

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by
Irene Gomez-Bethke,
Commissioner, Department
of Human Rights,
Complainant,

FINDINGS OF FACT,
CONCLUSIONS OF LPN
AND ORDER

VS.

C & L Restaurant, Inc.,
Respondent.

The above-entitled matter is before State Hearing Examiner Jon L. Lunde

pursuant to a Complaint and a Notice and Order for Hearing issued by the Com-

missioner of the Minnesota Department of Human Rights on February 22, 1983,

copies of which were duly served upon the Respondent by certified mail as

appears from an Affidavit of Service on file herein. The record closed on

August 17, 1983.

On August 17, 1983, Complainant's counsel, Richard L. Varco, Jr., Special

Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota

Street, St. Paul, Minnesota 55101 filed an Affidavit of No Answer in this

case and requested that the Hearing Examiner enter judgment against the Re-

spondent due to its continuing default and its failure to enter an appearance

or answer the Complainant's Second Amended Complaint in this matter in accor-

(lance with the Hearing Examiner's Order of July 20, 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 I,, this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69 (1982).

STATEMENT OF ISSUE

The issue in this case is whether or not the Respondent discriminated against its female former employee, Cheryl E. McClellan, on the basis of 'her sex by condititaing 'her continued employment -upon the provision of sexual favors in violation of Minn. Stat. 363.03, subd. 1(2)(b)(c) and 7(1)(1980); and if so, the compensation or other damages, if any, that employee is entitled to receive.

B-based on all the files, records and proceedings herein, the Hearing Exam-
iner makes the following:

FINDINGS OF FACT

1. The original Notice and Order for Hearing scheduled the hearing in this case to be held on June 22, 1982, at the Office of Administrative Hearings in Minneapolis. On July 26, 1983, the same day that Notice and Order was filed with the Office of Administrative Hearings, the Hearing Examiner wrote to both parties rescheduling the hearing to commence at 9:00 a.m. on Monday, July 18, 1983, at a location to be designated by Complainant's counsel, Richard L. Varco, Jr.

2. On July 12, 1983 (Respondent's counsel notified the Respondent that the July 18 hearing would be held at the Office of Administrative Hearings in Minneapolis. On the same date, the Complainant served upon the Respondent an Amended Complaint, specifying the compensatory damages the Charging Party, Cheryl McClellan, claimed. That Amended Complaint was served upon the Respondent on July 14, 1983, as appears from an Affidavit of Service on file herein.

3. The Respondent failed to answer the initial Complaint in this case within the 20 day time period specified in Minn. Rule 108 and has failed to answer the Amended Complaint served on July 14.

4. That Respondent has not filed the Notice of Appearance required under 9 MCAR sec. 2.205, or appeared in any manner in this proceeding.

5. The Respondent failed to appear at the hearing scheduled on July 18, 1983, and made no request for a continuance or any other relief.

6. Due to the Respondent's default in appearance at the July 18, 1983, hearing, and as a result of the filing of the Complainant's Amended complaint less than 20 days prior to the scheduled hearing, and an ambiguity in the Amended Complaint filed, the Hearing Examiner ordered the following:

1. That the Complainant clarify by, an Amended Complaint the allegations contained in Paragraph No. 7 of its original Complaint, particularly the language in the second sentence which indicates that the Charging Party offered sexual favors to her employer in return for her bank, which allegation is inconsistent with those contained in Paragraphs 8 and 9, which indicate that the employer offered to let the employee keep her bank in return for sexual favors.

2. That the Amended Complaint be served on the Respondent by certified mail and that the Respondent be allowed 20 days in which to respond.
3. That if the Respondent fails to answer the Amended Complaint, the Complainant may move for a default judgment by filing an Affidavit of the filing of the Amended Complaint and an Affidavit of Default.
4. That if the Respondent remains in default and the Complainant requests a default judgment consistent with the terms of this Order, that its request for entry of a default judgment be accompanied by a brief memorandum containing citations to those authorities which support a finding of sexual harassment or constructive discharge under the allegations of the Complaint, as amended.

Copies of the Hearing Examiner's written Order of July 20, 1983, were served upon both parties by mail on July 21, 1983, as appears from an Affidavit of Service on file herein.

7. On July 22, 1983, the Complainant served a Second Amended Complaint upon the Respondent pursuant to the Hearing Examiner's Order, as appears from an Affidavit of Service on file herein.

8. That the Respondent has failed to answer the Complainant's Second Amended Complaint within the 20 day time period authorized in the Hearing Examiner's order and has failed to make any appearance or request for relief.

9. On August 17, 1983, the Respondent filed an Affidavit of No Answer and a request for the entry of a default judgment pursuant to the Hearing Examiner's Order of July 20, 1983. That request was accompanied by a brief Memorandum containing citations to the legal authorities Complainant relies upon.

10. The Notice and Order for Hearing in this matter provided, in part, as follows:

You are required by HumRts 108 to serve an Answer upon the Hearing Examiner and Complainant's attorney within 20 days after service of the Complaint upon you. If you intend to appear at the hearing, you are further required by 9 MCAR 2.205 to file a Notice of Appearance with the Hearing Examiner within 20 days after service of the Notice and Order for Hearing. Failure to answer the Complaint or to appear at the hearing shall be deemed an admission of the allegations of the Complaint.

11. The allegations in the Complainant's Complaint as amended by the

Second Amended Complaint are incorporated herein in their entirety.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the

following:

CONCLUSIONS

1. That the Complainant gave proper notice of the hearing in this matter

and 'has fulfilled all relevant, substantive and procedural requirements of law

and rule.

2. That the Hearing Examiner 'has jurisdiction herein and authority to

order the relief c

granted pursuant to Minn. Stat. 363.071, subs.

2 (1981

Supp.), Minn. Stat. 363.071, subd. 1(19e2), and 14.50 (1982).

3. That the Respondent, C & L Restaurant, Inc., is an employer as defined

in Minn. Stat. 363.01, subd. 15 (1980).

4. that under 9 MCAR 2.208, et default occurs when a party fails to

appear at a hearing or fails to comply with any interlocutory orders of the

Hearing Examiner.

5. That the Respondent, C & L. Restaurant, Inc., as a result of its

failure to appear in this matter after a repeated opportunity to do so, and as

a result of its failure to answer the Second Amended Complaint served upon it

by the Respoondent as required by the Hearing Examiner's Order of July, 20,

1983, is in default herein.

6. That under 9 MCAR 2.208, when a defect occurs, the all allegations or

issues set out in the Notice of and Order for Hearing, or other pleading may

be taken as true or deemed proved without further evidence.

7. That ene Complainant established a prime facie case of sex dis-

crimination resulting in the Respondent's conditioning of her continued

employment with it upon the provision of sexual favors to the Pespondent's

president, Stanley Lynn.

8. That the Respondent failed to rebut the Complainant's Prima facie case of sex discrimination established by the Complainant.

9. That the conditioning of a female employee's continued employment upon her submission to the sexual advances of the Respondent's chief executive officer violates the provisions of Minn. Stat. Q 363.03, subd. 1(2)(c)(1980), which prohibits an employer from discriminating against a person with respect to the terms of employment on the basis of sex.

10. That the Respondent's conditioning of its employees continued employment on that employee's submission to sexual requests; after objection by the employee violates Minn. Stat. 363.03, subd. 7(1)(1981 Supp.).

11. That as a result of the Respondent's discriminatory actions, the Charging Party, Cheryl McClellen, lost wages and tips of \$1,837.50 which she is entitled to recover with interest at 6 percent per annum from February 28, 1982 through August 1, 1983, in the amount of \$158.94.

12. That under Minn. Stat. 363.071, subd. 2 (1981 Supp.), the Hearing Examiner may order a Respondent to pay an aggrieved party who has suffered discrimination punitive damages in an amount not more than \$6,000. That under Minn. Stat. 549.20 (1978), the punitive damages properly awardable to the Charging Party are \$500. Five hundred dollars is appropriate to effectuate the purposes of the Minnesota Human Rights Act because the actions of the Respondent's president show a willful indifference to the Charging Party's right to employment free from sexual demands. In this case, the Respondent's president is clearly a managerial and executive employee who was acting within the scope of his employment when he conditioned the Charging Party's employment on her submission to his sexual demands, and punitive damages are properly assessable against the Respondent, itself, for his actions. Greater punitive damages should not be awarded because there was only one incident of harassment, the financial condition of the Respondent is unknown, and the compensatory damages the Charging Party suffered were not great.

Based on the foregoing Conclusions of Law, it is hereby Ordered:

1. That the Respondent pay to the Charging Party compensatory damages in the amount of \$1,837.50, plus interest in the amount of \$158.94.

2. That the Respondent Cease and Desist from discriminating against women employees by, conditioning their employment on their submission to the sexual advances of male employees.

3. That the Respondent pay the Charging Party the sum of \$500 as punitive damages.

Dated this 22nd day of August, 1983.

JON L. LUNDE
Hearing Examiner