

BEFORE THE HUMAN RIGHTS COMMISSION

OF THE STATE OF MONTANA

TAMELA VEZANE,)	
Charging Party,)	HRC CASE NO. 9801008262
)	
v.)	ORDER REGARDING
)	APPEAL OF FINAL
DAVIS PIPE & MACHINERY AND)	AGENCY ORDER
DAWSON GLAZIER,)	
Respondent.)	

This matter came before the Human Rights Commission, as scheduled on May 4, 1999, for consideration of the Respondent’s appeal from the Final Agency Decision in the above-captioned case. Commission member Evelyn Stevenson was not present. Oral argument, having been requested by the parties, was heard. Counsel for Charging Party, Richard Buley was present. Respondent, Dawson Glazier was present, as was his attorney, Julianne Hinchey.

Both counsel were given 30 minutes for oral argument. Following oral argument, the Commissioner questioned counsel for both parties regarding various points raised in argument. After those questions, oral argument was closed and the Commission thereafter began deliberations.

The Commission reviewed Respondent’s exceptions in the same general order as presented in the briefs. The Commission individually considered the exception to each factual finding, and ruled thereon:

1. Finding of Fact No. 5. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

2. Finding of Fact No. 6. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

3. [Respondent's Brief omitted specific exception No. 3. It is noted here in order that the remaining exceptions follow the numbering system used by Respondent.]

4. Finding of Fact No. 7. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

5. Finding of Fact No. 8. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

6. Finding of Fact No. 9. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

7. Finding of Fact No. 10. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party and Respondent, the Commission concluded that a portion of the finding was not supported by the record. The Commission voted 4-0 to modify Finding of Fact No. 10 to read as follows:

“Glazier interpreted the absence of active and direct discouragement as encouragement. He began overt flirtation with Vezane. He called her into his office when the two of them were alone to “play computer games” on the office computer. He went into the tiny coffee area when she was already there, to initial additional body contact.”

The Commission thereafter voted 4-0 to overrule the remaining portions of the exceptions to Finding of Fact No. 10.

8. Finding of Fact No. 11. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

9. Finding of Fact No. 12. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

10. Finding of Fact No. 13. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a

whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

11. Finding of Fact No. 14. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

12. Finding of Fact No. 15. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

13. Finding of Fact No. 16. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

14. Finding of Fact No. 17. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 3-1 to overrule the exception.

15. Finding of Fact No. 19. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party and Respondent, the Commission concluded that a portion of the finding was not supported by the record. The Commission voted 4-0 to modify and overrule Finding of Fact No. 19. Finding of Fact No. 19 was modified to read as follows:

“On or about February 21, 1997 Vezane terminated her employment with Davis Pipe & Machinery. Uncontested Facts. She believed she had no choice. The situation kept getting worse, to the point where she was afraid to go into work if she would be alone with Glazier. She was afraid to talk to her husband. Their joint decision in 1995 that she could handle Glazier was not true now – she could not handle him. She finally told her husband. Together it was time for her to quit. Testimony of Vezane.”

16. Finding of Fact No. 22. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

17. Finding of Fact No. 23. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a

whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

18. Finding of Fact No. 24. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 3-1 to overrule the exception.

19. Finding of Fact No. 26. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party and Respondent, the Commission concluded that a portion of the finding was not supported by the record. The Commission voted 4-0 to modify and overrule Finding of Fact No. 26. Finding of Fact No. 26 was modified to read as follows:

“Since quitting her job with Glazier, Vezane has called a couple of prospective employers for work. She also has looked through the local newspaper, and has been to Job Service and applied for unemployment insurance. She is still unemployed. Her ability to seek work has been substantially diminished by her emotional distress. She has very limited qualifications to find a job as suited to her as the position at Davis Pipe & Machinery. She and her husband would still be working for Glazier but for the incidents involved in this case. Testimony of Vezane.”

The Commission thereafter voted 4-0 to overrule the remaining portions of the exceptions to Finding of Fact No. 19.

20. Finding of Fact No. 27. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

21. Finding of Fact No. 28. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

22. Finding of Fact No. 29. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, the Commission concluded that the portion of the finding providing for damages in the amount of \$20,000 was inadequately supported by the record. The Commission agreed, however, that based on the record as a whole, that Vezane was entitled to recover for her emotional damages in the amount of \$10,000, and that the \$10,000 amount would be reflected in the Conclusions of Law and the Order. The Commission voted 4-0 to modify Finding of Fact No. 29 to read as follows:

“Vezane’s emotional distress entitles her to recover, apart from her lost wages and interest.”

23. Finding of Fact No. 30. Respondent argued that the finding was not supported by substantial, credible evidence. Following discussion, and based on a review of the record as a whole, with note of the citations to the record made by Charging Party, the Commission voted 4-0 to overrule the exception.

In addition, the Commission considered legal arguments made by the parties regarding the Conclusions of Law made by the Department’s hearing officer. The Commission reviewed the Conclusions of Law, and held as follows:

1. Conclusion of Law No. 1. Noting that neither party challenged the jurisdiction of the Department, the Commission voted 4-0 to affirm Conclusion of Law No. 1.

2. Conclusion of Law No. 2. Respondent argued that the sexual conduct was not unwelcome, and that workplace conditions were not so bad that Vezane’s termination of employment was reasonable and a constructive discharge from employment. In considering the briefs and arguments of the parties, and based upon the findings of fact (as modified by the Commission), the Commission concluded that the facts support the legal conclusions that Glazier’s conduct towards Vezane was unwelcome and unlawful sexual harassment, and that workplace conditions were such that the termination of Vezane’s employment was a constructive discharge. Accordingly, the Commission voted 4-0 to affirm Conclusion of Law No. 2.

3. Conclusion of Law No. 3. The Commission acted to separate the portions of the conclusion that provided for lost wages and interest from the portion that provided for damages for emotional distress. The Commission first considered Respondent’s arguments that Charging Party failed to mitigate her damages by not engaging in a reasonable work search. Upon consideration of the briefs and arguments of the parties, and upon review of the record as a whole and the findings of fact, the Commission concluded that Respondent failed to carry his burden of proving by a preponderance of the evidence that Charging Party had a duty to mitigate damages and that Charging Party’s actions were unreasonable. The Commission voted 4-0 to affirm the portion of Conclusion of Law No. 3 that awarded Charging Party lost wages and interest.

In considering Respondent’s arguments that the emotional damage award was improper, the Commission noted that Respondent admitted he engaged in sexual conduct with his employee, Charging Party. The Commission considered the arguments that Respondent made concerning other factors in Charging Party’s life that may have been a source of emotional stress. The Commission discussed how egregious Respondent’s behavior was in comparison to that suffered by other Montana victims of sexual harassment. In weighing the cases cited by the Department’s hearing officer, and the arguments of Respondent and Charging Party, and in light

of the facts and the record as a whole, the Commission voted 3-1 to modify the award of emotional damages provided by Conclusion of Law No. 3 to \$10,000.

4. Conclusion of Law No. 4. The Commission noted that no party had specifically challenged the conclusion that affirmative relief is necessary, and voted 4-0 to affirm Conclusion of Law No. 4.

5. Conclusion of Law No. 5. The Commission noted that no party had specifically challenged the conclusion that Charging Party was the prevailing party for purposes of 49-2-505(4), MCA , and voted 4-0 to affirm Conclusion of Law No. 5.

The Commission, following the above actions, voted 4-0 to modify paragraph 2 of the Order to reflect that Charging Party was to receive the sum of \$31,756.21, plus interest. The Commission also noted that paragraph 3 of the Order should reference Conclusion of Law No. 4, and voted 4-0 to make that correction of clerical error.

The Commission then voted 4-0 to affirm the Final Agency Order, as modified. The Final Commission Decision is attached to this order.

Dated this __ day of June, 1999.

Gloria "Patt" Etchart, Chair, Montana Human Rights Commission

A party may appeal from this order by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this order pursuant to Section 2-4-701, et seq., MCA.

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing **ORDER REGARDING APPEAL OF FINAL AGENCY ORDER** was mailed to the following by U.S. Mail, postage prepaid, on this ___ day of May, 1999.

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