

**BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA**

<u>Florence Fourstar,</u>	)	Human Rights Act Case No. 9501006588
Charging Party,	)	
versus	)	<i>Proposed Final Commission Decision</i>
<u>Virgil Williamson,</u>	)	
<u>Respondent.</u>	)	

**I. Procedure and Preliminary Matters**

Charging party filed a complaint with the Montana Human Rights Commission on August 17, 1994. She alleged the respondent discriminated against her on the basis of her sex (female) and in retaliation when he subjected her to a sexually hostile and offensive work environment and when she rejected his advances beginning on or about June 2, 1994 and continuing until her discharge on July 13, 1994.

On April 22, 1998, the Department of Labor and Industry gave notice Fourstar's complaint would proceed to a contested case hearing, and appointed Terry Spear as hearing examiner for the Commission. The department completed service of process on Williamson on October 21, 1998. Fourstar and Williamson agreed to postpone the hearing until summer 1999, due to Williamson's health problems.

The contested case hearing convened on May 12, 1999, in Billings, Montana. Florence Fourstar attended. Virgil Williamson attended. Neither party had counsel. Fourstar and Williamson testified under oath. Williamson offered Exhibit 1, a letter appearing to be from Robert L. Sternberg to Williamson. The hearing examiner refused the exhibit as hearsay.

**II. Issues**

The legal issue in this case is whether Fourstar proved that Williamson made sexual advances towards her and retaliated against her when she rebuffed him. A full statement of the issues appears in the final prehearing order.

**III. Findings of Fact**

1. The Montana Secretary of State's Office recorded the June 26, 1992, incorporation of Crow Electric Power Corporation (CEPC) under the laws of the state of Montana. The Secretary's office recorded the involuntary dissolution of Crow Electric Power Corporation on December 2, 1996. Administrative notice of the records of the Secretary of State.
2. Williamson volunteered to serve as secretary of CEPC. The Crow tribal government caused the incorporation of CEPC, as an entity to solicit the construction of power plants on the reservation. Williamson was able to find some funding for the corporation. He assisted in the selection of a Board of Directors, and became a director and Chairman of the Board. Testimony of Williamson.
3. The first goal of CEPC was to lobby for signatures for a tribal referendum on the issue of construction of a power plant. CEPC found some utility companies and investors interested in the power plant project should the referendum pass. Under the Crow Constitution, unless a referendum passed, no plant construction was possible. Testimony of Williamson.
4. With the funding available, Williamson opened a corporate office in Billings, Montana, and hired staff. To lobby the individual voters, CEPC spent money on the voters, targeting big families, influential tribal members and individuals. Testimony of Williamson.
5. CEPC hired Fourstar on June 2, 1994. Fourstar was not Crow, but her husband and children were. Testimony of Williamson.
6. During her employment with CEPC, Fourstar was frequently absent and frequently late. She asked for and received an advance against her wages during her first month. She was not familiar with some of the computer tasks within her job. Testimony of Williamson.
7. Williamson took Fourstar to lunch and offered her a gift (earrings) during her first week of work. At first, when she came in late or took a long lunch hour, Williamson was uncritical. When she had car problems, Williamson bought gas, got the vehicle started and helped her drive it home. Testimony of Fourstar.
8. Williamson took Fourstar with him from work to Wal-Mart to buy some office supplies. He bought her a watch costing over a hundred dollars and some laundry items. He asked if he could put money in her bank account, with the explanation that he could not keep the money in his account. She declined to deposit money in her account. She selected and accepted the watch, returning it to Wal-Mart for a refund within days. She kept the money. Testimony of Fourstar.

9. When CEPC obtained additional funding for its lobbying, Williamson hugged Fourstar and tried to kiss her. He began telling her about dreams he had that involved her. He told her he had fallen in love with her. He gave her two rings during June. When she came to his home to pick up her advance check, he gave it to her, and suggested that they could “do something later.” Testimony of Fourstar.

10. On June 20, 1994, Williamson approached Fourstar again, trying to hold her hand. She told him she had a male friend, and was not interested in a relationship with him. Testimony of Fourstar.

11. After June 20, 1994, Williamson began to criticize Fourstar for being late, taking long breaks, and failing to perform her job duties. He asked her about the watch, and she explained she had returned it for cash. He sent her home because he said there was not enough work. Testimony of Fourstar and Williamson.

12. Fourstar decided to quit. On July 13, 1994, she told Williamson she was disappointed that she could not perform her duties at a higher level of professionalism. He believed she was referring to her job performance, but she was talking about the problems she had with his behavior. Testimony of Fourstar and Williamson.

13. Fourstar found a temporary job working at the Sheraton in Billings, for 6-7 hours a day at minimum wage. She worked that job for 2 weeks, then suffered a work-related injury. She was unable to work until October, when she found a full-time rest home job at \$7.00 per hour on October 10, 1994. The rest home wages equaled her wages at CEPC. Testimony of Fourstar.

14. Williamson resigned his voluntary position with CEPC 4 months later. CEPC at that time became a tribal entity, and the investors began dealing with the Tribal Chairperson. CEPC lost its funding as a result. Williamson is now disabled, unemployed, and living in another state. Testimony of Williamson.

## IV. Opinion

### *Liability for Sexual Harassment*

Montana law prohibits sexual harassment in the workplace. Sexual harassment in the workplace is discrimination because of sex, an unlawful discriminatory practice. §49-2-303(1), MCA. An employer who targets an

employee for unwelcome sexual advances sufficiently abusive to alter the terms and conditions of employment creates a hostile working environment that violates the employee's right to be free from discrimination. *Vaino v. Brookshire*, 258 Mont. 273, 852 P.2d 596 (1993). "Employer" includes an agent of the employer. §49-2-201(8) MCA (1993). Williamson, an agent of CEPC, is an appropriate respondent in this case.

This case involves direct evidence of discrimination, through the testimony of Fourstar. Direct evidence is "proof which speaks directly to the issue, requiring no support by other evidence" and proves a fact without resort to inference or presumption. *Black's Law Dictionary* 413 (5th Ed. 1979). Unless the respondent presents sufficient proof to rebut its truth, direct evidence of discrimination establishes liability. *Blalock v. Metal Trades, Inc.*, 775 F.2d 703, 707 (6th Cir. 1985). In employment cases under the Montana Human Rights Act, direct evidence can relate both to respondent's particular conduct and to respondent's discriminatory intention. *Foxman v. MIADS*, HRC Case #8901003997 (June 29, 1992) (racial discrimination); *Edwards v. Western Energy*, HRC Case #AHP86-2885 (August 8, 1990) (disability discrimination); *Elliot v. City of Helena*, HRC Case #8701003108 (June 14, 1989) (age discrimination).

Williamson disputed Fourstar's testimony with his own testimony. He explained that his gifts and attention toward Fourstar were not sexual overtures, but part of CEPC's efforts to dispose tribal voters to favor the referendum. According to Williamson, he never sought sexual favors or attention from Fourstar. According to Williamson, Fourstar was a marginal employee at best, and quit because she he did not allow her to be routinely late for work, gone for part of the day, and not working during the time she was present. There were no other witnesses and no circumstantial evidence offered by either side. This case turns on the credibility of the parties.

Williamson was not credible. His explanations required rejection of Fourstar's testimony of his advances. According to Williamson, Fourstar misunderstood his motives and misread his actions. However, to accept his explanations, the hearing examiner must believe that Fourstar fabricated her accounts of Williamson's advances, rather than misunderstanding his motivations. His contention that she fabricated her accounts of his advances, failed to explain why he suddenly lost patience with her behavior at work, unchanged since she began. His explanations did not address the change in his attitude toward Fourstar after she rebuffed him. The coincidence that he ran out of patience with her at exactly the time she told him she had no interest in him is incredible. The more credible evidence supports the conclusion that he retaliated against her when she rebuffed his advances.

### *Damages*

Fourstar lost wages until she found the job at the rest home. However, the extent of damages is only the difference between her wages at CEPC and her wages at the Sheraton. Williamson is not responsible for the loss of the Sheraton wages due to the industrial injury at that job. In August of 1994, minimum wage was \$4.25. Thus, averaging 6.5 hours per day for 5 days a week, Fourstar had wages or imputed capacity for wages of \$138.13. Before she left CEPC, she earned \$280.00 per week. The difference is \$141.87 per week, for a period of 11.286 weeks, for a total of \$1,601.15.

Prejudgment interest is proper on past wages lost due to illegal discrimination. *P. W. Berry Co. v. Freese*, 239 Mont. 183, 779 P.2d 521, 523 (1989); *Foss v. J.B. Junk*, Case No. SE84-2345 (M.H.R.C., 1987). The interest calculation is strictly a matter of law. 10% per annum simple interest on \$1,601.15 from October 10, 1994, through August 2, 1999, is \$690.28, with interest accruing hereafter at 43.9 cents per day.

### *Affirmative Relief Is Unnecessary*

Williamson is no longer supervising employees. The evidence proves that he is never likely to be supervising employees in Montana again. No risk of any further violations of the Montana Act exist.

### **V. Conclusions of Law**

- 1 The Commission has jurisdiction over this case. §49-2-509(7) MCA.
- 2 Respondent Virgil Williamson unlawfully discriminated in employment against charging party Florence Fourstar when he subjected her to a sexually hostile and offensive work environment and retaliated when she rejected his advances beginning on June 2, 1994 and continuing until her discharge on July 13, 1994. §§49-2-301 and 303(a) MCA.
- 3 Florence Fourstar is entitled to the sum of \$1,601.15 for lost wages. Prejudgment interest through August 2, 1999 is \$690.28. Interest accrues hereafter at 43.9 cents per day. §49-2-506(1)(b) MCA
- 4 Affirmative relief is unnecessary in this case. §49-2-506(1)(a) MCA.

## **VI. Proposed Order**

### **VI**

1. Judgment is found in favor of Florence Fourstar and against Virgil Williamson on the charge of illegal discrimination in employment because of sex (female) and by retaliation.

2. Virgil Williamson must pay Florence Fourstar \$2,291.43, with interest accruing at 43.9 cents per day until payment of judgment.

Dated: July 23, 1999.

---

Terry Spear, Hearing Examiner for the  
Montana Human Rights Commission