

**OHIO CIVIL RIGHTS COMMISSION**

IN THE MATTER OF:

**JAMES E. CADDELL, JR. AND  
HENRY W. THORNTON**

COMPLAINT #9088 (Caddell)  
(AKR) 73021600 (24963) 062600  
22A – A0 – 5661

Complainant

Complaint #9089 (Thornton)  
(AKR) 73021600 (24982) 062800  
22A – A0 – 5666

and

**AIRCRAFT BRAKING SYSTEMS CORPORATION**

Respondent

**ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

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**ALJ'S REPORT BY:**

Denise M. Johnson  
Administrative Law Judge  
Ohio Civil Rights Commission  
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## **INTRODUCTION AND PROCEDURAL HISTORY**

James E. Caddell, Jr. and Henry W. Thornton (Complainants) filed sworn charge affidavits with the Ohio Civil Rights Commission (Commission) on June 26, 2000 and June 28, 2000, respectively.

The Commission investigated the charges and found probable cause that Aircraft Braking Systems Corp. (Respondent) engaged in unlawful employment practices in violation of Revised Code Section (R.C.) 4112.02(A).

The Commission attempted, but failed to resolve these matters by informal methods of conciliation. The Commission subsequently issued Complaints on June 7, 2001.

The Complaints alleged that Complainants' race was a factor in Respondent's decision to discharge them.

Respondent filed Answers to the Complaints on July 5, 2001. Respondent admitted certain procedural allegations, but denied that it

engaged in any unlawful discriminatory practices. Respondent also pled affirmative defenses.<sup>1</sup>

A public hearing was held on April 9-11, 2002 and April 29-30, 2002 at the Akron Government Building in Akron, Ohio.

The record consists of the previously described pleadings, a transcript of the hearing (1,550 pages), exhibits admitted into evidence during the hearing, post-hearing briefs filed by the Commission on September 19, 2002, by Respondent on November 4, 2002, and a reply brief filed by the Commission on November 18, 2002.

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<sup>1</sup> Respondent raised as an affirmative defense to the Commission's jurisdiction the arbitrator's decision between Respondent and the United Auto Workers' (UAW), Local 856, issued October 16, 2000. In that decision the arbitrator recommended reinstatement without back pay. Respondent's position is that the decision was *res judicata* on the issues raised before the Commission. However, the agreement between Respondent and the union to arbitrate employment-related contractual disputes does not bar the Commission from seeking relief for victims of discrimination. See *EEOC v. Waffle House, Inc.*, (2002), 534 U.S. 279.

## **FINDINGS OF FACT**

The following findings of fact are based, in part, upon the assessment of the credibility of the witnesses who testified before the Administrative Law Judge (ALJ) in this matter. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed, each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainants filed sworn charge affidavits with the Commission on June 25, 2000, and June 28, 2000.

2. The Commission determined on May 17, 2001 that it was probable that Respondent engaged in unlawful discrimination in violation of R.C. 4112.02(A).

3. The Commission attempted to resolve these matters by informal methods of conciliation. The Commission issued the Complaints after conciliation failed.

4. Respondent is a corporation [or an agency of a political subdivision] doing business in Ohio and an employer.

5. Complainants are both African-American.

6. Respondent is a large manufacturing facility in Akron, Ohio that manufactures wheels, brake pads, and other braking system components on commercial, military, and general aircraft.

7. Complainants Caddell and Thornton worked for Respondent for over 19 years and 18 years, respectively. Both men were members of UAW Local 856.

8. In the wheel manufacturing process, rough wheels are produced that have sharp metal edges on them called burrs.

9. In February 2000, Complainants were both working as burr filers.

10. Complainants' work responsibilities required them to remove burrs from the rough wheels using electric grinders and other tools.

11. Burr filers have their own work areas with a workbench and tools where they burr the wheels.

12. During February 2000, Complainants were working at least six days a week, twelve hours a day.

13. Respondent has a written policy against violence, dated November 14, 1997; the policy was posted in the workplace. The policy contains the following language:

### **INAPPROPRIATE BEHAVIOR**

The Company will not tolerate acts of threatening, intimidating, or violent behavior. Any employee who is involved in such behavior, regardless of length of service or prior work record, will be subject to disciplinary action, up to and including termination, for such an offense, including the first offense.

14. On February 16, 2000, Mike Rubino, supervisor over Complainants' work area, suspended Complainants after Complainant Thornton complained to him that Complainant Caddell and he had words regarding a wheel that he had taken from Complainant Caddell's work area. During the incident Complainant Thornton received a cut under his eye.

15. Based on the collective bargaining agreement, management and Complainants' union representatives had a meeting on Friday, February 18, 2000, during which time the incident was reviewed.

16. Ed Searle, Vice President of Human Resources for Respondent, makes all final decisions for management regarding disciplinary actions.

17. As a result of the meeting, Searle made the decision to terminate Complainants' employment on the basis that they had violated Respondent's above referenced policy.

18. Both Complainants' grieved their terminations.

19. The arbitrator overturned the terminations but did not award back pay and benefits. Complainants returned to work on October 23, 2000.

## **CONCLUSIONS OF LAW AND DISCUSSION**

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.<sup>2</sup>

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<sup>2</sup> Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

1. The Commission alleged in the Complaints that Complainants' race was a factor in Respondent's decision to discharge them.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

(A) For any employer, because of the race, . . . of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(A) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under Title VII of the Civil Rights Act of 1964 (Title VII).

5. Under Title VII case law, the Commission is normally required to first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *McDonnell Douglas Co. v. Greene*, 411 U.S. 792, 5 FEP Cases 965 (1973). The burden of establishing a *prima facie* case is not onerous. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253, 25 FEP Cases 113, 115 (1981). It is simply part of an evidentiary framework “intended progressively to sharpen the inquiry into the elusive factual question of intentional discrimination.” *Id.*, at 254, 25 FEP Cases at 116, n.8.

6. The proof required to establish a *prima facie* case is also flexible and, therefore, may vary on a case-by-case basis. *McDonnell Douglas, supra* at 802, 5 FEP Cases at 969, n.13. In this case, the Commission may establish a *prima facie* case of race discrimination by proving that:

- (1) Complainants are members of a protected class; and
- (2) Respondent treated Complainants differently from similarly-situated non-minority employees for the same or similar conduct.

*Hollins v. Atlantic Co., Inc.*, 80 FEP Cases 835 (6<sup>th</sup> Cir. 1999).

7. The Commission having established a *prima facie* case of race discrimination, the burden of production shifted to Respondent to “articulate some legitimate, nondiscriminatory reason” for the employment action.<sup>3</sup> *McDonnell Douglas, supra* at 802, 5 FEP Cases at 969. To meet this burden of production, Respondent must:

. . . “clearly set forth, through the introduction of admissible evidence,” reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of the employment action.

*St. Mary’s Honor Center v. Hicks*, 509 U.S. 502, 507, 62 FEP Cases 96, 103 (1993), *quoting Burdine, supra* at 254-55, 25 FEP Cases at 116, n.8.

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<sup>3</sup> Although the burden of production shifts to Respondent at this point, the Commission retains the burden of persuasion throughout the proceeding. *Burdine, supra* at 254, 25 FEP Cases at 116.

The defendant’s burden is merely to articulate through some proof a facially nondiscriminatory reason for the termination. The defendant does not at this stage of the proceedings need to litigate the merits of the reasoning, nor does it need to prove that the reason relied upon was bona fide, nor does it need to prove that the reasoning was applied in a nondiscriminatory fashion.

*EEOC v. Flasher Co.*, 60 FEP Cases 814, 817 (10<sup>th</sup> Cir. 1992) (citations and footnote omitted).

8. The presumption created by the establishment of a *prima facie* case “drops out of the picture” when the employer articulates a legitimate, nondiscriminatory reason for the employment action. *Hicks, supra* at 511, 62 FEP Cases at 100.

9. Respondent met its burden of production by articulating that Complainants were terminated consistent with the application of Respondent’s inappropriate behavior in the workplace policy.

10. Respondent having met its burden of production, the Commission must prove that Respondent unlawfully discriminated against Complainants because of their race. *Hicks, supra* at 511, 62 FEP Cases at 100. The Commission must show by a preponderance of the evidence that Respondent’s articulated reason for Complainants’ discharge was not the true reason, but was “a pretext for discrimination.” *Id.*, at 515, 62 FEP Cases at 102, quoting *Burdine, supra* at 253, 25 FEP Cases at 115.

[A] reason cannot be proved to be a “pretext for discrimination” unless it is shown *both* that the reason is false, *and* that discrimination is the real reason.

*Hicks, supra* at 515, 62 FEP Cases at 102.

11. Thus, even if the Commission proves that Respondent's articulated reason is false or incomplete, the Commission does not automatically succeed in meeting its burden of persuasion:

That the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the . . . [Commission's] proffered reason of race is correct. That remains a question for the factfinder to answer . . . .

*Id.*, at 524, 62 FEP Cases at 106.

12. Ultimately, the Commission must provide sufficient evidence for the factfinder to infer that Complainants were, more likely than not, the victims of race discrimination.

13. The Commission attempted to show pretext in this case by alleging disparate treatment. Specifically, the Commission alleged that similarly-situated white employees were given preferential treatment by the Vice President of Human Resources, Ed Searle.

14. Proof of disparate treatment requires similarly-situated comparatives. The Commission must show that the comparatives were "similarly situated in all respects":

Thus to be deemed “similarly situated”, the individuals with whom . . . [Complainants] seeks to compare . . . treatment must have dealt with the same supervisor, and have been subject to the same standards, and have engaged in the same conduct without such differentiating and mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it.

*Mitchell v. Toledo Hospital*, 59 FEP Cases 76, 81 (6<sup>th</sup> Cir. 1992) (citations omitted).

15. To be deemed similarly-situated, “a precise equivalence in culpability” is not required; misconduct of “comparable seriousness” may suffice. *Harrison v. Metro. Gov’t. of Nashville and Davidson Cty.*, 73 FEP Cases 109, 115 (6<sup>th</sup> Cir. 1996) (quotations omitted). Likewise, similarly-situated employees “need not hold the exact same jobs; however, the duties, responsibilities and applicable standards of conduct must be sufficiently similar in all relevant aspects so as to render them comparable.” *Hollins v. Atlantic Co., Inc.*, 76 FEP Cases 553, 557 (N.D. Ohio 1997), quoting *Jurrus v. Frank*, 932 F.Supp. 988, 995 (N.D. Ohio 1993).

16. Respondent argues that the Commission failed to prove that Complainants were treated differently than similarly-situated white employees. However, the evidence in the record supports the determination that white employees engaged in “misconduct of

comparable seriousness” to that of Complainants, but received preferential treatment in that they were not discharged.

17. Each time it came to Searle’s attention that a white employee had been accused of violating Respondent’s policy regarding inappropriate behavior in the workplace, he characterized the white employee’s conduct as not rising to the level of conduct that would warrant termination pursuant to policy.

18. Robert Salisbury, a supervisor, allegedly elbowed a union employee, Robert Owens. Owens believed that Salisbury was angry because he questioned his authority. Both employees are white.

19. Searle did not believe that the incident occurred because it was not reported until two weeks later after Owens and another coworker were suspended. (Tr. 641)

20. Mack Warrick, a union employee, allegedly ran into Norm Linn, a union employee, and elbowed him. Linn alleged that along with the elbowing, Warrick made a motion of a gesture of an elbow to him. Both employees are white.

21. Both employees were suspended for three (3) days. Warrwick was only off for two (2) days. (Tr. 436)

22. Searle characterized this situation as a “confrontation”. (Tr. 903)

23. Searle testified that he could not determine clearly who had instigated the incident and that they were both involved in an altercation, confrontation, and argument over smoking. He testified that it was not clear as to who was at fault. (Tr. 905)

24. William Dodson, a union employee, allegedly forced his way in between brothers, Steven and Phillip Hendricks, while they were walking together. The physical contact allegedly caused hot coffee to spill on one of the brother’s hands. All three employees are white.

25. Dodson received a three-day suspension; Hendricks received a written warning.

26. Searle described this conduct as “schoolyard behavior”. (Tr. 680)

27. Njegovan, a union employee, heated up a coin which Simones, a union employee, picked up. The coin burned Simones’ hand.

28. Niegovan rigged Simones’ cigarette lighter so that when Simones attempted to light a cigarette a flame about ten inches shot out. Simones has a long beard and nearly burned himself. An argument ensued and Niegovan flipped Simones backward out of his chair. Simones’ back and neck were injured. Simones took workers’ compensation leave because of his injuries. (Tr. 749) Both employees are white.

29. Niegovan received a three-day suspension.

30. When the ALJ questioned Searle about Niegovan’s conduct, Searle gave the following explanation as to why Niegovan’s conduct did not warrant discharge:

Searle: In the industrial environment discharge is comparable to capital punishment. I'm not going to execute an individual for a practical joke. Capital punishment's reserved for a severe crime.

ALJ: Even if it results in the physical harm of an employee? I mean, here you have an employee who hit the floor with his back because he was pulled out of a chair.

Searle: And it was done in an unintentional manner. It was poor judgment on his part. There was some discipline that was appropriate. But to put it in my analogy, jail time was the appropriate punishment, not the electric chair.

ALJ: Why are you saying it's unintentional? I mean, he intended to grab his legs and spin him around.

(Tr. 695)

31. Ed Searle referred to the conduct of Njegovan as "friendly horseplay".

32. Jeff Walker, a union employee, had a history of incidents involving physical contacts and threatening and intimidating behavior. Walker is white. (Comm. Ex. J)

33. Searle testified that when it came time to take action there were no witnesses that would support a termination. (Tr. 924)

34. Respondent attempted to point to white employees who were terminated under Respondent's policy. However, those individuals were either terminated before the November 1997 policy was posted or after the date of Complainants' terminations.

35. After a careful review of the entire record, the ALJ disbelieves the underlying reasons that Respondent articulated for discharging Complainants and concludes that, more likely than not, they were a pretext or a cover-up for race discrimination.

The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of a prima facie case, suffice to show intentional discrimination.

*Id.*, at 511, 62 FEP Cases at 100.

The ALJ is convinced that Respondent's treatment of Complainants was motivated by race. Such actions constitute race discrimination and entitle Complainants to relief as a matter of law.

## RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint Nos. 9088 and 9089 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112; and

2. The Commission order Respondent within 10 days of the Commission's Final Order to pay Complainants back pay, including raises, benefits, and overtime pay based on the wages Complainants would have been paid had they not been terminated from employment from February 16, 2000 to October 23, 2000.

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DENISE M. JOHNSON  
CHIEF ADMINISTRATIVE LAW JUDGE

June 30, 2004