

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

FLORENCE TUCKER,

Charging Party,

-v-

ROSEBURG FOREST PRODUCTS,

Respondent.

Case No.: 0041010923

ORDER AFFIRMING
FINAL AGENCY DECISION

On June 14, 2005, the Department of Labor and Industry's Hearings Bureau issued a Final Agency Decision in the above-entitled matter. Charging Party, Florence Tucker, submitted objections and requested oral argument. The Commission considered the matter on September 14, 2005. Howard Toole appeared on behalf of Charging Party, Florence Tucker (Tucker). Maureen Lennon appeared on behalf of Respondent, Roseburg Forest Products (Roseburg).

At the hearing before the Commission, Tucker argued Roseburg arbitrarily enforced its policies. Tucker contended she was only given a verbal warning for a safety violation, whereas other younger employees were given formal written warnings. A written warning, Tucker noted, that was placed in her file unsigned. Tucker then asserted Roseburg failed to enforce its graduated disciplinary policy. Taken in light of numerous intimations by Roseburg employees that Tucker should consider retiring, it is Tucker's position that Roseburg's arbitrary enforcement of its policies reflected age discrimination.

In response, Roseburg contends that not everyone was rehired when it took over for Louisiana Pacific. Roseburg chose to hire Tucker at the age of 65 years of age and it fired Tucker at 65 years. Roseburg had no intention to discriminate against Tucker

based on age, rather it was concerned that Tucker would harm herself or others. In the hearings officer's decision, it is noted that Tucker's testimony is simply inconsistent throughout these proceedings.

In discussion, the Commission noted that a review of the transcripts confirmed the findings of the hearings officer that Tucker was perhaps cavalier in her attitude toward her employer's safety policies. After careful and due consideration, the Commission concludes that the Final Agency Decision in this matter is supported by substantial evidence and complies with the essential requirements of the law. *Admin. R. Mont. 24.9.1717(2)*.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office. *See Mont. Code Ann. § 2-4-702*.

IT IS HEREBY ORDERED that Charging Party's objections are overruled. The Commission **affirms** and adopts the Final Agency Decision issued by the Hearings Bureau.

DATED this ____ day of September 2005

Chair Franke Wilmer

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____day of September, 2005.

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