



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

E15-0418

March 11, 2016

Crystal R. Baker (Milo)

v.

McLaughlin Timber Trucking (Millinocket)
and
Jay McLaughlin (Millinocket)

I. Complainant's Complaint:

Complainant alleged that Respondents McLaughlin Timber Trucking and its owner, Jay McLaughlin, discriminated against her on the basis of sex by not paying her for hours worked, subjecting her to derogatory comments, and closely scrutinizing her work but not the work of male employees. Ms. Baker alleged that because of these intolerable conditions, she was forced to leave her position.

II. Respondents' Answer:

Respondents had notice of, but declined to provide any written response to, Complainant's allegations.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: February 15, 2015 through March 25, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 27, 2015.
- 3) Respondents have 15 or fewer employees. Respondents are subject to the Maine Human Rights Act ("MHRA") and state employment regulations.
- 4) Complainant is not represented by counsel. Respondents are represented by Walter F. McKee, Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

IV. Development of Facts:

- 1) The parties in this case are as follows:
 - a) Ms. Davis worked for McLaughlin Timber Trucking as a truck driver-class A vehicle from February 10, 2015 until March 17, 2015, when she was forced to resign.
 - b) Respondent McLaughlin Timber Trucking is a timber trucking company. Respondent Jay McLaughlin ("Owner") is the owner of McLaughlin Timber Trucking.
- 2) Complainant provides the following in support of her position:
 - a) Ms. Baker was the only woman on the job site.
 - b) On February 15, 2015, Respondents did not pay Ms. Baker for 15 out of 35 hours worked because she was being trained by another employee. Respondents also refused to pay Ms. Baker for three hours scheduled for that same day, because Owner wanted the truck she drove back at a certain time. The transport took longer than three hours, and Owner told Ms. Baker that he was paying other employees to wait for her to get to the garage.
 - c) After this, Ms. Baker was not paid for various reasons. For example, she was not paid one week because Owner did not send in paperwork required for the company itself to get paid. Owner also blamed the nonpayment on damage Ms. Baker had done to a part on a truck. Owner told Ms. Baker that he wanted Ms. Baker to put the claim for this damage through on her own insurance.
 - d) On two occasions, Ms. Baker was not paid because she got a truck stuck, which the Owner said was her fault. Owner also said that he did not owe her anything because of the truck with the broken part, which was her fault.
 - e) Male employees would say to Ms. Baker, "Get out of the truck and let [a male employee] do it"; "I don't wear a hard hat, but you really should, cause you might get hurt"; and "You can't really help work on the truck, I didn't expect you to know anything, so you should just clean it or something".
 - f) When employees were paid, Owner would ask male employees how many hours they had worked and pay them immediately. However, Owner wanted Ms. Baker to show and explain to him her exact duties performed. He would then ask her why it took her so long and state that he was not going to pay her for certain duties performed.
- 3) Although represented by counsel Respondents declined to provide any written response to Complainant's allegations.

V. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of

Complainant prevailing in a civil action.

- 2) The MHRA provides, in part, that it is unlawful employment discrimination to discriminate in the terms, conditions and privileges of employment on the basis of sex. 5 M.R.S. § 4572(1)(A).
- 3) Additionally, it is a violation of the MHRA if, although not formally terminated, an employee has no reasonable alternative to resignation because of intolerable working conditions. See *King v. Bangor Federal Credit Union*, 611 A.2d 80, 82 (Me. 1992). "The test is whether a reasonable person facing such unpleasant conditions would feel compelled to resign." *Id.* In addition, "an employee can be constructively discharged only if the underlying working conditions were themselves unlawful (i.e., discriminatory in some fashion)." *Sweeney v. West*, 149 F.3d 550, 557-558 (7th Cir. 1998).
- 4) In this case, Complainant alleged that she was discriminated against on the basis of sex in the terms and conditions of her employment, which led to her constructive discharge. Respondents did not provide a response to the allegations.
- 5) Because here there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). See *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 6) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that she (1) was a member of a protected class, (2) was qualified for the position she held, (3) suffered an adverse employment action, (4) in circumstances giving rise to an inference of discrimination. See *Harvey v. Mark*, 352 F. Supp. 2d 285, 288 (D.Conn. 2005). Cf. *Gillen v. Fallon Ambulance Serv.*, 283 F.3d 11, 30 (1st Cir. 2002).
- 7) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. See *Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. See *id.* Complainant's burden may be met either with affirmative evidence of pretext or by the strength of Complainant's evidence of unlawful discriminatory motive. See *City of Auburn*, 408 A.2d at 1262, 1267-68. In order to prevail, Complainant must show that she would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. See *City of Auburn*, 408 A.2d at 1268.
- 8) Here, Complainant has established a prima-facie case by showing that (1) she is female, (2) she was qualified for the position she held, (3) she was subject to less favorable terms and conditions (not paid for hours worked, subjected to derogatory comments, constructive discharge), (4) in circumstances giving rise to an inference of discrimination (male employees treated with more favorable terms and conditions).
- 9) Respondents have chosen not to respond or controvert any of the claims Complainant raised in her Commission complaint. Since Respondents have not refuted or in any way responded to the allegations contained in Complainant's sworn Commission complaint, all material facts in her complaint are presumed to be true, since it is reasonable to draw the presumption that Respondents would have provided exculpatory or explanatory evidence if any were available. In addition, the lack of response means that

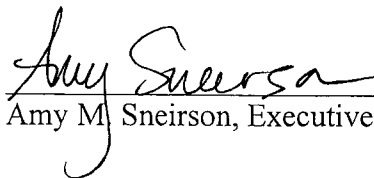
Respondents failed even to articulate legitimate, nondiscriminatory reasons for the adverse actions Complainant experienced.

- 10) Accordingly, it is found that Respondents subjected Complainant to less favorable terms and conditions of employment on the basis of sex, including by not paying her for hours worked while it paid male employees for all hours worked.
- 11) Complainant also has established that she was constructively discharged. Complainant was treated unfairly, subjected to heightened scrutiny of her work, was subjected to demeaning gender-based comments, and was not paid consistently for the work she did perform. Under the circumstances, a reasonable person would have felt that the working conditions were intolerable, compelling a resignation.
- 12) Unlawful sex discrimination, including constructive discharge, is found.

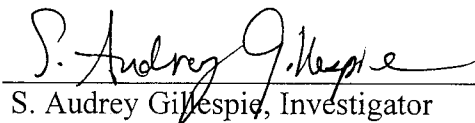
VI. Recommendation:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

1. There are **Reasonable Grounds** to believe that McLaughlin Timber Trucking and Jay McLaughlin discriminated against Crystal Baker on the basis of sex, including by constructively discharging her, and
2. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



S. Audrey Gillespie, Investigator