

BEFORE THE MONTANA
DEPARTMENT OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0048010982:

CHERYL BROCK,)	Case No. 921-2005
)	
Charging Party,)	
)	
vs.)	FINAL AGENCY DECISION
)	
RON MURI, d/b/a BILLINGS HOTEL and)	
CONVENTION CENTER,)	
)	
Respondent.)	

* * * * *

I. Procedure and Preliminary Matters

Cheryl Brock filed a human rights and an amended human rights complaint against Ron Muri d/b/a Billings Hotel and Convention Center (BHCC) alleging retaliation against her protected activity in violation of Montana Codes Annotated §49-1-102(1)(a) and §49-2-301. At the joint request and stipulation of the parties, jurisdiction in this matter was extended to permit the hearing to be held beyond the 12 month jurisdictional limit prescribed in Montana Code Annotated § 49-2-509.

Hearings Examiner Gregory L. Hanchett held a contested case hearing in this matter on September 27 and November 10 and 11, 2005 in Billings, Montana. Robert L. Stephens, Jr., Southside Law Center, represented Cheryl Brock, and Shawn P. Cosgrove, Parker Heitz & Cosgrove PLLC, represented Ron Muri, d/b/a Billings Hotel and Convention Center. Brock, Todd Yeager, Robbie Jorgensen, Cy Clark, Angela Arnold, Denise Boone, Becky Kilwein, and Cheri Milne all testified under oath. Exhibits 1 through 10, 11(Bates Stamped page 00025 only), 15, 17, 31 a, 31d, 31e, 32, 33, and 34 were admitted into evidence.

The parties asked for and were granted extended time in which to file closing briefs, with the last brief being filed on April 20, 2006. Based on the arguments and

evidence adduced at hearing as well as the parties' post-hearing briefing, the hearing examiner makes the following findings of fact, conclusions of law, and final agency decision.

II. Issues

A complete statement of issues appears in the final prehearing order issued in this matter on September 23, 2005. That statement of issues is incorporated here as if fully set forth.

III. Findings of Fact

1. BHCC employed Brock as a cocktail waitress and then as a bartender, from August 2001 through July 8, 2004, when she was ostensibly terminated for a second violation of the employer's employee meal policy. Prior to her termination, she had been considered a good employee and her immediate bar supervisor, Todd Yeager, testified that she was one of the best employees working the bar area for the Billings Hotel and Convention Center (BHCC).

2. At all times relevant to this case, Ron Muri was one of the owners of the BHCC, and had general supervisory authority over the operations of the BHCC business, but delegated the day-to-day matters to the general manager, which included delegation of supervision and direction of employees.

3. Prior to Brock's termination, there had been a number of issues and complaints regarding Muri's harassment of female employees in the bar, both cocktail waitresses and bartenders. Muri's conduct resulted in Brock's co-worker, Erica Kindsfather, filing a Human Rights complaint with the Montana Human Rights Bureau alleging Muri subjected her to sexual harassment and a hostile work environment. On November 24, 2003, Brock provided a written statement to the Montana Human Rights Bureau supporting and corroborating Kindsfather's complaint of sexual harassment. The Human Rights Bureau provided a copy of Brock's statement to BHCC on January 20, 2004. On January 28, 2004, a Human Rights Bureau investigator interviewed Brock regarding Kindsfather's claims.

4. As part of her duties as a bartender, BHCC required Brock to maintain her own till, count out the cash till, and account for monies received during the course of her shift. It was not unusual to have small overages or shortages, and during the busier shifts, this was commonplace. On February 28, 2004, Brock was

selectively written up for asserted persistent overages and shortages of the till in the bar at BHCC. Prior to Brock's writeup, no other bar employee had been disciplined or written up for bar overages and shortages.

5. After the Kindsfather complaint and after BHCC became aware of Brocks' written statement in support of Kindsfather's Human Rights allegations, Muri's attitude toward Brock changed. He became exceedingly angry at Brock and upset about the allegations. Muri expressed his anger to Todd Yeager, bar manager and Brock's direct supervisor, about Kindsfather's complaint and Brock's statement in support of the complaint. Muri specifically told Yeager "I want those bitches out of here." On more than one occasion, Muri told BHCC employees that he would "bury" Kindsfather and Brock. (Yeager testimony).

6. Muri repeatedly sexually harassed female employees and created an environment at BHCC that was offensive to the female employees during this time period. Muri's conduct toward female employees was so offensive that it generated complaints not only from the female employees but also the male employees as well. In fact, in order to protect female employees, Bar Manager Todd Yeager had to take special measures to make certain that Muri would not be left alone with the female employees. Yeager also took precautions to make sure he was present at the end of shift to intercede on behalf of his female workers to prevent unwanted comments and attention from Mr. Muri.

7. These concerns and complaints were communicated directly to the general manager, Cheri Milne, who then apprised Muri of the complaints regarding his conduct. As a result, management devised a plan to keep Muri out of the bar area when either Kindsfather or Brock were scheduled to work.

8. Brock had been scheduled to work the bar on March 5, 2004. Prior to the beginning of Brock's shift, Milne informed Yeager that Muri planned to be in the bar that evening and Muri did not want to see either Brock or Kindsfather working. As a consequence, Yeager contacted Brock and cancelled her shift. Yeager had to call in a former employee to cover Brock's scheduled shift. Muri cancelled Brock's shift because he was upset at Brock for supporting Kindsfather's HRC complaint.

9. Brock filed a complaint with the Human Rights Bureau on March 29, 2004, alleging that the March 5, 2004 incident was retaliatory. Notice of the retaliation charge was given to BHCC.

10. On May 12, 2004, after being notified about Brock's human rights complaint, Muri confronted Brock about her complaint while Brock was working a shift in the bar. Muri, who was intoxicated, uttered offensive verbalizations and exhibited somewhat threatening behavior toward Brock. Muir could not understand why Brock had filed her own complaint against him. He vowed to fight her all the way to the "supreme court." Indeed, at one point Muri said that he would "bury" Brock.

11. There was clearly a hostile atmosphere at BHCC, and Muri's hostility toward Brock and Kindsfather was well known to everyone working at BHCC.

12. On June 4, 2004, Brock was written up for a violation of BHCC's employee food policy. The violation had occurred more than two weeks earlier on May 20, 2004. Inexplicably (and with no fault on Brock's part), management delayed advising Brock of the violation for more than two weeks.

13. The policy, which had been basically inherited from the predecessor operators of BHCC, allowed employees to have a meal from a specific employee meal list. Later on, a special employee meal was prepared and kept in a warmer in the kitchen. Originally, employees could simply request an employee meal and if none was available, they could have a meal prepared from the employee meal list.

14. Subsequently, the employer provided a notice of change of policy that meals were to be prepaid if they were going to be ordered off the restaurant menu, and that employees were to write up a ticket in advance of requesting an employee meal. The change in policy was not particularly clear. Nevertheless, Brock was written up for failure to follow proper procedures on June 4, 2004 in connection with paying for a meal that she ordered from the kitchen. Although the policy, and the memo implementing the same, said that either any cook preparing food or employee requesting food without a ticket would be terminated immediately, no disciplinary action was taken against the cook, and a warning was issued to Brock.

15. The write up concerned Yeager because he thought it was just a pretext in gearing up to fire Brock in retaliation for participating in Kindsfather's human rights complaint and for filing her own complaint. Yeager characterized Brock as an "excellent employee." Yeager talked to Brock about making certain that she did nothing to bring attention to herself that could result in possible further writeups which would lead to her termination. Brock took his advice and was careful not to

engage in any conduct that would provide BHCC a legitimate basis for terminating her.

16. On July 1, 2004, Brock was working in the bar alone. At approximately 9:50 p.m. she called the kitchen for an employee meal and was told that the employee meals had already been thrown out. Brock asked for something to eat and a kitchen employee brought her a sandwich.

17. Brock was not attempting to and did not intend to order off of the restaurant menu. Instead, in conformity with what she understandably thought the employee menu policy meant, she had called and asked the cook to prepare an employee meal.

18. Muri was apparently in the kitchen area. Muri told the employee who delivered the sandwich to Brock to tell Brock that she would have to pay for the meal even though she did not order the meal off of the restaurant menu. When the employee told Brock that Muri had said she must pay for the meal, Brock asked that it be returned to the kitchen. She made this request because she understood, in conformity with past practice, that she was entitled to an employee meal and she had not ordered off the restaurant menu but had merely asked for an employee meal.

19. On July 8, 2004, Muri and BHCC discharged Brock from her job for failure to pay for the employee meal on July 1, 2004.

20. BHCC cut Brock's hours on March 5, 2004 and then discharged her in retaliation for her statement supporting Kindsfather in Kindsfather's human rights complaint. The write ups for the till shortage and the alleged improper ordering of food were pretextual, are not credible, and do not present a legitimate basis for Brock's termination.

21. After Brock's discharge, she pursued other employment avenues, including potential employment in Great Falls, which did not work out. She contacted Job Service and interviewed with a number of prospective employers, and was ultimately hired at the Northern Hotel as a bartender, a position comparable to the position she had held at BHCC.

22. Brock was unable despite diligent efforts to secure alternative employment with a new employer (the Northern Hotel) until September 13, 2004, a

period of nine weeks. Actual loss of wages for the period of Brock's unemployment is \$5,850.00 (9 weeks x \$675.00=\$5,850.00).

23. Brock incurred job seeking and travel expenses in connection with her efforts to secure alternative employment, which included eight round-trips between Billings and Great Falls, which she estimated cost approximately \$50.00 each for a total of \$400.00 (See Charging Party's Exhibit 15.)

24. At the time of Brock's discharge from BHCC, she was averaging \$675.00 per week. Her new employment with the Northern Hotel averages about \$350.00 per week, with an average weekly loss in income of \$325.00 per week. The average income included tips and is represented by a summary of the 2004 wage and tip information, which is verified by Brock's 2004 income tax return. (Charging Party's Exhibit 32.) From September 13, 2004, up through the date of decision in this matter, a period of approximately 96 weeks, Brock earned approximately \$31,200.00 less than she would have earned at BHCC during the same period of time.

25. As an evening bartender, Brock's tips would have remained fairly steady, and that the gambling clientele that she had established a personal relationship with, would have contributed to the same level of tip income that she would have received at BHCC.

26. Brock's unwarranted discipline and her termination were upsetting to her and quite reasonably caused her emotional distress. As a result of the actions and conduct of BHCC, Brock experienced emotional pain and suffering, and the sum of \$10,000.00 is a reasonable amount to compensate her for that damage.

27. The preponderance of the evidence establishes that Brock's current employment situation will not result in any significant increases of her base pay or her tip income over time. The pay differential between what she formerly earned at BHCC, and which she now earns at the Northern Hotel, will continue into the future. The average weekly income difference of \$325.00 is a reasonable standard by which to assess future anticipated loss of income.

28. Brock is entitled to prehearing interest at the statutory rate of 10% on all lost wages and loss of income in the sum of \$2,791.25.

29. While Brock was still employed at BHCC, the Billings Auto Auction ceased to operate in the Billing's area and the source of tip income that clientele from the Auto Auction provided began to dwindle. Nonetheless, Brock's tips remained relatively consistent because when business slowed down, fewer people were scheduled to work, thereby allowing one or two employees to wait on approximately the same number of people four or five employees would wait on, on busier nights. Therefore, sales per employee remained relatively consistent because fewer employees worked on slower nights.

30. As an evening bartender, Brock's tips would have remained fairly steady, and that the gambling clientele that she had established a personal relationship with, would have contributed to the same level of tip income that she would have received at BHCC.

31. BHCC argued at hearing that there was a decline in bar revenues and that tips were a function of overall revenue. However, there were no records produced by BHCC that would demonstrate a decline in gambling revenues or that the decline in revenues would have impacted Brock's history of tip income. Therefore, the hearing examiner finds as a matter of fact that any decline in bar revenue did not affect Brock's history of tip income.

IV. Discussion and Analysis¹

A. BHCC and Muri Retaliated Against Brock For her Protected Conduct.²

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.

² In her closing brief, Brock has made reference to the obviously hostile working environment that existed at BHCC and the sexual discrimination that Muri perpetrated upon female members of the bar staff, including Brock. This evidence has relevance to the retaliation claim and therefore has been admitted to prove the retaliation claim. Brock's closing arguments do not appear to limit discussion of the hostile environment and sexual discrimination to their bearing on the retaliation claim, but instead attempt to suggest a separate cause of action for sexual discrimination. The hearings examiner, however, has limited the use of the hostile working environment and sexual discrimination evidence in order to ensure the respondent's due process rights. *Cf., Centech Corporation v. Sprow*, 2006 MT 27, 331 Mont. 98, 128 P.3d 1036 (which affirmed a district court's determination that amending a human rights complaint at the time of hearing to permit an allegation of wage disparity as a basis for proving sex discrimination violated the respondent's due process rights of notice). Both the March 19, 2004 complaint and the July 28, 2004 amended complaint are clearly limited to the retaliation that Brock experienced. The hearing examiner has not considered the hostile working environment evidence and the sexual discrimination evidence for any purpose other than as that evidence bears on the retaliation claim.

Montana law prohibits retaliation in employment practices for protected conduct. Protected conduct includes filing a charge of discrimination and assisting or participating in any manner in an investigation. Admin. R. Mont. 24.9.603 (1). Retaliation under Montana law exists where a person is subjected to discharge, demotion, denial of promotion or other material adverse employment action after engaging in a protected practice. Admin. R. Mont. 24.9.603 (2). A charging party can prove her claim under the Human Rights Act by proving that (1) she engaged in a protected practice, (2) that thereafter her employer took an adverse employment action against her, and (3) a causal link existed between protected activities and the employer's actions. Admin. R. Mont. 24.9.610 (2). When a respondent with actual or constructive knowledge of a human rights proceeding takes significant adverse action against a charging party during or within six months of the pendency of those proceedings, a rebuttable presumption arises that the action was in retaliation for engaging in protected conduct. Admin. R. Mont. 24.9.603 (3) specifically provides that:

Direct or circumstantial evidence can provide the basis for making out a prima facie case. Where the charging party has presented evidence of statements made by a decision maker related to the decisional process being challenged which reflect unlawful discrimination, then the case is one of direct evidence of discrimination. *Laudert v. Richland County Sheriff's Department*, 2000 MT 218, ¶29, 301 Mont. 114, ¶29, 7 P.3d 386, ¶29. Where a prima facie claim is made out by direct evidence, the employer must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and is unworthy of belief. Admin. R. Mont. 24.9.610(5); *Reeves v. Dairy Queen*, 1998 MT 13, ¶17, 287 Mont. 196, ¶17, 953 P. 2d 703, ¶17. _____

Brock has demonstrated direct evidence of discrimination in this matter in several ways, not the least of which are Muri's direct statements of retaliatory intent made after he became aware of Kindsfather's and Brock's human rights cases. Most notable among those statements are his comments that he wanted to "get the bitches out of here" and that he would "bury" Kindsfather and Brock. He reiterated these points not only to other BHCC employees but also to Brock directly. Brock has demonstrated by direct, substantial evidence that Muri's reason for taking her out of the March 5, 2004 work schedule and firing her was retaliation.

B. BHCC Retaliated Against Brock In Issuing Her A Written Reprimand For the Til Overage, In Removing Her From the Work Rotation, And In Firing Her.

As this is a direct evidence case, once the charging party shows by direct evidence that an unlawful consideration played a motivating role in an employment decision, the respondent employer must show by a preponderance of the evidence that it would have made the same decision even if it had not allowed the unlawful consideration to play a role in the decision. *Laudert, supra*, citing *Price Waterhouse v. Hopkins (1989)*, 490 U.S. 228. The respondent has failed to demonstrate in this case that there was any legitimate business purpose for the write up over the till shortage, pulling Brock out of the March 5, 2004 work schedule, or for firing her other than to retaliate against her for engaging in protected activity.

Muri and BHCC concede that they were aware of Brock's participation in Kindsfather's human rights complaint at the time of the write up for the till shortage and at the time Brock was pulled off the March 5, 2004 work schedule. Muri and BHCC further concede that they were additionally aware of Brock's own human rights complaint at the time Brock was discharged.

Brock was written up for a till shortage despite the fact that several other employees had experienced similar shortages and never been written up. Indeed, the evidence demonstrates that till shortages were not an unusual occurrence at the bar but Brock was nonetheless singled out for discipline. The true basis for the discipline was retaliation against Brock.

Likewise, the clear reason for taking Brock out of the March 5, 2004 was Muri's desire to retaliate against her for her support of Kindsfather. There is no other rationale explanation. The proffered reason—to permit other workers to share in the Friday night profits—is untenable. There is no substantial evidence that any other employee ever complained that he or she was not working on Friday nights. Moreover, Yaeger, is exactly right in his testimony that pulling the two best bar tenders/servers out of the schedule on a Friday night was counterproductive to profitability. The only plausible explanation for pulling Brock off the Friday night schedule was to retaliate against her for her support of Kindsfather's human rights complaint.

Brock's discharge was not motivated by legitimate concerns and this is not a "mixed motive" case. A mixed motive case arises when the charging party proves illegal discrimination "but the respondent proves that the same action would have been taken in the absence of the unlawful discrimination . . ." Admin. R. Mont. 24.9.611. Almost certainly, in the absence of the unlawful desire to retaliate, the

same action would not have been taken against Brock. She unquestionably was one of the bar's stellar employees. Her misunderstanding of the food policy - understandable in light of the less than clear policy - did not merit discharge. Finally, it is not at all clear that she violated the food policy. Brock, through long past practice had been permitted to have an employee meal. She did not intend and did not believe that she was ordering a meal off of the restaurant menu on the night she allegedly violated the food policy. She was in fact comporting with previous long standing policy. In light of her service, her unquestionable importance to the bar's operation, and the relative minor nature of her infraction (if in fact an infraction occurred at all), the only conclusion the hearing examiner can reach is that Muri was gunning for Brock with the purpose of retaliating against her for her participation in a protected human rights activity. Brock has established retaliation which violates the Montana Human Rights Act.

C. Damages.

The department may order any reasonable measure to rectify any harm Brock suffered as a result of illegal retaliation. Mont. Code Ann. §§ 49-2-506(1)(b). The purpose of awarding damages is to make the victim whole. E.g., *P. W. Berry v. Freese* (1989), 239 Mont. 183, 779 P.2d 521, 523; *see also Dolan v. School District No. 10* (1981), 195 Mont. 340, 636 P.2d 825, 830; *accord, Albermarle Paper Co. v. Moody* (1975), 422 U.S. 405.

A charging party who has proved a human rights violation has a presumptive entitlement to an award of back pay. *Dolan, supra*. Back pay awards should redress the full economic injury the charging party suffered to date because of the unlawful conduct. *Rasimas v. Mich. Dpt. Ment. Health* (6th Cir. 1983), 714 F.2d 614, 626. Back pay is computed from the date of the discriminatory act until the date of the final judgment. *EEOC v. Monarch Tool Co.*, 737 F.2d 1444, 1451-53 (6th Cir. 1980).

The charging party may also recover for losses in future earnings, if and only if the evidence establishes that future losses are likely to result from the discriminatory acts. *Martinell v. Montana Power Co.* (1994), 268 Mont. 292, 886 P.2d 421, 439. Front pay is an amount granted for probable future losses in earnings, salary and benefits to make the victim of discrimination whole when reinstatement is not feasible; front pay is only temporary until the charging party can reestablish a "rightful place" in the job market. *Sellers v. Delgado Comm. College*, 839 F.2d 1132 (5th Cir. 1988), *Shore v. Federal Expr. Co.*, 777 F.2d 1155, 1158 (6th Cir. 1985); *see also, Hearing Aid Institute v. Rasmussen*, (1993), 258 Mont. 367, 852 P.2 628.

Prejudgment interest on lost income is also a proper part of the damages award. P.W. Berry, *op. cit.*, 779 P.2d at 523; Foss v. J.B. Junk (1987), HR No. SE84-2345.

Brock has demonstrated that she had no income due to the loss of her position at BHCC from the time of her termination until she obtained new work at the Northern Hotel on September 13, 2004. This complete loss of income amounted to \$5,850.00. Brock's pay at her new job is substantially less than that pay which she earned at BHCC. Between September 13, 2004 and the date of this decision (July 14, 2006), Brock will have lost \$31,200.00 in income due to her diminished pay at her new job (\$325.00 per week x 96 weeks between September 13, 2004 and July 14, 2006=\$31,200.00). Brock is also entitled to interest on the lost wages through the date of decision at the rate of 10% per annum in the amount of \$2,791.25.³

BHCC presented no evidence to show that Brock did not diligently pursue new employment or that she took employment that was beneath her capability. BHCC argued in its closing brief that Brock's testimony showed that her calculation of lost wages was inflated. To the contrary, Brock's testimony and evidence on the issue of her wages at BHCC and her diminished wages at the Northern Hotel are quite credible and fully support the damages she seeks.

Brock has sought an award of front pay until July 7, 2007. See, Final Prehearing Order, Page 6. Due to Muri's and BHCC's retaliatory conduct and the obvious animosity that Muri has exhibited toward Brock, Brock's reinstatement at BHCC is not feasible. Brock is likely to continue to suffer diminished earnings through July 7, 2007 as it is unlikely that she will be able to secure work similar to her BHCC job work in the Billings area which will have the same rate of remuneration as that paid to her at BHCC. Front pay in the amount of \$325.00 per

³The hearing examiner calculated interest on the amount of lost wages by determining the daily value of interest on the monthly income lost by the unlawful discharge and then calculating the number of days that have elapsed between the month of lost income and the date of the judgment in this matter, July 14, 2006. This process was applied to each of the months of lost income, and then the interest value for each of these separate months was added together to arrive at the total amount of interest due on the lost income. The daily interest value for the period of lost income for the nine weeks immediately following her discharge is \$.79 per day (10% per annum divided by 365 days = .00027% x \$2,925.00 (\$675.00 x 52 weeks divided by 12 months = monthly income of \$2,925.00) = \$.79 per day). The interest due on this lost income through July 14, 2006 is \$515.87. The daily interest value for the period of lost income after she found new work is \$.38 per day (10% per annum divided by 365 days = .00027% x \$1,408.33 (\$325.00 x 52 weeks divided by 12 months = monthly income of \$1,408.33) = \$.38 per day). The interest due on this lost income through July 14, 2006 is \$2,701.27. The total interest due on all sums is \$3,217.14.

week until July 7, 2007, totaling \$16,575.00 (\$325.00 x 51 weeks between July 14, 2006 and July 7, 2007) is reasonable and appropriate in this case. This amount reasonably approximates the loss she will suffer during that time period due to Muri's and BHCC's illegal conduct.

Brock is also entitled to damages for emotional distress inflicted upon her as a result of Muri's and BHCC's unlawful conduct. The Montana Supreme Court has recognized that compensatory damages for human rights claims may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances. *Vortex Fishing Systems v. Foss*, 2001 MT 312, ¶ 33, 308 Mont. 8, ¶ 33, 38 P.2d 836, ¶ 33. The severity of the harm governs the amount of recovery. *Id.* Here, Brock has unquestionably suffered emotional distress. Her testimony adequately proves this point. The humiliation of being fired and the emotional distress of the uncertainty encountered in having to seek new employment as well as the uncertainty due to diminished earnings even after securing new employment justifies an award of \$10,000.00 in this case.

V. Conclusions of Law

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. § 49-2-509(7).
2. Ron Muri d/b/a the Billings Hotel and Convention Center violated the Montana Human Rights Act by retaliating against Cheryl Brock for engaging in protected activity. Admin. R. Mont. 24.9.603.
3. Cheryl Brock is entitled to be compensated for damages due to loss of back pay and expenses she incurred in seeking new employment. She is also entitled to interest on those damages. In addition, she is entitled to front pay through July 7, 2007.
4. Pursuant to Mont. Code Ann. § 49-2-506(1)(b), BHCC must pay Cheryl Brock the sum of \$37,050 in damages (\$5,850.00 + \$31,200.00=\$37,050.00) for lost wages and \$3,217.14 in prejudgment interest on those damages through July 14, 2006, as well as \$10,000.00 as damages for emotional distress. In addition, Muri must pay Brock front pay totaling \$16,525.00.
5. The circumstances of the retaliation in this case mandate imposition of particularized affirmative relief to eliminate the risk of continued violations of the

Human Rights Act. Mont. Code Ann. § 49-2-506(1).

VI. Order

1. Judgment is found in favor of Cheryl Brock and against Ron Muri d/b/a Billings Hotel and Convention Center as Muri and BHCC illegally retaliated against Brock for engaging in activity protected by the Montana Human Rights Act.

2. Within 90 days of this order, Ron Muri must complete eight (8) hours of training, conducted by a professional trainer in the field of personnel relations and/or civil rights law, on the subject of discrimination and terms and conditions of employment, with prior approval of the training by the Human Rights Bureau. Upon completion of the training, Muri shall obtain a signed statement of the trainer indicating the content of the training, the date it occurred and that Muri attended for the entire period. Muri must submit the statement of the trainer to the Human Rights Bureau within two weeks after the training is completed.

3. Ron Muri d/b/a Billings Hotel and Convention Center is enjoined from taking any adverse employment action or retaliating in any way against any employee who engages in any activity protected by the Montana Human Rights Act.

4. Ron Muri d/b/a Billings Hotel and Convention Center must pay Cheryl Brock the sum of \$66,792.14, representing \$37,050.00 in damages for lost earnings, \$3,217.14 in prejudgement interest on those lost earnings, \$10,000.00 for emotional distress and \$16,525.00 in front pay.

5. For purposes of Montana Code Annotated § 49-2-505(7), Cheryl Brock is the prevailing party in this matter.

DATED: July 14, 2006

Gregory Hanchett, Hearing Examiner
Hearings Bureau, Montana Department of Labor and Industry