

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of,)
 RAYMOND GOMES,)
)
 Complainant,)
)
 vs.)
)
 HAWAII ENVIRONMENTAL TRANSFER,)
)
 Respondent,)
 and)
)
 DIRECTOR, DEPARTMENT OF LABOR)
 AND INDUSTRIAL RELATIONS.)
)
 _____)

CASE NO. OSAB 91-003

FILED
 DEPARTMENT OF LABOR
 AND INDUSTRIAL RELATIONS

91 MAY 17 AM 10

DECISION AND ORDER

This occupational safety and health case is before the Board on written notice of contest of a decision of the Administrator of the Occupational Safety and Health Division of the Department of Labor and Industrial Relations dated January 10, 1991, denying a complaint of discrimination filed by Complainant, RAYMOND GOMES, against Respondent, HAWAII ENVIRONMENTAL TRANSFER, under §396-8(e) of the Hawaii Revised Statutes (HRS).

Complainant did not appear at the trial on May 10, 1991.

The sole issue before the Board is whether Complainant was unlawfully discharged by Respondent, pursuant to HRS Section 396-8(e)(1)(D).

FINDINGS OF FACT

1. Respondent is a recycling plant where Complainant worked as a sorter.

2. On November 20, 1990, Complainant reported to work at 2:55 p.m. Some time during the shift, Complainant and his supervisors, George Tavares, Odette Hanohano, Peter Powell, and Edwin Pentz (collectively "supervisors"), met to discuss Complainant's poor work performance, as well as his complaints of unsafe work conditions to management.

3. The supervisors first counseled Complainant on his slow output and poor work habits; thereafter, they asked Complainant to write down each of his safety concerns so that management could investigate the alleged problems.

4. Complainant refused to write anything down and called Edwin Pentz a "liar". Then, according to Peter Powell and Gordon Tavares, Complainant told them that he was "tired of this sh_t, I quit, and I can't take this no more."

5. Complainant punched out at 6:22 p.m., on November 20, 1990, and did not return until November 30, 1990, to pick up his paycheck. Before turning over the paycheck, Edwin Pentz asked Complainant to sign a statement that he voluntarily resigned from the company and that all monies owed him had been paid. Complainant initially refused to sign and became upset, but because he wanted his paycheck, he later obliged. Before he left, he told Edwin Pentz that he could make trouble for him.

6. On November 30, 1990, Complainant filed a discrimination complaint against Respondent with the Division of Occupational Safety and Health (DOSH), alleging that he was terminated for exercising his rights under Chapter 396.

CONCLUSIONS OF LAW

We conclude that Complainant was not unlawfully terminated by Respondent, under HRS §386-8(e)(1)(d). This section reads:

* * *

(e) Discharge or discrimination against employee for exercising rights prohibited.

(1) No person shall discharge, suspend or otherwise discriminate in terms and conditions of employment against any employee by reason of:

(D) The employee's filing a complaint, having instituted or causing to be instituted any proceeding under or related to this chapter, or the employee's intent to testify in any such proceedings, or otherwise acting to exercise rights under this chapter for oneself or others.

We find that Complainant voluntarily resigned on November 20, 1990, and was not discharged by reason of the exercise of any rights afforded him under Chapter 396. We credit the statements of Peter Powell and Gordon Tavares.

Accordingly, we hold that Complainant was not unlawfully terminated under HRS §396-8(e)(1)(D).

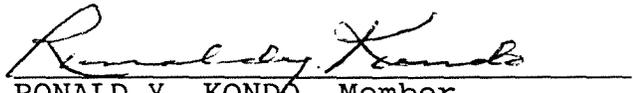
ORDER

The decision of the Administrator of the Occupational Safety and Health Division of the Department of Labor and Industrial Relations dated January 10, 1991, is hereby affirmed.

Dated: Honolulu, Hawaii, MAY 17 1991.


EDWARD L. CORREA, JR., Chairman


CAROL K. YAMAMOTO, Member


RONALD Y. KONDO, Member

I do hereby certify that the foregoing is a true and correct copy of the original on file in this office.

