

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>JOHN H. HORTON,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>and</b>	)	<b>CHARGE NO: 2001CF0017</b>
	)	<b>EEOC NO: 21BA02534</b>
<b>UNIVERSAL DISTRIBUTION, INC.</b>	)	<b>ALS NO: 11638</b>
<b>d/b/a COBRA INTERNATIONAL, INC.,</b>	)	
<b>UNIVERAL EXPEDITED, f/k/a MUSTANG</b>	)	
<b>INTERNATIONAL, INC. and INDUSTRIAL</b>	)	
<b>STAFFING SERVICES, INC.,</b>	)	
	)	
<b>Respondents.</b>	)	

**RECOMMENDED ORDER AND DECISION**

Complainant, John Horton, filed a charge with the Illinois Department of Human Rights (IDHR) on July 11, 2000. The Charge alleged that he was laid-off by Respondents due to his race; black. Respondents failed to file a verified response to the charge. As a result, the IDHR found Respondents to be in default and filed a Petition for Hearing to Determine Complainant's Damages. On October 10, 2001, the Illinois Human Rights Commission entered an order of default against Respondents, Universal Distribution, Inc. d/b/a Cobra International, Inc., Universal Expedited, f/k/a Mustang International, Inc. and Industrial Staffing Services, Inc., and the matter was transmitted to the Administrative Law Section for hearing on the issue of damages and for further proceedings not inconsistent with the order. On October 22, 2001, the administrative law judge entered an order that was duly served upon the parties setting the matter for hearing on damages for December 3, 2001, at 9:30 a.m.

The matter was continued to June 6, 2002 for hearing on damages. On June 6, 2002, Complainant appeared personally and with counsel, while Respondent, Cobra International, Inc., appeared through counsel. No other Respondents appeared in this matter. A Public Hearing was held on the issue of damages. The transcript of the proceeding arrived and the Respondent filed a Post-Hearing Brief, while Complainant filed a Reply Brief on February 4, 2003. This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.).

### **FINDINGS OF FACT**

The facts marked with asterisks are facts which were alleged in the Department Charge. Those facts were admitted as a result of a finding of default against Respondent by the Department. The remaining facts are those which were proven by a preponderance of the evidence at the public hearing on this matter. Assertions made at the public hearing which are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Complainant is a male black.\*
2. Complainant filed a charge with the Illinois Department of Human Rights on July 11, 2000.\*
3. On October 10, 2001, the Illinois Human Rights Commission entered an order of default against Respondents.\*
4. Complainant was laid-off / discharged by Respondents due to this race; black.\*
5. On October 22, 2001, the administrative law judge entered an order setting the matter for hearing on damages on December 3, 2001, at 9:30 a.m.

6. The matter was continued to June 6, 2002 for hearing on damages. On June 6, 2002, Complainant appeared personally and with counsel, while Respondent, Cobra International, Inc., appeared through counsel. No other Respondents appeared in this matter. A Public Hearing was held on the issue of damages.

7. Complainant made \$10.75 an hour and worked 45 hours a week while with Respondents. Based on those figures, the weekly income for Complainant was \$483.75

8. Complainant was out of work for a period of 12 months (July 7, 2000 to July 7, 2002). The total amount of back pay based upon the weekly rate of \$483.75 for 52 weeks is \$25,155.00.

9. Complainant was paid at the hourly rate of \$7.00 per hour for a 40 hour work week at his new place of employment beginning in July of 2001 for a six month period. The differential in pay for Complainant was \$3.75 an hour, plus 5 hours at \$10.75 an hour for a weekly difference of \$203.75. The total amount of back pay differential for the six month period (26 weeks) is \$5,297.50.

10. Thereafter, Complainant was paid at the hourly rate of \$9.50 per hour for a 40 hour work week for a four month period. The differential in pay for Complainant was \$1.25 an hour, plus 5 hours at \$10.75 an hour for a weekly difference of \$103.75. The total amount of back pay differential for the six month period (26 weeks) is \$2,697.50. The total amount of back pay is \$33,150.00.

11. Complainant received \$600.00 a month for five and one-half months for unemployment, for a total of \$3,300.00. After deducting the unemployment benefits

received by Complainant from the back pay amount, the Complainant is entitled to \$29,850.00 for back pay.

12. Complainant's counsel, James T. Derico, Jr., worked 7.3 hours in this matter at a rate of \$250.00 per hour for a total of \$1,825.00.

13. Respondents failed to file an objection to Complainant's counsel's motion for attorneys' fees.

14. Respondents did not introduce any evidence to show that Complainant failed to mitigate his damages.

#### **CONCLUSION OF LAW**

1. Complainant is an “aggrieved party” and Respondents are “employers” as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B)(1)(c), respectively.

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. Because of the default order entered in this matter, Respondents have admitted the allegations of the Department Charge that Complainant was laid off / discharged by Respondents due to his race; black, in violation of Section 2-102(D) of the Act.

4. Complainant is entitled to the sum of \$29,815.00 for back pay.

5. Respondents have waived their right to contest any claim by Complainant for attorneys' fees.

6. Complainant is entitled to \$1,825.00 in attorney's fees.

7. Complainant is not entitled to any additional damages for violation of the Act.

### **DISCUSSION**

On October 10, 2001, a panel of the Human Rights Commission entered an order of default against Respondents. As a result, there are no liability issues to discuss. Only damages issues remain to be determined.

A complainant who has established that he lost his job in violation of the Human Rights Act is presumptively entitled to an award of back pay that will make him whole. Anderson and National Railroad Passenger Corp., 2 Ill. HRC Rep. 124 (1981). Since Complainant has proven unlawful retaliation, he is entitled to back wages. Complainant testified that he earned \$10.75 an hour while with Respondents. Respondents did not contest this amount. Therefore, the \$10.75 figure will be used to calculate back pay.

Complainant was laid-off / discharged as of July 7, 2000 by Respondents. Complainant was out of work for a period of 12 months (52 weeks) until he could find other employment making \$7.00 an hour for a 40 hour work week for a period of 6 months (26 weeks). For the 12 month period, Complainant lost \$25,155.00 in back pay, and lost \$5,297.00 for pay differential during the subsequent 6 month period of employment. Thereafter, Complainant began making \$9.50 an hour for a period of 4 months. The pay differential for the 4 month period is \$2,697.50. According to the above-calculations, the total sum of back pay is \$23,150.00.

While Complainant is required to make reasonable efforts to seek employment after his discharge, Respondents have the burden of proving that Complainant failed to mitigate his damages. ISS International Service System, Inc. v. Illinois Human Rights

Commission, 209 Ill.Dec. 414, 651 N.E.2d 592, 598 (Ill.App. 1<sup>st</sup> Dist. 1995). There was no showing that Complainant failed to mitigate his damages by not seeking other employment. Complainant did state that he received \$600.00 a month for five and one-half months for unemployment, which totaled \$3,300.00. This amount deducted from \$33,150.00 equals \$29,850.00, which is the amount which Complainant is entitled to for back pay. Because Complainant has to wait for the damages to which he is entitled, prejudgment interest is necessary to make Complainant whole. Such interest is recommended.

After a finding of liability against the Respondents, the Complainant is entitled to reasonable attorneys' fees and costs incurred in litigating the matter. 775 ILCS 5/8A-104(G). The purpose of the fee award is to provide an effective means of access to the judicial process to victims of civil rights violations who might not otherwise have the means to retain counsel. Clark and Champaign National Bank, Ill. HRC Rep. 193 (1982). In Clark, the Commission set forth guidelines to be considered in awarding attorneys' fees. Although the provision of the Act awarding attorneys' fees should be accorded liberal construction, the purpose of such awards is not to provide a windfall for prevailing attorneys. York and Al-Par Liquors, Ill. HRC Rep. (1986CF0627), June 29, 1995. The burden of proof for requesting attorneys' fees rests with the Complainant.

When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney and previous awards of attorneys' fees to counsel. Clark and Champaign National Bank, *supra*.

In this instance, an order was entered by the Commission on June 21, 2002 which

granted Respondents 21 days after service of the motion to respond to Complainant's motion for fees. The order specifically indicated that "failure to do so will be taken as evidence that Respondent does not contest the amount of such fees." Despite the order, Respondents have not filed any response to Complainant's motion for fees. As a result, Respondents have waived the issue of attorney's fees. Mazzamuro and Titan Security, \_\_\_ Ill. HRC Rep. \_\_\_, (1989CN3464, October 21, 1991). Upon review of Complainant's Attorney's motion for attorneys' fees, I find that under the factors spelled out in the Clark and York cases, that the hourly rate of \$250.00 to be reasonable, albeit the waiver. Taking into consideration the background of James T. Derico, Jr. and the hours that he spent in pursuit of this matter, I also find that the requested amount of \$1,825.00 to be reasonable.

In addition, Respondent should be ordered to clear Complainant's personnel records of reference to this case. Finally, Respondent should be ordered to cease and desist from further unlawful discrimination on the basis of age.

During the hearing, Complainant requested damages in the amount of \$30,000.00 for "Defendant's violation of the Civil Rights Act and Mr. Horton's civil rights." The Act allows for compensable and actual damages that relate to lost wages and emotional distress. The damages set forth by the Act encompasses the notion that the grant of any award is for the purpose of a violation of the Act, as well as Complainant's civil rights. As such, it would be redundant to grant the additional award prayed for by Complainant. Therefore, I find that Complainant is not entitled to an additional amount of \$30,000.00 for violation of the Act.

**RECOMMENDATION**

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

- A. Respondents pay to Complainant the sum of \$29,850.00 for lost back pay.
- B. Respondents pay to Complainant prejudgment interest on all amounts awarded, such interest to be calculated as set forth in 56 Ill. Admin. Code, Section 5300.1145;
- C. Respondents pay Complainant the amount of \$1,825.00 for attorneys' fees for Attorney James T. Derico, Jr.;
- D. Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;
- E. That Respondent be ordered to cease and desist from further acts of unlawful discrimination.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
NELSON E. PEREZ  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: