

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

<p>Juan Perez 4602 American Ash Drive Madison, WI 53704</p> <p style="text-align:center">Complainant</p> <p style="text-align:center">vs.</p> <p>Affiliated Carriage Systems, Inc., d/b/a Madison Taxi Post Office Box 9299 Madison, WI 53715</p> <p style="text-align:center">Respondent</p>	<p style="text-align:center">RECOMMENDED FINDINGS OF FACT, OF LAW AND ORDER</p> <p style="text-align:center">Case No. 20938</p>
---	---

This matter came on for a hearing before Madison Equal Opportunities Commission hearing examiner Clifford E. Blackwell, III on November 14, 1990 at 9:05 a.m. The Complainant, Juan Perez, appeared in person. The Respondent was duly served with notice of the hearing, but did not appear. At 9:55 a.m., the hearing commenced despite Respondent's non-appearance, pursuant to MEOC Rule 9.4. On the basis of the evidence presented, the hearing examiner now makes his Recommended Findings of Fact, Conclusions of Law and Order, as follows:

RECOMMENDED FINDINGS OF FACT

1. The Complainant, Juan Perez, is a black male. He was born in Cuba and is a Hispanic. He speaks with a noticeable Hispanic accent.
2. The Respondent, Affiliated Carriage Systems, Inc. d/b/a/ Madison Taxi (Madison Taxi), is a domestic Wisconsin corporation and is a taxi cab company providing transportation for hire to the general public. During the period in question, the Respondent employed at least 20 persons in furtherance of its enterprise and business. Respondent's principle place of business is 1403 Gilson Street, in the City of Madison.
3. The Complainant began employment with the Respondent in September of 1987. His employment with the Respondent was terminated on April 15, 1988 by action of the Respondent.
4. The Complainant was the only black, Cuban or Hispanic employed by the Respondent from September, 1987 through April 15, 1988.
5. The Complainant understands that the Respondent claims to have fired him for being late to his driving shift. The Complainant admits to occasionally being late because of a conflict with scheduling for his other job.
6. The Complainant was not assigned to transport Hispanic customers, despite being the only Hispanic employee of the Respondent.

7. Driving assignments were made on the basis of an individual driver's proximity to a fare. Occasionally the Complainant was not assigned a fare even though he was closer to the fare than the assigned driver.
8. The Complainant lost wages as a result of his termination. He was paid on a commission basis and averaged between \$250 and \$260 per week.
9. He attempted to find other work to compensate for the loss of income caused by his termination. After one month, his other part-time job became a full-time position and with this increase he regained \$50 per week of his lost earnings. After 18 months, he received a salary increase at his job that brought his earnings to at least the same level as those prior to his termination.
10. His termination caused him anguish and emotional distress. He felt discouraged about his prospects for being fairly treated in future employment. His termination also adversely affected his family relationships because of his feelings that he was failing in his responsibilities as the head of the household and that he was concerned for the future prospects of his children in a system in which they may suffer discrimination.
11. The Respondent discriminated against the Complainant on the basis of his race.
12. Notice of Hearing was mailed to Respondent at Respondent's last known address on October 5, 1990, and was received at Respondent's place of business on October 10, 1990, as evidenced by a certified mail return receipt. The Respondent failed to answer the complaint or to appear at the hearing within one-half hour of the scheduled time for commencement of the hearing.

RECOMMENDED CONCLUSIONS OF LAW

13. The Respondent is an employer subject to the Madison Equal Opportunities Ordinance.
14. The Respondent terminated Complainant's employment because of his race, in violation of sec. 3.23(7), Madison General Ordinance.

RECOMMENDED ORDER

15. The Respondent shall cease and desist from its violation of the employment provisions of the Ordinance.
16. The Respondent shall pay Complainant back wages in the amount of \$15,530 (fifteen thousand five hundred thirty dollars).
17. The Respondent shall also pay to the Complainant the sum of \$2,000 (two thousand dollars) to compensate Complainant for the loss of rights guaranteed to him by the Ordinance and for emotional injuries including embarrassment, humiliation and mental distress.
18. The Respondent shall submit proof to the Commission of its compliance with paragraphs fifteen (15), sixteen (16), and seventeen (17), herein, on or before February 14, 1992.

MEMORANDUM DECISION

The Respondent, despite having had due notice of the hearing in this matter, failed to file an answer to the Notice of Hearing or to appear at the hearing. Pursuant to MEOC Rule 9.4, the hearing examiner waited more than thirty minutes beyond the scheduled hearing time before commencing the hearing. There is no question that the Respondent discriminated against Complainant because of his race, or that such discrimination is in violation of sec. 3.23(7), Madison General Ordinances. The Complainant presented competent, credible and uncontroverted testimony that Complainant, a black, Hispanic male of Cuban origin, was terminated from Respondent's employment under circumstances for which other White employees were not terminated. The Complainant admits that he had problems making his scheduled shift but testified that he had tried to work out an acceptable arrangement with the Respondent. White employees were not terminated from employment despite being late for their shifts. Under the circumstances, it is reasonable to conclude that the Complainant's race was a significant factor in his termination. It is the type of disparate treatment that the Ordinance is intended to address.

The Complainant's contention that he was discriminated against on the basis of his Cuban ancestry or his ethnic status as a Hispanic is less clear. It apparently rests upon the Complainant's belief that the Respondent's fare assignment policy did not take into account his individual situation. Particularly he is concerned about the fact that he was not assigned to drive Hispanic or Spanish speaking fares and that some times he was not assigned a fare even though he was the closest driver to the fare. The Complainant testified that it was the Respondent's policy to assign the closest cab to a fare to respond to a call.

While it might make business sense to assign a driver who speaks Spanish to fares of Hispanics, the failure to do so, by itself, does not demonstrate any discriminatory intent or action. The Complainant when discussing the Respondent's practice of assigning the closest driver to pick up a fare, was unable to indicate that white drivers were treated differently. Other than observing that he was the only Cuban or Hispanic employee, the Complainant did not give any testimony that would lead one to believe that such treatment was discriminatorily motivated. This falls short of the proof necessary to prove a prima facie case of discrimination in employment. Accordingly, the Complainant's claim based upon his national origin/ancestry and ethnic group fails.

What remains to be resolved is the issue of relief. The ordinance provides that the Commission is to "order such action by the Respondent as will redress the injury done to the Complainant in violation of the ordinance, bring Respondent into compliance with its provisions and generally effectuate the purposes of the ordinance." Sec. 3.23(9)(c)2.b., Madison General Ordinances. Discrimination unquestionably has more than a purely economic impact. In employment cases, it subjects those discriminated against to embarrassment and creates distress and unrest within the community, sec. 3.23(1), Madison General Ordinances. The Hearing Examiner has previously described the types of damages that are available in employment discrimination cases brought before the Commission. Nelson vs. Weight Loss Clinic of America, Inc. and Weight Loss Clinic, MEOC Case No. 20864 (9/29/89). The Hearing Examiner will apply the principles set forth in the Nelson case here.

The Complainant suffered a significant wage loss as a result of his termination. He had been making approximately two hundred fifty dollars (\$250) per week on a commission basis while driving for the Respondent. Since the Respondent did not refute the Complainant's testimony concerning the level of his average wage and since it is not an inherently unreasonable figure, I accept it as adequate evidence of the Complainant's actual loss. The Complainant also testified that he had made efforts to secure additional employment to mitigate his wage loss. This testimony indicates that the Complainant was able to increase his previous other part-time position to full-time after one month and as a result increased his earnings by fifty dollars (\$50) per week. Presumably he remained with the same

employer for reasons of job security and eventual income gains. Under the circumstances of the Complainant, specifically those relating to his family responsibilities, the desire and need for stability and security is understandable. The Commission will not second guess the actions of the Complainant in staying in this position. The Complainant's testimony concerning his recovery of his full wage loss is somewhat contradictory. On one hand he seems to say that after eighteen months he had only recovered one hundred fifty (\$150) per week of the two hundred fifty dollars (\$250) per week that he lost as a result of his termination. On the other hand, he states that at eighteen months he received sufficient promotion to make up for his wage loss. It is appropriate to take the Complainant at his word and find that he made up his wage loss as of eighteen months after the termination. This would also terminate the Respondent's liability for back wages. The Order calculates the Complainant's wage loss including a reduction for the increase of the wages received at his other job.

The Nelson case indicates that where the facts warrant an award for emotional damages or for humiliation or other forms of distress, the Hearing Examiner may make such an award. In this case an award of compensatory damages is appropriate. The Complainant testified to his concern for the loss of income, the fact that his faith in the system had been damaged and that he feared for the future of his children. At the time of the hearing, the strength of the Complainant's feeling was apparent to the Hearing Examiner. The sum of two thousand dollars (\$2,000), is deemed to be adequate compensation for this loss and injury. A higher award is not deemed necessary because there was no showing of any public humiliation or use of language or specific racial animus at work in this case. The Complainant's own testimony is sufficient to support this award and testimony of experts is not required. Chomicki vs. Wittekind 128 Wis. 2d 188, 381 N.W.2d 561 (Wis. App. 1985). Such testimony might add support for a larger award of damages for this component of damages.

The Nelson case avoids the issue of punitive damages by finding that the facts did not support an award of such damages even if awardable by the Commission. Similarly in this case, I find that there is insufficient evidence of malice or wanton or willful disregard for the rights and feelings of the Complainant to justify an award of punitive damages and accordingly no such award shall be made.

The Complainant has not requested an order of reinstatement, and given the circumstances of the Complainant's termination and the passage of time since the termination, the Hearing Examiner finds that an order of reinstatement with the Respondent is inappropriate. The corresponding monetary remedy of front pay is similarly inappropriate. In the case of front pay, the Complainant has already recovered the wages lost as a result of his termination making front pay inappropriate. The requirement of the ordinance to fashion a remedy that effectuates the purposes of the ordinance and to redress the injury done to the Complainant are met by an award of back pay and compensatory damages and further equitable relief is not necessary.

IT IS SO ORDERED,

Signed and dated this 30th day of December, 1991

Clifford E. Blackwell, III
Hearing Examiner