



ANDREW M. CUOMO
GOVERNOR

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

ABRAHAM JOSEPH,

Complainant,

v.

KEY FOOD STORES CO-OPERATIVE, INC., FIVE
AND ONE FOOD STORES, INC., UNITED FOOD &
COMMERCIAL WORKERS UNION (UFCW), AFL-
CIO, LOCAL 342,

Respondents.

DETERMINATION AFTER
INVESTIGATION

Case No.
10156816

Federal Charge No. 16GB204334

On 8/13/2012, Abraham Joseph filed a verified complaint with the New York State Division of Human Rights ("Division"), charging the above-named Respondents with an unlawful discriminatory practice relating to employment because of creed in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division has determined that it has jurisdiction in this matter and that PROBABLE CAUSE exists to believe that the Respondents have engaged in or are engaging in the unlawful discriminatory practice complained of.

Pursuant to the Human Rights Law, this matter is recommended for public hearing. The parties will be advised of further proceedings.

Dated:

2/7/13

Brooklyn, New York

STATE DIVISION OF HUMAN RIGHTS

By:

Joyce Yearwood-Drury
Director O.S.H.I.

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

TO: Files

REGION: O.S.H.I.

FROM: Joyce Yearwood-Drury
Director O.S.H.I.

DATE: January 23, 2013

SDHR CASE NO: 10156816-12-E-C-E

Federal Charge No. 16GB204334

SUBJECT: Abraham Joseph v. Key Food Stores Co-Operative, Inc., Five And One Food Stores, Inc., United Food & Commercial Workers Union (UFCW), AFL-CIO, Local 342

FINAL INVESTIGATION REPORT AND BASIS OF DETERMINATION

I. CASE SUMMARY

This is a verified complaint, filed by complainant, Abraham Joseph, on Mon 8/13/2012. The complainant who observes the Sabbath according to the Orthodox Jewish tradition, charges the respondents with unlawful discriminatory practices in relation to employment because of Sabbath observance.

II. SUMMARY OF INVESTIGATION

Complainant's Position:

Complainant was a butcher for ShopRite in New Jersey from 2003-2012. Complainant moved to New York City at some point in 2011. All chain supermarkets in New York City exclusively hire butchers who are members of United Food and Commercial Workers Local 342 (UFCW). Complainant submitted his application to UFCW and noted that he is not available Friday nights and Saturdays according to his sincerely held religious beliefs. UFCW Field Representative Peter Iacona directed Complainant to Key Food Supermarket on 1/18/12 for an available butcher position.

On 1/18/12 Complainant duly reported to Key Food Supermarket and filled out employment paperwork. He indicated he was available every day except Friday nights and Saturdays to observe Sabbath. Complainant began working. Shortly thereafter, a representative told Complainant that as he could not work Saturday, the position could not be offered to him. Despite his protests that he was available every other time, he would not be offered the position. As he was there, Complainant worked a full eight hour day. Complainant was initially only paid for 4-1/2 hours despite working a full eight hours. Some time later he was finally remitted the 3-1/2 hours he was owed.

Complainant contacted Iacona who thereafter refused to help him because of his Sabbath observance. Complainant was forced to find a non-union job.

Respondents' Position:

Respondents denied discriminating against Complainant.

Respondents Key Food/Five and One stated that they have a union contract with Respondent UCFW for butchers. They have two butchers, of whom one is the manager, and several meat wrappers who are prohibited from doing butcher duties. The manager and butcher always work on Saturday because that is the busiest day. While Sunday is also busy, the contract requires a premium for working Sundays so the butcher and supervisor alternate on Sundays.

Respondent acknowledged that Complainant appeared after they submitted their opening to UCFW. When it was discovered Complainant was not available on Saturdays he was informed that he could not fill the position. There was an issue with his time cards, which were repeatedly inserted, which resulted in the initial 4-1/2 hour payment. Subsequently, the remaining pay was submitted to him.

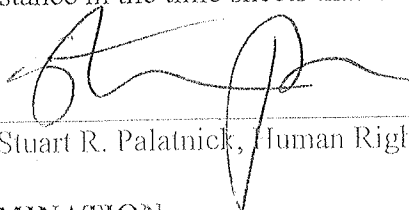
Respondent provided twenty-two (22) scheduling sheets, both the supervisor and butcher were always scheduled to work on Saturday. Respondent stated that the manager was scheduled for a one-week vacation and two weeks where there was no butcher would be the only variances.

Respondent provided that there is no viable accommodation. If Complainant was hired Respondent would have to hire a part-time butcher for Saturday only.

Investigator's Observations:

The time sheets show that both the manager and butcher worked on Mondays, Thursdays, Fridays and Saturdays and alternate half-day on Sundays. They had either Tuesday or Wednesday off. There is no instance in the time sheets that there was only one butcher scheduled for a Saturday.

Submitted by:


Stuart R. Palatnick, Human Rights Specialist I

III. BASIS FOR DETERMINATION

Complainant alleged that because he is a Saturday Sabbath observer, Respondent Key Food refused to accept his employment and thereafter Respondent UCFW Local 342 refused to refer him to any other positions.

Respondents denied discriminating against Complainant. UCFW local 342 stated Complainant identified as a Sabbath observer and was sent out to Key Food, who stated that Saturday is their busiest day and their operations require a butcher to be available on Saturday.

The investigation supports that the instant complaint be evaluated by an administrative law judge who can determine if there was a violation of the law and what would be the appropriate remedy.

The essential facts are not in dispute. Complainant sincerely observes the Jewish Sabbath from Friday night through Saturday. Complainant duly noted that he was not available during the Sabbath on his applications to UFCW Local 342 and Key Food when sent for an available butcher position. After he started working, a manager informed Complainant that the position required Saturday availability and his position was terminated though he worked the remainder of an eight hour shift. Though he was initially paid for only 4-1/2 hours, he was eventually paid for the full day. While Complainant identified the day he worked as 1/18/12 and Respondent asserted the time card shows he worked 1/25/12, the Division notes both dates are Wednesday.

The record reveals that Respondent's meat department operates with two butchers, one of whom is the Meat Manager, along with several part-time wrappers who can not do butcher work under the collective bargaining agreement (CBA). The CBA provides that Sunday work is a premium on wages workday. The time cards show the butchers working a half-day on alternate Sundays. The record reveals that the two butchers worked every Saturday except for one week of scheduled vacation. The record reveals that both butchers are typically scheduled for Thursday, Friday, Saturday and Monday, the days Respondent identified as their busiest days. The manager and butcher have a Tuesday or Wednesday and alternate Sundays off.

It is undisputed that Complainant and Respondent's owner are Jewish, and Complainant identified the manager he interacted with as also Jewish. The investigation did not reveal any evidence that Respondents considered Complainant's creed at all. There was no indication that Complainant was unsatisfactory in his duties in any way during his single shift.

Although it appears Respondent may have legitimate reasons for terminating Complainant regarding undue hardship; under The Human Rights law §296.10(a) the employer is always obligated to first make a bona fide effort to accommodate an employee's or prospective employee's religious observance or practice, before denying an employment opportunity, or refusing to accommodate. The investigation tends to support that Respondent Key Food determined *a priori* that the position required Saturday attendance and made no effort whatsoever to engage Complainant in any interactive process.

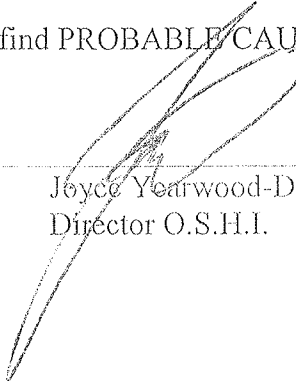
As such, the investigation supports that the instant complaint be evaluated by an administrative law judge who can determine if there was a violation of the law and if so, what is the appropriate remedy.

Reviewed & Approved:


Cynthia Mendoza-Garcia, HRS II

IV. DETERMINATION

Based on the foregoing, I find PROBABLE CAUSE to support the allegations of the complaint.



Joyce Yearwood-Drury
Director O.S.H.I.