



MAINE HUMAN RIGHTS COMMISSION  
51 State House Station  
Augusta, Maine 04333-0051

JOHN P. GAUSE  
COMMISSION COUNSEL  
ACTING EXECUTIVE  
DIRECTOR

Tel: 207.624.6290  
Fax: 207.624.8729  
TTY: 1.888.577.6690  
[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

July 28, 2011  
Ronald Vilandry (Lebanon)

v.

Lank Machining Co., LLC

**I. Complainant's Charge:**

Ronald Vilandry alleges that Lank Machining Co., LLC ("Lank Machining") discriminated against him on the basis of age by refusing to hire him for the position of CNC Operator at the company.

**II. Respondent's Answer:**

Respondent denies discrimination and alleges that Complainant was not selected for the position because his experience was not what Lank Machining was looking for, and it was believed he would not be a good fit for the position.

**III. Jurisdictional Data:**

- 1) Dates of alleged discrimination: September 27, 2010.
- 2) Date complaint filed with the Maine Human Rights Commission: December 16, 2010.
- 3) Lank Machining employs 7 people and is subject to the Maine Human Rights Act as well as state employment regulations.
- 4) The parties are not represented.
- 5) Investigative methods used: A thorough review of the materials submitted by the parties, follow-up request for information and documents, phone interviews.

**IV. Development of Facts:**

- 1) The parties in this case are as follows:

- a) Complainant was 63 years old when he applied for the position of CNC Operator with Lank Machining. Complainant applied for the job through a staffing agency.
  - b) "Owner" is the owner of Lank Machining and interviewed Complainant.
  - c) "Temp Agency" is the temp agency that Complainant was recruited through.
- 2) Complainant provided the following:
- a) He had an interview with Respondent on September 27, 2010 for the position of CNC operator. He had over three years of experience doing this particular work. During his interview, he recognized Owner as a former coworker of his from a previous company working from 1974 – 1984. He asked Owner if he worked there during those years. That is probably why Owner guessed his age. After discussing this common connection, Owner said something to the effect of, "you must be around 63, right?" He answered affirmatively and Owner said he was 63 as well. This conversation took place after their tour of the facility and right before he left. Owner said something to the effect of, "Well we should be thinking about retiring at our age." Owner thanked him for coming in and said he would let Temp Agency know if he was selected.
  - b) He was not selected by Respondent as CNC Operator. He believes this was because of his age.
  - c) The person who was hired to the position of CNC Operator had no experience with Yasnac controls, no CNC machine experience and less experience than him overall. He has both experience with Yasnac controls and CNC operations. He has over 15 years of machine shop experience. He has worked in both slow and fast machine shops. He should have been Respondent's first choice. He never told Owner he did not have Yasnac control experience. He worked with Yasnac controls at his previous job.
- 3) Respondent provided the following:
- a) He (Owner) met with Complainant on September 27<sup>th</sup> for his interview. He mentioned his previous experience at a fast-paced, high production machine shop. He thought to himself that it was not a good previous work experience considering Lank Machining is a low production machine shop and is a drastically different work environment. High production shops usually mean "pushing a button" to produce mass quantities whereas a low production shop requires a lot more variety of machines and knowledge on how to operate them. Age played no factor in his decision not to hire Complainant.
  - b) While touring the facility, Complainant stated that he had no experience with Yasnac controls (which is half of their equipment). Complainant then told him

that he was 63 years old. He did this on his own accord. He said something to the effect of, "Just in case you were wondering, I'm 63 years old." He then told Complainant he was the same age and stated something to the effect of, "we should be thinking of retiring, however, with the economy as it is we need to work." He proceeded to show Complainant more of the operating equipment on the shop floor. He thanked Complainant for coming in and told him he would let Temp Agency know after interviewing other candidates whether or not he was selected.

- c) He decided not to hire Complainant because he had no previous experience in a low production machine shop. Going from a high production to a low production shop is difficult and he felt he would need to "un-train" and then re-train Complainant and that he would not be a good fit because of this.
  - d) The man they hired from Temp Agency was around 40 years old. He was not employed more than two weeks before he was terminated for poor job performance. He was not qualified to do the job and had lied about his experience. This man, however, was hired to the position of Saw Operator. It is true he had no Yasnac controls experience but he was not hired as CNC Operator. The position was left vacant because he could not find anyone qualified enough through Temp Agency.
  - e) He did work for the same company as Complainant from 1974 to 1984. He did not recognize him as a former coworker though. As far as he recalls, Complainant did not bring up the fact that they worked together during his interview.
- 4) Temp Agency provided the following:
- a) Complainant interviewed with Lank Machining on September 27<sup>th</sup>. After the interview, Respondent contacted them and stated that they would like to consider Complainant as a secondary candidate because he did not have the specific machine experience they desired, he was from a high production shop which could lead to boredom at their shop, and he did not seem to have a commitment to safety standards. Complainant also contacted them after the interview and stated that the interview did not go well, and that they wanted someone much younger than him for the position. He stated that he knew this because he was asked his age by Owner. A Temp Agency representative told him that age does not factor in their hiring criteria or that of their clients.
  - b) Candidate CS was interviewed by Lank Machining on September 30<sup>th</sup> and hired to the CNC operator position. Respondent stated that CS's machine experience and familiarity with the quality standards were stronger and he had not worked in a high volume shop, which gave him an advantage over Complainant. CS was 38 at the time of hire.

**V. Analysis:**

- 1) The Maine Human Rights Act requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Human Rights Act provides that it is unlawful for an employer to refuse to hire someone based on age. 5 M.R.S.A. § 4572(1)(A).
- 3) Because there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). See *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 4) First, Complainant establishes a prima-facie case of unlawful age discrimination by showing that (1) he applied for and (2) met the minimum objective qualifications for the job sought, (3) he was rejected, and (4) the person hired was of a substantially different age than him. *City of Auburn*, 408 A.2d at 1263; *Maine Human Rights Com. v. Kennebec Water Power Co.*, 468 A.2d 307, 309 (Me. 1983). See *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312-13 (1996) (federal ADEA).
- 5) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. See *Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. See *id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. See *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet his overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.
- 6) In order to prevail, Complainant must show that he would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. See *City of Auburn*, 408 A.2d at 1268.
- 7) Here, Mr. Vilandry establishes a prima-facie case of age discrimination by showing that he applied for the CNC Operator position, he met the qualifications for the job, he was rejected, and the person hired (CS) was significantly younger (by 30 years).

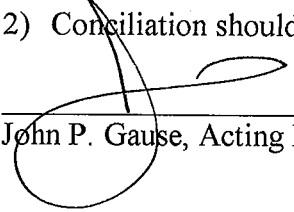
Although Respondent states that CS was hired for a different position, Temp Agency confirmed that he was officially hired for the CNC Operator position.

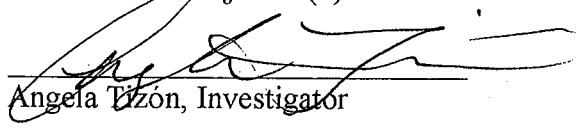
- 8) Respondent articulated legitimate, nondiscriminatory reasons for terminating Complainant, namely, that he a) stated that he did not have Yasnac control experience and b) that he was not a good fit for the position because his previous experience was in a high volume shop as opposed to a low volume shop meaning he would have to be "un-trained and re-trained."
- 9) Complainant was able to show that Respondent's reasons for rejecting him were irrelevant and that age likely played a factor in the decision not to hire him. Reasoning is as follows:
  - a) Complainant was able to show that the previous company he worked for had machines with Yasnac controls and therefore he would not have stated that he had no experience with these controls as Respondent alleges.
  - b) Resumes of Complainant and CS show that Complainant had far more experience than CS and that CS had no CNC experience or experience with Yasnac controls. Respondent's reasoning that someone with less experience overall is a better candidate than someone who worked in a high production shop is not plausible.
  - c) Temp Agency confirmed that Complainant called them following the interview and told them that the interview had not gone well, that Owner had asked him his age and that he believed they wanted someone younger for the job. The fact that Complainant alleged this directly following the interview and not at a later date adds credibility to his claim.
  - d) Respondent alleged that CS was hired to a position other than the CNC Operator and therefore the fact that he had no CNC or Yasnac control experience did not factor into the decision to hire him. Temp Agency confirmed, however, that CS was in fact hired (through them) to the CNC Operator position.

#### **VI. Recommendation:**

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

- 1) There are **Reasonable Grounds** to believe that Lank Machining Co., LLC discriminated against Ronald Vilandry on the basis of age by refusing to hire him for the CNC Operator position.
- 2) Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

  
\_\_\_\_\_  
John P. Gause, Acting Executive Director

  
\_\_\_\_\_  
Angela Tizon, Investigator