

STATE OF CD%  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Marilyn E.  
McClure, Commissioner, Department of  
Human Rights,

Complainant,

ORDER

V.

Inland Steel Mining Company,

Respondent.

On April 20, 1983, the undersigned Hearing examiner issued a final decision on this matter -which found that Respondent, Inland Steel mining had discriminated against the charging party, Timothy Johnson; on the basis of disability and awarded \$89,700.00 as compensatory damages with a right to employment. On May 23, 1983, Respondent concurrently filed a Petition for Judicial Review and a motion for Reconsideration of the calculation of compensatory damages. Felix T. Petrilli, Esq., Assistant Director of Corporate Health Services, Inland Steel Company, 30 West Monroe Street, Chicago, Illinois 60603, and Mark E. Levinger, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 551101, filed briefs on the Motion for Reconsideration on behalf of Respondent and Complainant, respectively, through August 4, 1983.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2 (1982), this Order is the final decision in this case and under Minn. Stat. 363.072 (1982), the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69 (1982).

STATEMENT OF ISSUES

The issues raised by Respondent in its Motion for Reconsideration which it contends should change the damage award are: (a) whether Timothy Johnson has

or 'had any desire to work for Inland Steel Mining Company; (b) whether Timothy Johnson made adequate efforts to mitigate his damages; (c) whether an off-set should be allowed for unemployment compensation received by Timothy Johnson,- (d) whether Respondent's offer of employment to Timothy Johnson prior to hearing should toll damages from that date; (e) whether Minn. stat.

OLPLWV UHFRYHU\ RI GDPDJHV I whether damages should have been tolled because of a continuance granted to complainant; and (g) whether interest on the compensatory damages from the date of loss calculated using the interest rates established pursuant to Minn. Stat. 549.09 was proper.

Based upon the record herein and the arguments of counsel, the Hearing examiner makes the following:

#### CONCLUSIONS

1. 'The Hearing examiner has jurisdiction over this matter pursuant to Minn. Stat.. 363.071 and 14.50 (19e2).

2. For the reasons set forth in the Memorandum below, the Hearing Examiner hereby amends Conclusion 10 contained in the April 20, 1983 Decision on this matter as follows: Timothy Johnson is entitled to compensatory damages in the amount of \$12,635.00 with interest computed at the rate of 6 percent per annum resulting in an award of \$16,191.00.

3. Conclusions 1 through 9 contained in the decision issued on April 20, 1983, are incorporated by reference herein.

Based upon the foregoing Conclusions, the Order issued on April 20, 1983, is amended as follows:

ORDER

IT IS HEREBY ORDERED:

1. Inland Steel Mining Company cease and desist from discriminating on the basis of disability in violation of Minn. Stat. 363.03, subd. 1(2)(a); and
2. Inland Steel Mining Company pay to Timothy Johnson the sum of \$16,191.00 as compensatory damages.

Dated: August 1983.

PETER C. ERICKSON  
Bearing Examiner

MEMORANDUM

The factual situation presented in this case resulted in a large damage award due to several factors. The charging party, Timothy Johnson, was unskilled at the time he applied for a general laborer job at Inland Steel. After his rejection he was unable to find similar employment elsewhere. Because of the economic condition of Minnesota and the country at that time, Johnson was and has been unable to find other employment to sufficiently offset what he would have earned if he had been employed by Inland because Respondent pays high wages when compared to most other employers (non-mining operation) in northern Minnesota. Finally, the hearing date on this matter was pushed back because of settlement negotiations and a continuance requested by the Complainant.

In the initial decision on this case, the Hearing Examiner awarded Johnson full compensatory damages up to the date of hearing, with interest, and a right to employment at Inland Steel Mining Company. In the initial set of briefs and in the briefs on this Motion, Respondent argued and continues to argue the issues delineated above. Those arguments were rejected by the Hearing Examiner when damages were initially calculated because of the language contained in Minn. Stat. (I" 363 and decisions of the Minnesota Supreme Court interpreting that language. Minn. Stat. 363.071, subd. 2 authorizes the Hearing Examiner to award compensatory damages, punitive damages, reinstatement to a job or hiring and

any other relief the examiner deems just and equitable. The Supreme Court

has interpreted this language to mean that the charging party is entitled to

'De placed in the same position as he/she would have been in if no discrimination-

tion 'had occurred. Brotherhood of Railway and Steamship Clerks v. Balfour,

303 Minn. 178, 229 N.W.2d 3 (1975). This standard has not been changed by the

Court and has been followed by the Office of Administrative Hearings in all

cases where discrimination has been found. State v. Reserve Mining Company\_

HR-80-017-PE (Decision Issued October 23, 1981),- State v. United States Steel

Corporation, HR-80-015-PE (Decision Issued April 1, 1982). Consequently,

Mr. Johnson was awarded compensatory back pay, with interest based upon the

applicable rate for the years in question, and a right to employment at Inland

Steel. The "make whole" standard was followed in this matter as the over-

riding principle to determine damages.

In a recent Order issued by the Minnesota Supreme Court, it was made clear

that the "make whole" policy is not an inflexible standard. Lamb v. Village

of Bagley, Finance and Commerce, Issue 28, July 15, 1983, page 27. In that

case, the Hearing Examiner initially- found no discrimination on the part of

Respondent, Village of Bagley. That decision was upheld by a three-judge

District Court Panel but reversed by the Supreme Court which remanded to the

District Court with instructions to:

. . . order the payment to Lamb of compensatory damages, Nanri.

Stat. 363.071, subd. 2 (1980, and equitable relief for employment discrimination, id. subd. 2(a), in the amount of \$905 plus interest, representing the difference between Lamb's salary of \$475 per month and two other officers' beginning salaries of \$540 per month for 12 months plus the promised clothing allowance of \$125. A reasonable attorney's fee should be awarded pursuant to Minn. Stat. 363.14, subd. 3 (1980).

Lamb v. Village of Bagley, 310 N.W.2d 508, 512 (Minn. 1981).1

On December 15, 1981, District Court issued an Order directing that:

. . . this matter is to be remanded to the Hearing examiner with instructions to order the payment to Lamb of compensatory damages, Minn. Stat. 363.071, subd. 2 (1980), and equitable relief for employment discrimination, id. subd. 2(a), in the amount of \$905 plus interest, representing the difference between Lamb's salary- (of 4475 per month and two other officers' beginning salaries of \$540 per month for 12 months plus the promised clothing allowance of \$125.

that a reasonable attorney's fee should be awarded pursuant to Minn. Stat. 363.14, subd. 3 (1980). The amount of such fee shall be set by the Hearing Examiner.

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that other relief that the Hearing Examiner deems appropriate be awarded.

The District Court's Order essentially duplicated what the Supreme Court had

said and added the "other relief" language contained in Minn. Stat. 363.071,

subd. 2.

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Joseph Lamb and the Department of Human Rights filed a joint petition

for clarification of the Supreme Court's language concerning relief to

Lamb because the Order seemed to limit compensatory damages to only a

12-month period rather than making Lamb "whole". The Petition was dated

October 5, 1981, and was denied by the Supreme Court.



Before the Hearing Examiner, the State and Joseph Lamb argued that the language used by the Supreme Court and District Court must be read to mean that Lamb should be "made whole" pursuant to the standard dictated in *One Court in Brotherhood*, supra. The respondent argued that the Supreme Court's Order should be read strictly, and that only the damages specifically enumerated could be awarded. The Hearing Examiner followed the policy set forth in *One Court in Brotherhood* and the more liberal Remand Order of the District Court and awarded compensatory damages with interest computed at the rates established pursuant to Minn. Stat. 549.09 (1980) for the years in question. This amount totaled \$37,500.00 in addition to the damages enumerated by the Supreme Court's Order. *Lamb and State v. Bagley*, HR-79-023-PE (Order Issued May 11, 1982).

This Order on damages was appealed to District Court which reversed, holding that the District Court's Order had been overly broad and that the Supreme Court's Order should be read narrowly. *Lamb and State v. Bagley*, Ninth Judicial District (Decision Issued November 15, 1982). This reversal was then appealed to the Supreme Court by Lamb and the State who argued that in order for *One Court in Brotherhood* and the language contained in Minn. Stat. 363.071, subd. 2 to be followed, the Hearing Examiner's award must be upheld. The Supreme Court affirmed the District Court pursuant to Rule 136.01(2) of the rules of Civil Appellate Procedure.2 although this ruling does not reverse *One Court in Brotherhood*, the Hearing Examiner does read it to mean that the "Make whole" policy may not always be the overriding standard for relief.

The record in this matter shows that Timothy Johnson applied for many jobs after his rejection by Inland Steel- during One late winter and spring of 1978. (See, Finding 9). Because of his lack of success in finding a job, Mr. Johnson and a friend decided to travel to California. On the way, he was able to become employed in Colorado through the urging of a friend. When that employment slowed, Johnson returned to his home state of Michigan where

,Johnson testified he "could not even look for other employment" because of a lack of transportation. (tr. 5, pp. 177-178). However, Johnson did become employed for a short period of time in late 1978 as a "skidder operator", but quit because of a disagreement over wages. Mr. Johnson's recollection of the jobs he had and the money he earned subsequent to 1978 was unclear. Mr. Johnson moved from job to job and had minimal earnings until late 1981 when he obtained full-time employment.

The Hearing Examiner has reconsidered the damage issue in this matter and determined that Mr. Johnson should recover compensatory damages, with interest, through the end of 1978. A new determination is based upon equitable

2 rule 136.01(2) reads: Summary Opinion. In any case decided under rule 133.01 or in any other case where the Supreme Court determines that a detailed opinion would have no precedential value, the Supreme Court in its discretion may enter the following summary opinion:

"Affirmed (or reversed or other appropriate direction for action), pursuant to Rule 136.01(2)." (Amended January 5, 1976).

principles, rather than the more rigid "make whole" standard used in the initial decision on the matter. The record shows that subsequent to 1978,

Johnson resided in Michigan and discontinued his regular job search for employment

similar to that at Inland Steel. Mr. Johnson could only estimate the amount of money he earned from infrequent employment, and supplied no documentation to support his guesswork.

The hearing date was continued at Complainant's request and Respondent offered to reconsider another application

from Johnson, which offer was refused. Because of the long period that has elapsed since this cause of action arose, the Hearing Examiner has not ordered

that Timothy Johnson be hired by Respondent with accumulated fringe benefits and seniority.

Respondent contends that no interest on the compensatory damages should be awarded in this matter.

In most civil matters, interest is not computed from the time of the loss. Rather, it is only added after a judgment is rendered up to the time the judgment is entered. Minn. Stat. 549.09 (1982). However, the Minnesota Supreme Court has authorized interest on a damage award from the date of loss when the damages are "readily ascertainable by computation or reference to generally recognized standards . . .". Potter v. Hartzell Propeller, Inc., 189 N.W.2d 499, 504 (Minn. 1971); Polaris Industries v. Plastics Inc., 299 N.W.2d 414 (Minn. 1980). In this matter, damages are readily ascertainable merely by subtracting the amount of income Timothy Johnson actually made during the time in question from the amount he would have earned if he had been employed by Inland Steel Mining Company.

The Hearing examiner has computed interest at the rate dictated by Minn. Stat. 334.01 (1982).

Respondent contends that Minn. Stat. 541.07(5) limits the period for recovery of damages herein to two years prior to the issuance of the complaint citing Brotherhood, supra. That statutory provision reads as follows:

541.07 two YEAR LIMITATIONS.

Except where the uniform commercial code otherwise prescribes, the following actions shall be commenced within two years:

(5) for the recovery of wages or over-time or damages, fees or penalties accruing under any federal or state law respecting the payment of wages or overtime or damages, fees or penalties. (The term "wages" means all remuneration for services or employment, including (commissions and (bonuses and the cash value of all remuneration in any medium other than cash, where the relationship of master and servant exists and the term "damages," means single, double, or treble damages, accorded by any statutory cause of action whatsoever and whether or not the relationship of master and servant exists);

The facts in Brotherhood involve discriminatory union settlement agreements which gave Black railroad employees union membership only at the price of pay reductions and lessened seniority rights. These agreements were negotiated in 1958 and 1960, however, the Court held that charges filed in 1966 were not barred by the six-month statutory limitation because of the continuing discriminatory impact upon the seniority system. The Hearing examiner

in that case had awarded compensatory damages to the charging parties back to the date when the union contracts were negotiated. In determining the appropriate extent of the back pay allowance, the Minnesota Supreme Court applied the two-year limitation period contained in Minn. Stat. 541.07(5) holding that the "back pay claims . . . must be limited to a period of two years prior to the date of the filing of . . . [t]he charges in 1966.'" 229 N.W.2d at 14.

Thus, the operative date for recovery of damages is the date the charge was filed, not the date the complaint was issued as Respondent argues.

Respondent also cites Richardson v. ISD No. 271, 297 Minn. 91, 210 N.W.2d 911 (1973) and Minnesota Mining and Manufacturing Company v. State by Wilson, 289 N.W.2d 396 (Minn. 1979), as support for its position. Those cases only dealt with the appropriate scope of a class action, however, not with the scope of relief afforded an individual claimant who filed a timely charge with the Minnesota Department of Human Rights.

In this matter, the charge alleging discrimination was filed by Timothy Johnson on March 23, 1978. Compensatory damages have been awarded from the date of Mr. Johnson's rejection from employment in February of 1978 for the remainder of that year. Although the Complaint herein was not issued until January 20, 1981, that date has no bearing on the recovery of damages.

Brotherhood, supra, The only period of limitation controlled by the Complaint is the scope of a class action. Richardson, supra; 3M, supra.

Respondent contends that tax withholding, social security and other mandatory employer deductions from gross wages should reduce the damage award herein. Mae Bearing Examiner is not, however, in a position to determine the amount of mandatory employer deductions. The record herein will not support such a determination. Consequently, the Respondent must act on its own behalf to comply with the requirements of both state and federal law.

Mae Conclusions and discussion above precludes a determination of several of the issues set forth above. Consequently, they have not been addressed.

Except as modified herein, the Memorandum contained in the April 20, 1983 decision is incorporated herein by reference.

P.C.E.