Rivera was employed by Chase Logistics LLC from September 10, 2018, through January 23, 2019. O.D.
5. On or about April 18, 2019, Rivera dual filed a verified Complaint with the Pennsylvania Human Relations Commission (PHRC) and the Equal Employment Opportunity Commission (EEOC) at PHRC case number 201803194. O.D.
6. On or about April 18, 2019, Rivera filed a verified Complaint with the PHRC at case number, 201903162. O.D.
7. On or about May 5, 2020, Rivera filed Amended Complaints in both cases. O.D.

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<sup>2</sup> Abbreviations  
O.D. Official Document  
Tr. Hearing Transcript

8. The Complaint at PHRC Case No. 201803194/EEOC Charge No. 17F202060475 was amended to reflect the correct name of Respondent as Chase Logistics LLC. Tr. 6.

9. The Amended Complaints alleged that Rivera was subjected to ancestry-based harassment and was discharged in retaliation for complaining about the harassment. Tr. 8.

10. On May 25, 2021, the PHRC ordered a Finding of Probable Cause and Judgment for Rivera on the issue of liability in PHRC Case No. 201903162 based on Chase Eckert's failure to file an Answer to the Complaint. O.D.

11. Conciliation failed in PHRC Case No. 201903162 on July 7, 2021, because Chase Eckert declined to attend the conciliation conference. O.D.

12. On July 26, 2021, the PHRC ordered a Finding of Probable Cause and Judgment for Rivera on the issue of liability in PHRC Case No. 201803194/EEOC Charge No. 17F202060475 based on Chase Logistics LLC's failure to file an Answer to the Complaint. O.D.

13. These cases were consolidated when they were placed on the public hearing docket.

14. A pre-hearing conference was held on August 1, 2022, before Hearing Examiner Shanon S. Levin. Tr. 9.

15. At the pre-hearing conference, appearances were entered orally as follows: Stephanie Chapman, Esquire for Rivera and Alaine Grbach, Esquire for Respondents. *Id.*

16. During the pre-hearing conference, counsel for Respondents waived the right to an in-person hearing and agreed to a virtual hearing. *Id.*

17. A final pre-hearing conference was scheduled for October 26, 2022. *Id.*

18. Attorney Grbach failed to appear at the pre-hearing conference on October 26, 2022 and had not filed a written entry of appearance. Tr. 9.

19. On October 31, 2022, Attorney Grbach informed the Office of the Hearing Examiner via email that she would not be entering her appearance on behalf of Respondents. O.D.

20. The Office of the Hearing Examiner issued an Order on November 2, 2022, giving the Respondents until November 7, 2022, to object to having the hearing virtually. O.D.

21. The Office of the Hearing Examiner did not receive a response from Respondents.  
Tr. 10.

22. A Public Hearing was held virtually on November 9, 2022, before Hearing Examiner Darlene Hemerka. Tr. 1.

23. Although Respondents' received notice of the Public Hearing, they were not present at the Public Hearing.

24. Rivera earned \$20.00 an hour and usually worked approximately forty (40) to fifty (50) hours a week while working at Chase Logistics, LLC. Tr.11-2.

25. Rivera's last day of work for Respondents was on or about January 15, 2019. Tr. 11.

26. Rivera started working sometime in mid-April 2019 with a company called Selma and Company earning \$20.00 per hour. Tr. 14.

27. Rivera's position at Selma and Company was an on-call position and he worked approximately twenty-five (25) to thirty-five (35) hours per week. Tr. 14-5.

28. Rivera ended his employment with Selma and Company in the beginning of June 2019. Tr. 15.

29. Rivera was unemployed for two (2) weeks in June 2019. Tr. 16.

30. Rivera then worked for Chartwell Staffing for approximately two (2) months, earning \$18.00 per hour, working forty (40) hours per week. Tr. 16-7.

31. In August 2019, Rivera was employed by Frehling & Jennings as a yardjockey, earning \$22.00 per hour, working forty (40) hours per week. Tr.17-8.

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**PHRC CASE NO. 201903162**

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**CONCLUSIONS OF LAW**

1. The Pennsylvania Human Relations Commission (PHRC) has jurisdiction over Complainant, Respondents, and the subject matter of the Complaints under the Pennsylvania Human Relations Act (PHRA).
2. The parties and the PHRC have fully complied with the procedural prerequisites to convene a Public Hearing.
3. The PHRA requires the Commission to construe its provisions liberally.
4. The PHRC has broad discretion in fashioning a remedy and their actions are entitled to deference by a reviewing Court.
5. In an employment discrimination case, the PHRC may award affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the

complaint, compensation for loss of work in matters involving the complaint, hiring, and reinstatement.

6. The only limitation upon the Commission's authority is that its award may not seek to achieve ends other than the stated purposes of the Act.

7. The purposes are not only to restore the injured party to his pre-injury status and make him whole but also to discourage future discrimination.

8. The question of mitigation of damages lies within the sound discretion of the Commission.

9. It is the Respondents' burden to establish that the Complainant failed to mitigate his damages to limit a Complainant's entitlement to an award.

10. Rivera has established he is entitled to back pay.

11. Respondents' are entitled to an offset in the back pay amount for any wages Rivera earned after his discharge.

12. Rivera's damages in lost income representing back pay are approximately \$18,960.00 (\$28,800.00 - \$9,840.00).

13. The Commission has discretion to award pre-judgement interest on back pay awards.

14. Pennsylvania awards pre-judgement interest at a rate of 6%.

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**OPINION**

These consolidated cases arise out of Complaints filed by Jose Rivera II, (Rivera), against his former employer, Chase Logistics LLC, and Chase Eckert, owner of Chase Logistics, LLC (collectively Respondents). In the Complaints, Rivera alleged that Respondents subjected him to ancestry-based harassment. O.D. The Complaints also alleged that Respondents terminated Rivera in retaliation for

complaining about the harassment. *Id.*

Respondents failed to answer Rivera's Complaints and the PHRC found probable cause and entered judgment for Rivera on the issue of liability in both cases. O.D. After the findings of liability in these cases, conciliation efforts were unsuccessful. Subsequently, the cases were consolidated and approved for a public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held on November 9, 2022 before Permanent Hearing Examiner Darlene Hemerka. Tr 1. Stephanie Chapman, Esquire, appeared on behalf of the Commonwealth's interest in the Complaints. No one appeared on behalf of the Respondents. Since liability attached because Respondents failed to file Answers, the only question at the public hearing was what damages Rivera could establish. Rivera filed a post-hearing brief in December 2022.

The Pennsylvania Human Relations Commission (PHRC) has broad discretion in fashioning a remedy and its actions are entitled to deference by a reviewing Court. *Murphy v. Pa. Human Relations Comm'n*, 486 A.2d 388 (Pa. 1985). The PHRC may award actual damages including loss wages and reinstatement. 43 P.S. § 959(f)(1). The only limitation upon the Commission's authority is that its award may not seek to achieve ends other than the stated purposes of the Act. *Consol. Rail Corp. v. Pa. Human Relations Comm'n*, 582 A.2d 702, 708 (Pa. Commw. Ct. 1990). This purpose is not only to restore the injured party to his pre-injury status and make him whole but also to discourage future discrimination. *Williamsburg Cmty. Sch. Dist. v. Pa. Human Relations Comm'n*, 512 A.2d 1339 (Pa. Commw. Ct. 1986).

Here the PHRC found Respondents liable for harassment and retaliation. The only issue remaining in this case is a determination on damages. Rivera testified that he earned \$20.00 per hour and worked approximately forty (40) to fifty (50) hours per week. Tr. 11-12. Thus, Rivera averaged \$900.00 per week. Respondents failed to provide any evidence to establish a contradictory amount. On or about January 15, 2019, Respondents terminated Rivera. Approximately thirty-two (32) weeks elapsed between Respondents' termination of Rivera and him getting a comparable paying job. Therefore, Rivera is owed \$28,800 in unmitigated back pay.



It is the Respondents' burden to establish that the Complainant failed to mitigate his damages to limit Complainant's entitlement to an award. *Raya & Haig Hair Salon v. Pa. Human Relations Comm'n*, 915 A.2d 728, 735 (Pa. Commw. Ct. 2007). In the instant case, Respondents failed to introduce any evidence to establish that Rivera failed to mitigate his damages.

Notwithstanding, Respondents are entitled to an offset of all the wages Rivera earned after he was discharged. The wages offsetting the back pay award are as follows: In or around April 15, 2019, Rivera began working at Selma and Company. He worked at Selma and Company twenty-five (25) to thirty-five (35) hours per week making \$20.00 an hour until early June 2019. Tr. 15. Rivera earned approximately \$4,800.00. Rivera was then unemployed for approximately two weeks. Tr. 16. Rivera then worked at Chartwell Staffing beginning in mid-June for forty (40) hours per week at \$18.00 per hour. Tr. 17. He worked there approximately two months. Tr. 16. Rivera earned approximately \$5,040.00. Rivera next worked at Frehling and Jennings, a comparable job, earning more than with Respondents at \$22.00 an hour for a forty (40) hour work week. Tr. 17-8. Thus, Rivera earned approximately \$9,840.00 which Respondents are entitled to offset the back pay. With the offset, Rivera's back pay is \$18,960.00.

Rivera also requests pre-judgement interest on his back pay award. The Commission has discretion in awarding pre-judgment interest. Pre-judgment interest "serves to compensate a plaintiff for the loss of the use of money that [he] otherwise would have earned had [he] not been unjustly discharged." *Booker v. Taylor Milk Co., Inc.*, 64 F.3d 860, 868 (3d Cir.1995). Moreover, "[t]o fulfill this [make-whole] purpose, prejudgment interest should be 'given in response to considerations of fairness [and] denied when its exaction would be inequitable.'" *Id.* citing *Green v. USX Corp.*, 843 F.2d 1511, 1531 n. 16 (3d Cir.1988)).

In this case, the Hearing Examiner finds that Rivera is entitled to pre-judgement interest. Pennsylvania awards pre-judgement interest at a rate of 6%. *Diaz v. Saucon Valley Manor Inc. et al*, No.12-0433, 2013 WL 4564300 (E.D. Pa. Aug. 27, 2013). Rivera is entitled to \$1,137.60 in interest for a total award of \$20,097.60. A recommendation and order follow.

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**RECOMMENDATION OF THE PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Rivera has proven he was subjected to ancestry-based harassment and retaliated against in violation of the PHRA. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Permanent Hearing Examiner further recommends issuance of the attached Final Order.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

*Darlene Hemerka*

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**Darlene Hemerka Hearing Examiner**

Date 01/09/2023

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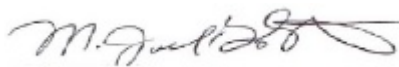
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**FINAL ORDER**


AND NOW, this 23rd day of January, 2023, upon consideration of the entire record in this matter, the Commission adopts the foregoing Proposed Findings of Fact Conclusions of Law and Opinion and hereby **ORDERS**

1. Respondents cease and desist from harassing employees based on their ancestry.
2. Respondents cease and desist from terminating employees who complain about harassment.
3. That each Respondent is jointly and severally liable for Rivera's damages and that within thirty (30) days of the effective date of this Order, Respondents shall pay Rivera the lump sum of \$20,097.60 in a check made payable to "Jose Rivera" delivered in care of Stephanie M. Chapman, Esq., at the Commission's Harrisburg Regional Office.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

By:   
\_\_\_\_\_ **M. Joel Bolstein**

ATTEST:

By:  O/B/O Commissioner Mayur Patel  
\_\_\_\_\_ **Mayur Patel, Secretary**