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Ky Commission
on Human RightsCOMMONWEALTH OF KENTUCKY
COMMISSION ON HUMAN RIGHTS
THE HEYBURN BUILDING, 7TH FLOOR
332 WEST BROADWAY
COMPLAINT NO. J638-E

MARTA BROWN

COMPLAINANT

vs.

WAL-MART STORES, INC.

RESPONDENT

RECOMMENDED ORDER

I. INTRODUCTION

In the Complaint filed on April 15, 1996, with the Kentucky Commission for Human Rights, Complainant, Marta Brown, alleged that Respondent, Wal-Mart engaged in discrimination when she was denied the opportunity to play Santa Claus for store patrons during the holiday season. Respondent acknowledges that Ms. Brown was not permitted to play Santa Claus, but contends that this occurred only after she was given a chance to play the part, and the store received at least one customer complaint. The sole question then, is whether Respondent's requirement that a male play Santa Claus constituted gender-based discrimination in violation of the law. For the reasons discussed below, it is the opinion of the Commission that Respondent did not engage in unlawful gender-based discrimination, and that Claimant's claim should be dismissed.

II. FINDINGS OF FACT

Ms. Brown was employed at the Morganfield Wal-Mart store from August 3, 1994 through December 28, 1995. She worked at the Customer Service Desk, assisting customers with returns and, when necessary, conducting price checks for employees. She received satisfactory reviews and from all indications was a good employee.

On or around December 1, 1995, in the course of an employee meeting, the store manager, Chris Taylor, sought volunteers to play Santa Claus for the upcoming holiday season. No employee volunteered for the part, other than Ms. Brown. Mr. Taylor believed that Ms. Brown had the personality to play Santa Claus in that she was friendly and always smiling.

Since this was a volunteer position, Wal-Mart did not compensate Ms. Brown for playing Santa, nor did she expect compensation. She was, however, allowed to use any of the items in the store for her costume, including pillows for padding, boots, and any other necessary accessories.

Ms. Brown arrived at the store at approximately 8:00 a.m. on the Saturday she was to play Santa Claus. Another Wal-Mart employee, Donna Simpson, helped her dress for the part. Ms. Brown only dressed in the "traditional" Santa outfit, and did not make use of any padding items in the store such as pillows, blankets, or towels. Although she apparently was unaware that padding items were available for her use, there was no prohibition on using store items communicated to her, and she had taken advantage of the use of other store items to fill out the outfit, such as boots from the shoe department.

Unfortunately, Ms. Brown's debut as Santa Claus was less than successful. Although she was dressed as a male Santa Claus, complete with a beard, she told her friend to announce that "She's in the store" when advising the customers of Santa Claus' arrival. At some point a group of three or four boys, ranging in ages from six to eleven years of age sat on her lap. One of these boys punched her on her breast. He then whispered to his mother, "Mom, Santa Claus is a woman". Ms. Brown and Ms. Simpson later were laughing about the incident.

Then sometime in that same afternoon, Mr. Taylor received a complaint from a very irate customer, asking why Santa Claus was a woman. Apparently, the female customer's child had asked his/her mother about Santa's breasts, and the customer was having difficulty answering the question while at the same time maintaining the child's belief in Santa Claus. It is unknown whether this child was the same one who had punched Ms. Brown's breast.

Acting on the customer complaint, and his concern that a female Santa Claus may affect Wal-Mart's reputation in the community and the Christmas sales, Mr. Taylor met with Ms. Brown the following Monday. Ms. Brown contends that another supervisor, Shon Gill McCormick, who is also female, made a comment that Ms. Brown would not be allowed to play Santa Claus because someone had complained about her breasts. Regardless whether Ms. McCormick had commented on Ms. Brown's replacement, it is undisputed that the decision was made to allow another employee, this time male, play the part of Santa Claus.

Ms. Brown voluntarily quit her employment and her last day of employment was December 28, 1995. She quit because of the stress of the job, and because fellow employees teased her about the Santa accident, including the instance where the child had punched her breast. Additionally, Ms. Brown had another job opportunity with a different employer.

III. CONCLUSIONS OF LAW

Both Federal and State Civil Rights laws prohibit discrimination on the basis of gender. KRS 344.010; 42 USC 2000-e. Because Title VII and Kentucky's Civil Rights Act are "virtually identical", Kentucky Courts recognize the persuasive value of Federal decisions when interpreting Kentucky's discrimination statute. *Whig vs. Rambo Baking Co.*, Ky. App., 765 S.W.2d 26, 28 (1988).

In this case, the Commission need only look to the facts to determine whether Respondent acted legitimately, and within the confines of the law, when it replaced Ms. Brown with a male for the role of Santa Claus.

The Commission specifically finds that Respondent's decision was not based upon male-female stereotypes. Respondent tried to accommodate Claimant. She was given an opportunity to play the role of Santa Claus, and was provided use of all store items to facilitate that role. Unfortunately, despite the best of intentions on both the part of Claimant, and Respondent, it just did not work. Customers were able to discern the fact that a female was playing Santa Claus, and these same customers had complained about Claimant's portrayal of Santa Claus to Respondent. The impact of the matter on Respondent's sales, especially in a small town during the Christmas holiday was significant and a legitimate business concern.

Because the facts do not demonstrate that Respondent engaged in gender based discrimination as is contemplated under either Federal or State laws, judgment will be entered in favor of Respondent, and Claimant's Complaint is hereby dismissed.

Recommended this day of , 2000.



Commissioner Karen McCord
Kentucky Commission For Human Rights