

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

BONNIE PHILLIPS,	:	NO. 08 – 02,020
Plaintiff	:	
vs.	:	CIVIL ACTION
	:	
MUNCY VALLEY LODGE NO. 866 LOYAL ORDER	:	
OF MOOSE and FRED COCKRUM,	:	
Defendants	:	Non-jury Trial

**OPINION AND VERDICT**

Before the Court is Plaintiff's claim for damages under the Pennsylvania Human Relations Act, based on her contention she was fired from her employment due to her age. A trial was held June 4, 2012. The court now enters the following:

**FINDINGS OF FACT**

1. Plaintiff was employed by Defendant Muncy Valley Lodge No. 866 Loyal Order of Moose (hereinafter "the Moose") as a bartender beginning in August 2002.
2. Plaintiff was hired by Francis Johnson, the Social Quarters Manager at that time.
3. Plaintiff generally worked 38 hours per week under Mr. Johnson.
4. The Moose was remodeled and significantly expanded in early 2005.
5. Mr. Johnson was replaced by Fred Cockrum in August 2005.
6. In August 2005 there were four bartenders on staff: Louanne Effen, age 55, Sherry Shoemaker, age 46, Becky Hill, in her late 30's and Plaintiff, age 56.<sup>1</sup>
7. Within a month or so of becoming Social Quarters Manager, Mr. Cockrum reduced the hours of various employees; Plaintiff's hours were reduced from 38 per week to 30 per week.
8. After Mr. Cockrum became Social Quarters Manager, the servers were directed to make their own drinks for the table customers, a function previously performed by the bartenders.
9. All of the servers hired by Mr. Cockrum were very young women (early twenties).

10. Plaintiff was fired by Mr. Cockrum on December 6, 2005. Mr. Cockrum told Plaintiff she was being fired for undermining his authority and although Plaintiff asked for an explanation, none was given.
11. Mr. Cockrum sought and obtained approval from the Board of Directors prior to firing Plaintiff.
12. Plaintiff was replaced by Jonelle Haynes, a server who had been recently hired, who was age 26.
13. Mr. Cockrum had received only one customer complaint regarding Plaintiff's service and had never informed Plaintiff regarding that complaint.
14. Plaintiff was not provided with any warning that her behavior was insubordinate before being fired.
15. Mr. Cockrum's allegation of insubordination was based on one alleged incident which allegedly took place the night before Plaintiff was fired.<sup>2</sup>
16. Louanne Effen, age 55 in 2005, quit her position as bartender in May of 2007 after learning that a newly hired 22-year-old bartender was being paid more than she was (she had worked there since 1998), and being told by Mr. Cockrum "so what if [the new bartender] made more" than she did.
17. Becky Hill was fired by Mr. Cockrum after being warned five or six times regarding customer complaints.
18. Plaintiff received unemployment compensation for twenty-six weeks in the amount of \$133 per week for a total of \$3,458.
19. Plaintiff began employment with the Hughesville Legion on September 18, 2006, but earned less than she had at the Moose.
20. As of April 1, 2007, Plaintiff's wages at the Hughesville Legion matched her wages at the Moose. To that point, she had earned \$3,024.
21. From December 6, 2005, through April 1, 2007, Plaintiff's lost wages from employment at the Moose were \$14,490 (\$210 per week x 69 weeks).

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<sup>1</sup> Plaintiff was born on June 1, 1949.

<sup>2</sup> The testimony in this regard was extremely sketchy. It appears the incident had to do with who would get ice. Other than that, the court is at a loss to say what the allegations are and how it was that Plaintiff was insubordinate.

22. Plaintiff's net loss was \$8,008.
23. Interest at six percent through this date is \$2,882.
24. After being fired, Plaintiff suffered humiliation and "felt devastated". She was unable to "go out of the house" for six weeks.
25. At all times material hereto, the Moose was an employer within the meaning of the Pennsylvania Human Relations Act and employed four or more employees.
26. At all times material hereto, Mr. Cockrum had full authority to hire and fire employees.
27. Plaintiff incurred attorney's fees in prosecuting this matter.

## **DISCUSSION**

In an employment discrimination case, the plaintiff must first establish that he is in a protected class, that he is qualified for the position, that he suffered an adverse employment action, and that the employer needed someone to perform the work following the plaintiff's dismissal. *See Spanish Council of York, Inc. v. Pennsylvania Human Relations Commission*, 879 A.2d 391 (Pa. Comm. 2005). Once these factors are established, the burden shifts to the defendant to articulate a legitimate, non-discriminatory motive for its actions. *Id.* If the defendant does so, the plaintiff must then demonstrate that the proffered reasons were pretextual. *Id.* In the instant case, Defendants concede Plaintiff has met her initial burden of proof, and the Court finds Defendants have offered a legitimate, non-discriminatory motive for their actions. The court also finds, however, that Plaintiff has demonstrated that the proffered reason (that Plaintiff undermined Mr. Cockrum's authority) was pretextual.

Initially, the court notes that it remains in the dark regarding the alleged incident which is supposed to have triggered Plaintiff's termination. While Defendant does not have the burden of proof at this juncture, the lack of evidence weighs in Plaintiff's favor as it suggests that the incident may not have happened the way Mr. Cockrum asserted. The court notes Mr. Cockrum did not explain to Plaintiff at the time he fired her, what she had done to undermine his authority. Further, Plaintiff showed that Mr. Cockrum had never indicated to her that her work was not satisfactory but he had so indicated to another bartender who was then terminated

on that basis, and when terminating the other bartender he had explained to her that she was being fired based on customer complaints. Plaintiff also demonstrated that Mr. Cockrum hired mostly very young women, at least one of them was being paid more than bartenders who had considerably more experience and tenure, and he replaced Plaintiff with a young woman who had just been hired shortly before. Considering the circumstances and the lack of explanation or forewarning, the court is convinced that Plaintiff's termination was based on her age.

Accordingly, the Court draws the following:

### **CONCLUSIONS OF LAW**

1. Plaintiff was discharged from employment because of her age.
2. Plaintiff is entitled to compensation for back wages.
3. Plaintiff is entitled to damages for the humiliation and emotional distress she suffered as a result of being fired.
4. Plaintiff is entitled to an award of attorney's fees.

### **VERDICT**

AND NOW, this 14<sup>th</sup> June 2012, for the foregoing reasons, the Court finds in favor of Plaintiff and against Defendants. Plaintiff is hereby awarded \$10,890 as lost wages plus interest, plus \$5000 damages. Within ten days of this date, Plaintiff shall submit to this court an itemized statement of attorney's fees, providing a copy to defense counsel. Should defense counsel object to the statement within ten days thereafter, a hearing on the matter will be scheduled.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Joseph C. Borland, Esq.  
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W. Jeffrey Yates, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson