

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
800 A Street, Suite 204
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BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS
ON REFERRAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS

ALASKA STATE COMMISSION FOR)
HUMAN RIGHTS, PAULA M.)
HALEY, EXECUTIVE DIRECTOR,)
ex rel. HARRY ROSS,)
)
Complainant,)
)
v.)
)
SOA, DCED, ALASKA RAILROAD)
)
Respondent.)
_____)

ASCHR No. R-05-080
OAH No. 08-0230-HRC

AMENDED COMPLAINT

Complainant Paula M. Haley, Executive Director of the Alaska State Commission for Human Rights, ex rel. Harry Ross submits the following Amended Complaint against Respondent State of Alaska, Department of Community & Economic Development, Alaska Railroad Corporation.

1. Harry Ross ("Ross") is an African American man who has worked for the Alaska Railroad Corporation for the last forty years.
2. Ross has an excellent record of work performance, attendance, and leadership, such that the Railroad featured footage of him doing his job as a conductor in promotional videos broadcast on cable television. He is recognized by passengers from all over the world.

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3. The Alaska Railroad Corporation, State of Alaska, Department of Economic and Community Development, is an employer and a political subdivision of the state within the meaning of AS 18.80.255.
4. In October of 2004, Ross applied for a promotion to the position of trainmaster, a supervisory position with the Alaska Railroad ("Railroad") and was selected for an interview.
5. The Railroad interviewed seventeen people for the trainmaster position. It is not clear whether any other applicants granted interviews were members of any protected class.
6. The following people interviewed Ross for the position of trainmaster: Patrick Flynn, manager of special projects; Cheryl Evans, manager of recruitment; Curt Rudd, superintendent of the Anchorage terminal; Mike Olsen, superintendent of the Fairbanks terminal; and Mark Turberville, manager of safety systems.
7. Not all of the members of the hiring committee listed in paragraph six above were present for interviews of other applicants. At the time of filing, it is not known who was present at any of the other interviews granted.

Amended Complaint

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8. Ross's interview consisted of the hiring committee asking Ross twenty five questions. According to the hiring committee, a numerical scoring system was used to rate applicant answers in some, but not all interviews.
9. At some point during the interview process, the hiring committee abandoned the use of the numerical scoring method but it is not clear when or why this occurred.
10. The hiring committee members used no consistent, objective criteria to support the numerical scoring system or the interview process as a whole.
11. The Railroad did not hire Ross for the position of trainmaster, but instead hired five other candidates, all of whom were Caucasian and less experienced than Ross.
12. On April 22, 2005, Ross filed a complaint of discrimination with the Alaska State Commission for Human Rights that was co-filed with the EEOC.
13. Throughout his forty year career, Ross has endured persistent racial discrimination by the Railroad including not being promoted on the same basis as Caucasian employees, being called racial epithets by coworkers and supervisors, and being denied equal health benefits. In 1984, Ross filed an internal EEO complaint due to these issues.

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14. In response to Ross's 2005 complaint with the Commission, the Railroad denied that it had discriminated, claimed that Ross had performed poorly in his interview, and failed to convince the hiring committee of his enthusiasm for the job.
 15. Aside from the perception that Ross lacked enthusiasm, the Railroad claimed it did not promote Ross because he appeared not to have the computer skills necessary for the job.
 16. The trainmaster position does not, in fact, require greater than basic computer abilities.
 17. Ross has basic computer skills including the ability to use word processing, email, and web browsing applications and the willingness to obtain necessary computer training.
 18. There was no evidence that the successful applicants for the trainmaster position demonstrated better computer skills than Ross.
 19. One successful applicant submitted to the hiring committee during his interview that he had a concern that he lacked computer skills.
 20. There is no evidence to suggest that the hiring committee put the same emphasis on the subjective criterion of enthusiasm in their consideration of

27 Amended Complaint

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2 the other, Caucasian, less experienced applicants that they did in denying
3 Ross, the most qualified and experienced applicant, the position.

4 21. Both before and after the hiring process for trainmaster occurred, Curt
5 Rudd, a member of the hiring committee, continually addressed Ross by
6 the nickname "Black Magic."
7

8 22. In spite of the discrimination and indignities Ross endures, Ross continues
9 his work as a conductor with the Alaska Railroad.
10

11 **PRAYER FOR RELIEF**

12 Wherefore complainant asks for the following relief:

- 13
- 14 1. That the Commission issue an order declaring that respondent violated AS
15 18.80.220(a)(1) by failing to promote Ross to the position of trainmaster
16 because of his race, African American, when the reasonable demands of
17 the position did not require distinction on the basis of race.
18
 - 19 2. That the Commission order respondent to adopt and disseminate to all
20 current employees and future applicants a policy of nondiscrimination
21 under the Alaska Human Rights Law that includes, but is not limited to, a
22 policy prohibiting race discrimination in employment as prohibited by AS
23 18.80.220.
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27 **Amended Complaint**

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3. That the Commission issue an Order directing Respondent to provide make whole relief to Ross including back pay, front pay, and all retirement benefits that would have accrued if Respondent had hired Ross for the trainmaster position.

Respectfully submitted this 9th day of June 2008.

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

/s/

Caitlin Shortell
Human Rights Advocate

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