

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE ALASKA STATE COMMISSION FOR HUMAN RIGHTS
ON REFERRAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS

STATE COMMISSION FOR HUMAN)
RIGHTS, ROBERT W. CORBISIER,)
EXECUTIVE DIRECTOR, *ex rel.*,)
KACIE O’SULLIVAN,)
)
Complainant,)
)
v.)
)
AAA ALASKA CAB, INC.,)
)
Respondent.)
_____)

OAH No. 21-2166-HRC

ASCHR No. J-20-090

AMENDED ACCUSATION

Robert W. Corbisier, Executive Director of the Alaska State Commission for Human Rights, *ex rel.* Kacie O’Sullivan, hereby alleges the following against Respondent AAA Alaska Cab, Inc.:

1. Respondent AAA Alaska Cab, Inc. (“AAA Alaska”) is a taxi service located at 47623 West Point Avenue, Soldotna, Alaska, 99669.
2. Respondent’s Certificate of Incorporation was dated on or about February 7, 1994. According to the 2020 Biennial Report, which was filed with the State of Alaska on or about December 31, 2020, John Brent Hibbert owns 100% of the corporation.
3. Respondent owns a fleet of taxis.
4. Respondent’s cab fleet clearly identifies its brand.
5. Fleet vehicles are leased to drivers.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 6. Fleet vehicles are leased to drivers on a monthly term period, called “Term Period”.
- 7. The Term Period auto renews.
- 8. The lease is terminable at will.
- 9. Other than a driver’s license, no special skills are required to be a cab driver.
- 10. Drivers are not permitted to independently sublease taxicab vehicle(s).
- 11. Potential drivers must contact Respondent, and be interviewed and approved by Mr. Hibbert in order to lease a vehicle.
- 12. Respondent establishes the driver lease schedule.
- 13. Respondent maintains and manages the taxicab driver’s schedules/shifts.
- 14. Respondent manages patron requests for taxicab drivers via a centralized driver dispatch system.
- 15. Taxicab drivers receive patron/rider callouts only through the centralized system.
- 16. AAA Alaska provides drivers with the taxicab vehicle.
- 17. AAA Alaska provides drivers with the computer.
- 18. AAA Alaska provides drivers with the meter.
- 19. AAA Alaska provides drivers with the radio.
- 20. AAA Alaska vehicles are conspicuously marked with its identifying decal/marketing/branding on its vehicles.

AMENDED ACCUSATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

21. Drivers must check their vehicles out at the beginning of the assigned shift and check in at the end of their assigned shift.

22. AAA Alaska maintains and pays for all state and local licensure, permits and fees on leased cabs, i.e., AAA Alaska’s fleet.

23. AAA Alaska maintains liability insurance on each taxicab.

24. AAA Alaska’s automobile insurance indemnifies AAA Alaska against all claims for damages arising out of the operation of its taxis.

25. The liability insurance is only in effect during the time in which a driver has the vehicle checked out.

26. Drivers must complete accident report form(s) for any and all accidents that occur during their lease period.

27. Drivers must give the accident report form(s) to AAA Alaska within twenty-four (24) hours of an incident.

28. Drivers must check in and out with AAA Alaska dispatch services, so the insurance is only active during the driver’s assigned schedule.

29. Taxicab drivers are not permitted to work for another cab owner without obtaining prior approval from AAA Alaska.

30. Taxicab drivers are not permitted to work for another cab owner without first completing daily payment obligations or making financial arrangements with AAA Alaska to complete said financial obligations.

31. Drivers are not permitted to alter or personalize the leased vehicle.

AMENDED ACCUSATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

32. One hour of the term period segment, leased period, is reserved to AAA Alaska for maintenance and repairs.

33. During the reserved period drivers cannot take the vehicle to pick-up patrons/fares.

34. AAA Alaska designates the time for maintenance and repairs.

35. Drivers are responsible for lease fees during the above said reserved one hour period.

36. Drivers must agree to maintain the reputation and goodwill of AAA Alaska.

37. AAA Alaska maintains its cab fleet by furnishing oil, antifreeze, tires, and maintenance deemed necessary or desirable in the continued operation of its fleet vehicles and equipment due to normal wear and tear.

38. Drivers are required to accept cash payments from customers and have the collected funds deducted from the drivers' term period segment (daily) rate.

39. AAA Alaska can manage and limit dispatch calls to a particular driver.

40. There is no absolute rule with respect to whether a taxicab driver is an employee of the owner of the cab or an independent contractor within Title VII of the Civil Rights Act.

41. There is no absolute rule with respect to whether a taxicab driver is an employee of the owner of the cab or an independent contractor within AS 18.80 *et seq.*

42. AS 18.80.300 defines "employee".

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

43. *Jeffcoat v. Dept. of Labor*, 732 P.2d 1073, is the seminal Alaska case governing employee/employer relationships.

44. Federal courts utilize an “economic realities” test to determine whether an individual is an employee or an independent contractor for purposes of Title VII of the Civil Rights Act of 1964.

45. On or about June 30, 2020, AAA Alaska caused an advertisement seeking a cab driver for its nightshift to run on Craigslist.

46. The advertisement did not list a business license as a requirement for the position.

47. The advertisement did not list applicant-carried insurance to be a requirement.

48. The advertisement did not list driver owned cars as a requirement.

49. On or about June 30, 2020, Kacie O’Sullivan answered AAA Alaska’s advertisement, and applied to be a night shift cab driver with AAA Alaska.

50. At the time of her application, the only available shift for cab drivers was the night shift.

51. At the time of her application, Ms. O’Sullivan was qualified for the cab driver position that was listed on Craigslist.

52. Brent Hibbert interviewed Ms. O’Sullivan for a night shift cab driver.

53. During the interview, he conditioned her hire upon his insurance company accepting her as a driver, i.e., her being eligible for coverage under AAA Alaska’s insurance policy.

AMENDED ACCUSATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

54. Brent Hibbert informed Ms. O’Sullivan that upon acceptance, he would contact her and put her on the driving schedule.

55. Ms. O’Sullivan was approved by the insurance company as a cab driver for AAA Alaska.

56. Brent Hibbert spoke with Ms. O’Sullivan and confirmed she was approved and eligible to be covered under AAA Alaska Cab’s insurance.

57. Brent Hibbert advised Ms. O’Sullivan that although she was eligible for insurance coverage under said policy, he would not hire her because she was a female, asserting safety concerns due to a recent attack on a male driver during the night shift

58. Brent Hibbert rescinded his job offer when he advised Ms. O’Sullivan that although she was eligible for insurance coverage under said policy, he would not hire her for the only available position because of her sex, i.e., because she was a female.

59. Brent Hibbert offered Ms. O’Sullivan a position on the day shift if one were to become available.

**FIRST CAUSE OF ACTION
TERMINATION BECAUSE OF SEX A VIOLATION OF AS 18.80.220(a)(1)**

60. Paragraphs 1-59 above are realleged and incorporated herein.

61. Ms. O’Sullivan responded to a Craigslist help-wanted advertisement for a taxi-cab driver with AAA Cab, Inc.

62. On or about June 30, 2020, Ms. O’Sullivan interviewed for the position during which time Brent Hibbert informed Ms. Sullivan that she would have to be eligible for his insurance and conditioned her employment upon his insurance accepting

1 her, telling Ms. O’Sullivan she would have the job and be placed on the driver schedule
2 if she were eligible for his insurance.

3 63. Shortly thereafter, Ms. O’Sullivan contacted AAA Alaska Cab, Inc.,
4 regarding the status of the insurance. Brent Hibbert informed Ms. O’Sullivan that she
5 was eligible for the insurance in question, and Ms. O’Sullivan informed Brent Hibbert
6 that she would await a call regarding scheduling. Brent Hibbert acknowledged the
7 scheduling requirement.
8

9
10 64. About one week later and after not hearing from either Brent Hibbert or
11 AAA Alaska Cab, Ms. O’Sullivan re-contacted Brent Hibbert at which time he
12 confirmed that she was eligible for his insurance, as well as advised Ms. O’Sullivan that
13 although she was eligible for insurance coverage under said policy, he would not hire her,
14 asserting a recent attack on a male driver during the night shift.
15

16 65. Additionally, Brent Hibbert elaborated on his concerns informing Ms.
17 O’Sullivan that he had safety concerns for females working the night shift and that he
18 would hire her for a day shift position if one became available.
19

20 66. Brent Hibbert declined to hire Ms. O’Sullivan.

21
22 67. Brent Hibbert revoked his offer to hire Ms. O’Sullivan for the night shift
23 cab driver position.

24 68. Brent Hibbert rescinded his job offer when he revoked his initial offer to
25 hire Ms. O’Sullivan as a night shift cab driver.
26
27
28

ALASKA STATE COMMISSION FOR HUMAN RIGHTS
800 A Street, Suite 204
Anchorage, Alaska 99501-3669
(907) 276-7474 FAX (907) 278-8588

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

69. Brent Hibbert revoked his initial offer to hire Ms. O’Sullivan as a cab driver (the position for which she interviewed) because he thought the shift was too dangerous for women, i.e., because of her sex, female.

PRAYER FOR RELIEF

Wherefore the Executive Director asks for the following relief:

1. That the Commission issue an order declaring that Respondent violated AS 18.80.220 by failing to hire Ms. O’Sullivan based on the fact that she is female.
2. That the Commission order Respondent to adopt and disseminate to all employees an approved statement of corporate policy reflecting Respondent’s nondiscriminatory posture.
3. That the Commission order Respondent to adopt and disseminate to all employees an approved statement of corporate procedures implementing/executing approved corporate policy.
4. That the Commission order Respondent to obtain one hour of in-person training for its managers, supervisors, and employees on the provisions of the Alaska Human Rights Act that prohibits discrimination in employment, with an emphasis on sex-based discrimination, and that such order specifies the trainer and training curriculum be approved by Commission staff prior to the training being conducted.
5. That the Commission order Respondent to provide “back pay” to Complainant for the period beginning with the date of the alleged discrimination, July

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

30, 2020. Additionally, that the Commission order the computation of back pay to include regular wages, an estimate of the overtime wages Complainant would have earned during the period, and any benefits or increases that would have normally accrued to Respondent’s employees of comparable seniority and ability, plus interest.

Further, that the amount of back pay awarded to Complainant is to be reduced by the amount earned from Complainant’s employment during the back pay entitlement period on a quarterly basis.

6. That the Commission order Respondent to send a check to the Commission, payable to Complainant, along with a written explanation of how the monetary award was computed, within fifteen (15) days of the date the Commission issues its order, and that the Commission forward the check to Complainant

7. That the Commission order Respondent to eliminate all documents and entries relating to the facts and circumstances that led to Ms. O’Sullivan’s filing of the above-captioned charge of discrimination, and any of the related events occurring thereafter, from any record of application retained following Ms. O’Sullivan’s interview.

8. That the Commission order Respondent to refrain from penalizing Ms. O’Sullivan in any way in future considerations for employment and, if hired, for transfers, promotions, or upgrading because Ms. O’Sullivan complained about discrimination or because she filed a complaint with the Commission.

1 9. That the Commission order Respondent to refrain from advising or
2 informing any other employer or potential employer of Ms. O’Sullivan’s of the facts or
3 circumstances involved in this case.

4 Dated at Anchorage, Alaska 10/19/2021.

6 ALASKA STATE COMMISSION
7 FOR HUMAN RIGHTS

8 ***SIGNATURE***
9 ***REDACTED***

10 By: _____
11 Helen T. Hickmon
12 Human Rights Advocate
13 ABA# 0211067

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

800 A Street, Suite 204
Anchorage, Alaska 99501-3669
(907) 276-7474 FAX (907) 278-8588

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28