

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0041011013:

LEAHTASSA OWEN,)	Case No. 1681-2005
)	
Charging Party,)	
)	
vs.)	FINAL AGENCY DECISION
)	
ON THE FLY, INC. (a/k/a STANLEY)	
STEEMER CARPET CLEANER),)	
)	
Respondent.)	

* * * * *

I. Procedure and Preliminary Matters

This matter stems from Leahtassa Owen’s complaint of age discrimination filed against On The Fly Carpet Cleaning (On The Fly) in April 2004. Initially, the Human Rights Bureau determined that there was no probable cause for the charge and issued a decision recommending dismissal. On appeal, the Human Rights Commission reversed the determination and remanded this matter for hearing.

Hearings Examiner Gregory L. Hanchett held a contested case hearing in this matter on July 18, 2005. Owen appeared and represented herself. John O’Dowd appeared on behalf of On The Fly. Owen, O’Dowd, and Peter Naclerio all testified under oath. Owen’s exhibits 1 and 5 through 16 were admitted into evidence. Exhibits 2, 3, and 4 were not admitted as they were hearsay. The respondent offered no exhibits. Based on the evidence adduced at the hearing, the following findings of fact, conclusions of law, and final agency decision are made in this matter.

II. Issue

Did On The Fly illegally discriminate against Owen on the basis of age when it laid her off from her part-time employment?

III. Findings of Fact

1. On The Fly employed Owen as a part-time carpet/upholstery cleaner for approximately 90 days beginning in the first part of August 2003. On The Fly laid Owen off on November 12, 2003. At the time of the lay off, O'Dowd told Owen that she was being laid off due to lack of work and financial distress that the company was undergoing. O'Dowd also told Owen that he would hire her back if additional work became available.

2. Indeed, On The Fly was suffering severe financial distress at the time. As a licensee of Stanley Steemer carpet cleaning, by the summer of 2003 On The Fly owed Stanley Steemer more than \$100,000. Stanley Steemer had started repossessing On The Fly's cleaning vans. By the summer of 2003, four of six On The Fly cleaning vans had been repossessed. Stanley Steemer was also in the process of filing law suits against On the Fly to collect the debt. In addition, On The Fly was paying copious amounts of attorneys' fees in order to defend against the lawsuits. Eventually, On The Fly ceased to exist as a business entity in Montana.

3. At the same time Owen was employed, On The Fly also employed five other part-time and three full-time employees. All of the part-time employees were laid off at about the same time as Owen, all for the same reason: lack of work and financial distress of the company. Only the employees were retained.

4. At the time of the lay off, Owen was 53. The exact age of the other part-time employees is uncertain, but it appears that they may have been younger than Owen, with some of the part-time employees being approximately 30 years of age.

IV. Opinion¹

The Human Rights Act bans age discrimination in employment unless age is reasonably related to the job demands. Mont. Code Ann. § 49-2-303(1)(a). Owen alleges that her lay off was based on impermissible considerations of age. Owen does not dispute that all of the part-time employees were laid off but contends that the younger workers were not laid off until a couple of months after she was. Owen did not present any credible direct evidence of discriminatory animus due to her age, so her claims are subject to the indirect evidence analysis.

¹ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Where there is no direct evidence of discrimination, Montana utilizes the three-tier standard of proof from *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, in reviewing age discrimination claims in the employment context. *Tonack v. Montana Bank of Billings* (1993), 258 Mont. 247, 854 P.2d 326. *See also, Clark v. Eagle Systems* (1996), 279 Mont. 279, 927 P.2d 995. Under the *McDonnell Douglas* analysis, the plaintiff must prove a prima facie case. Once the plaintiff has done so, the burden then shifts to the employer to demonstrate a legitimate, nondiscriminatory basis for its conduct. If the employer does this, the burden then shifts back to the plaintiff to show that the employer's reasons were merely pretextual. *McDonnell Douglas, supra*.

In *Clark*, the Montana Supreme Court, in reviewing the propriety of granting a motion for summary judgment for the respondent, noted that the plaintiff's prima facie case is established by showing that the plaintiff (1) is in a protected class, (2) performed his job in a satisfactory manner, (3) was discharged, and (4) was replaced by a substantially younger worker. *Clark, supra*, 279 Mont. at 286, 927 P.2d at 999. The *McDonnell Douglas* standard of proof, however, is flexible rather than rigid. The four elements are not woodenly applied to every claim, but instead adapt to the nature of the proof proffered.² Here, at a minimum, Owen must show that she is in a protected class, that she performed her job satisfactorily, that she was discharged, and that other similarly situated younger workers were not discharged.

It is on the last element that Owen's prima facie case fails. The testimony established that the part-time workers were all laid off at substantially the same time and for the same reason: lack of money. Thus, there is nothing to show that Owen was treated in a disparate fashion from any other part-time worker and Owen has failed to prove her prima facie case.

Even if Owen had proved a prima facie case, On The Fly showed a legitimate nondiscriminatory basis for laying her off. It stretches credulity to suggest that Owen's lay off was due to any reason other than the financial condition of On The Fly, much less to assert that illegal discrimination played any part in On The Fly's decision to lay Owen off. On The Fly's equipment was being repossessed, including its cleaning vans. On The Fly owed Stanley Steamer in excess of \$100,000.00 and was being sued for failure to pay those fees. On The Fly was paying large amounts of attorneys' fees to defend against the law suits. The lay off of the part-time employees was plainly and simply a cost saving measure.

² *Cf., Martinez, supra, citing Crawford v. Western Electric Company, Inc.* (5th Cir. 1980), 614 F.2d 1300 (fitting the first tier elements of *McDonnell Douglas* to the allegations and proof of the particular case).

Since On The Fly demonstrated legitimate, nondiscriminatory reasons for its actions, Owen had the opportunity to prove, by a preponderance of the evidence, that the legitimate reasons offered by On The Fly were only pretexts for illegal discrimination. *Hafner, supra* at 405, 886 P.2d at 953. This she failed to do. The reality of this case is that the business laid off Owen and the other part-time workers in order to cut costs. Owen's attempts to rebut the legitimate basis for the lay off were nothing but conjecture and speculation. On The Fly had no discriminatory animus in laying off Owen.

V. Conclusions of Law

1. The Department has jurisdiction. Mont. Code Ann. § 49-2-509(7).
2. On The Fly did not illegally discriminate against Owen on the basis of age when it laid Owen off.
3. Having found that On The Fly did not illegally discriminate against Owen, any issue regarding damages is moot.
4. Having found no illegal discrimination, this matter must be dismissed. Mont. Code Ann. § 49-2-507.

VI. Order

1. Judgment is found in favor of respondent On The Fly and against Leahtassa Owen on the charge that respondent discriminated against charging party on the basis of age.
2. The department dismisses the complaint.

Dated: September 14, 2005

/s/ GREGORY L. HANCHETT
Gregory L. Hanchett, Hearing Examiner
Montana Department of Labor and Industry

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