

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: April 24, 1987  
CASE NO. 82-CETA-198

IN THE MATTER OF

KENNETH D. TAYLOR,

Complainant,

v.

HAMPTON RECREATION AND HAMPTON  
MANPOWER SERVICES,

Respondent.

BEFORE: THE SECRETARY OF LABOR

DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA or the Act), 29 U.S.C. §§ 801-999 (Supp. V 1981), and the implementing regulations at 20 C.F.R. Parts 676, 677 (1986).

The Complainant, Kenneth D. Taylor, filed a complaint with the subrecipient of a CETA grant, Hampton Recreation and Hampton Manpower Services, of the City of Hampton, Virginia, on May 13, 1981. On the same date a hearing was held on the complaint and a decision was rendered on May 19, 1981, at which time the Complainant was notified that his complaint was denied. The Complainant appealed to the CETA prime sponsor, Peninsula Office of Manpower Programs (POMP), which denied the appeal on June 1,

1981. On June 9, 1981, Complainant appealed to the Manpower Executive Board, which in turn, on September 1, 1981, upheld the prime sponsor's decision. On September 28, 1981, the Complainant appealed the Manpower Executive Board's decision to the Regional Office, Office of Civil Rights, Department of Labor. Again the decision below was upheld and the complaint was dismissed.

The Director of the Office of Civil Rights advised the Complainant that under the provisions of 20 C.F.R. § 676.88(f), Complainant could request a hearing before an administrative law judge. Complainant did, and the matter was assigned to Administrative Law Judge (ALJ) Robert O. Brissenden for a de novo hearing. The ALJ found that Respondent had violated the Act and the CETA regulations by failing to provide proper training and found that Complainant was entitled to backpay. Decision and Order, May 14, 1984 (D. and O.). Both Respondent and the Grant Officer sought review of the decision, and jurisdiction was asserted on June 26, 1984.

Respondent objects that the ALJ's decision on the facts was clearly erroneous, contending: that Complainant did receive training; that he was continuously insubordinate and defiant and rejected counseling; that in fact, he received formal training at a seminar in Atlanta, Georgia, in courses at Hampton Institute and at various seminars in Virginia; that Complainant voluntarily resigned and was not entitled to compensation; that CETA did not require on-the-job training; and that CETA funds cannot be used to pay for work not performed.

The Grant Officer believes that the rationale under CETA is not clearly articulated in the ALJ's decision.

The record-reveals the following facts pertinent to this decision. POMP received a grant under CETA from the Department of Labor's Employment and Training Administration (ETA) which required POMP, as the prime sponsor, to assure compliance with the Act and the Regulations. POMP issued a subgrant to Hampton Recreation and Hampton Manpower Services (HR&HMS or Respondent). Complainant was a CETA participant, employed by Respondent pursuant to Title II, Part D, of the Act, and assigned to the Hampton Arts and Humanities Center as a Performing Arts Specialist. The Grant Officer administered the grant for ETA.

Complainant Taylor began his employment with HR&HMS on April 2, 1980. He was assigned to work under the direct supervision of the Cultural Program Coordinator, William Eyre, and his job was scheduled to last for a period of 18 months, with a salary in excess of \$8,000 per annum. He took the job with the understanding that he would have "on-the-job-training." Transcript of October 12, 1983, Hearing (T.) at 66-67.

Taylor was assigned to write press releases, although he had no previous experience or training in such writing. Eyre told him that he should write a release and his questions would be answered by Eyre's reviewing it. Oct. 12 T. at 68-69. Mr. Eyre did not give Taylor assistance or advise him of the

proper format. Id., at-70-71. Eyre did give him some old files containing one or more press releases. Id. at 71. Taylor continued to have difficulty in learning how to write releases but his questions to Mr. Eyre were not answered to his satisfaction. Id. at 73-74. He continued to work for some two months without any clear directions from Eyre but with increasing conflict and frequent misunderstanding. Arguments developed and Taylor went to Jeane Ziedler, the Center Manager, for assistance, and on May 30, 1980, he filed a grievance. Id. at 75-79.

Taylor's grievance stated that he was receiving insufficient supervision, by which Taylor meant lack of training and instruction. Id. at 79-80. On June 3, 1980, a meeting was held with Mr. Charles Badger, who was the departmental head responsible for both Eyre and Taylor. The meeting did not resolve the problems. Within the next two months matters apparently worsened. Both Eyre and Taylor stated that the arguments reached the point when violence seemed possible, although they disagreed as to who threatened it. Id. at 80-81; November 2, 1983, T. at 213, 253. As various other witnesses testified that Eyre had a habit of becoming angry, loud and belligerent, Oct. 12 T. at 25-28, 60-61, October 14 T. at 293-294, I find that Eyre was primarily responsible for any threat of violence.

A further meeting with Mr. Badger was held but relations between Eyre and Taylor did not improve. Complainant was frequently reprimanded, and verbally abused. Taylor and Eyre

continued to have a hostile relationship throughout Taylor's employment. Oct. 12 T. at 86-110 inclusive, and 176-202; Oct. 14 T. at 176-278 inclusive.

Sometime around September 30, 1980, Taylor was given a written reprimand. Exhibit (Ex.) E-8. Taylor stated that due to the continued stress on the job his blood pressure went up to around 170, Oct. 12 T. at 105-108, and on November 8, 1980, after an abusive confrontation with Eyre and a threat of another letter of reprimand, Taylor resigned. Oct. 12 T. at 104, 106, 109-112; Oct. 14 T. at 7. Taylor testified that his blood pressure returned to normal after treatment and leaving the job. Oct. 12 T. at 112.

Taylor made frequent requests and complaints about his lack of training. The Employability Development Plan, which is required by section '677.2 of the CETA regulations, sets forth Complainant's education and employment history and states his needs and barriers to his employment. Ex. C-3. The plan called for training in public speaking, public relations, journalism and speech communications.

Respondent's witnesses disagreed or were unclear as to training provided to Taylor. Sheila Blackwell, senior Employment and Training Specialist for Respondent, stated that Taylor received (unspecified) training in Georgia, at Hampton Institute and at local training workshops. Nov. 2 T. at 327. Badger believed that Taylor attended certain unnamed seminars. Id. at 334-335. Jan Baran, Executive Director for Employment and Training Programs for the City, stated

that Taylor attended two conferences, and a photography class. Id. at 304-305. Respondent made no showing, however, that those courses were relevant to the needs expressed in the Employability Development Plan. Id. at 304-307.

The ALJ made the following findings: (1) that Title II CETA workers had a right to training; (2) that Complainant was, in effect, promised training; (3) that such training was frustrated by Respondent; and (4) that Complainant was forced to resign since discharge was imminent and his health had been affected adversely. The ALJ concluded that Taylor was entitled to be paid for the balance of the eighteen months of his contract.

The following questions are before me for consideration:

1. Did the ALJ err in finding that Complainant was deprived of training to which he was entitled?
2. Did the ALJ err in finding that Complainant's resignation was forced?
3. Did the ALJ err in awarding Complainant backpay either because he had not suffered a loss due to wrongful termination on discriminatory grounds or because CETA funds cannot be used to pay an individual for work not performed?
4. If Complainant is entitled to backpay, should interest be calculated at a uniform rate of 10.6 percent per annum?

Upon review of the full record I endorse and accept the

ALJ's summing up of the statements of witnesses along with his endorsement or rejection of different versions of the same incidents. In addition I make these Findings of Fact and Conclusions of Law:

1. A major purpose of CETA is to improve the employability of participants by training. 20 C.F.R. §§ 677.1-3, 677.21-26. The Act is designed to enable participants to develop their skills and talents so that they can move into the general work force. To accomplish this goal, a prime sponsor is required to develop an individualized Employability Development Plan for each participant in a CETA Title II program. 20 C.F.R. § 677.2. Such a plan was prepared for Complainant, at the prime sponsor level, i.e. by POMP, and called for training in public speaking, public relations, journalism, and speech communications. The record supports the ALJ's finding that Taylor was entitled to training to upgrade his skills, to overcome his barriers to steady employment, and to enhance his formal education in his chosen field in accordance with the general purposes of the Act.

As previously stated, Respondent's witnesses were unclear and contradictory as to what formal training Taylor received. It is impossible to determine from anything which Respondent provided whether the training was related to training called for in Taylor's Employability Development Plan. Respondent further alleged that Taylor was not entitled to on-the-job training but only to that provided by the various seminars and classes to which he was referred, but claimed that even so, Taylor received on-the-job

training. If this is so, he must have gotten it from Eyre, his immediate supervisor.

It is clear, however, that Eyre did not provide adequate training for Taylor. Taylor, as shown by his development plan, needed help in "work role identification," technical skills, public speaking, journalism and principles of public relations. Ex. C-3. With the exception of Eyre, almost every witness, on each side, who knew Eyre, testified that Eyre had difficulty dealing with subordinates. Eyre was actively abusive to Taylor, and when Taylor made repeated requests for training and information, he was denied all such requests. Where the participant, as in this instance, sought consistently to obtain a clearer understanding of his job, and was unable to perform adequately as a result of the rejections of his requests, he has failed to receive what 'CETA envisions for him. While Eyre might be an adequate supervisor for a veteran staff, he was not for Taylor, and as a result, the training program was not only inadequate but totally lacking.

It may be that entire conformity to an Employee Development Plan does not always occur. But the Act requires some semblance of effort to provide training to participants. A record of courses offered, with a showing of why such courses were believed to be relevant, would be some evidence satisfying the requirement. Some effort to explain the mechanics of the job and aid in redoing written work, could serve as on-the-job training. The almost

total lack of commitment to training reflected in this case, however, is contrary to both the spirit and the letter of the Act. .

2. According to Taylor, he resigned because the turmoil on the job had caused his blood pressure to rise to 170 and because he apparently was going to be fired in the near future. The ALJ's finding that discharge was imminent is a responsible one, supported by the evidence. Eyre was not only abusive to Taylor, Eyre's supervisor backed him up when Taylor complained. Taylor had gotten nowhere with his grievances and his requests for help. He was simply told to do what Eyre told him, an extremely difficult task.

It appears from the record that Taylor, himself, was a difficult employee whose attitude was not the best one. That was one reason he was in a CETA program. He found his best efforts unsuccessful and could see no prospects for improvement without the training he had repeatedly requested and been denied. I agree with the ALJ's decision that this record establishes that Taylor was forced to resign.

3. Complainant suffered a loss from wrongful termination and can be made whole from funds taken from sources other than CETA. As stated in the decision in In the Matter of Allen Gioielli, Case No. 79-CETA-148, January 18, 1982, the authority of the Secretary of Labor to order the payment of backpay derives from the purposes of CETA and the Secretary's responsibility for

carrying out the provisions of the statute. While there was some dispute concerning the Secretary's power to award backpay prior to the 1978 amendments to CETA, as the United States Court of Appeals for the Sixth Circuit ruled in Kentucky Department of Human Resources v. Donovan, 704 F.2d 288, 294 (1983), "[i]t is beyond doubt that the 1978 amendments to the CETA program provide the Secretary with the power to award backpay...." See also Milwaukee County v. Peters, 682 F.2d 609, 612-613 (7th Cir. 1982). Since the purpose of backpay is not to provide a windfall but to make the Complainant whole, the amount of backpay owed should be off-set by the amount of any wages earned by Complainant during the remainder of the eighteen months of the -program.

4. Backpay awards are designed to restore the claimant to the position that he would have been in had the wrongful termination not occurred. Interest therefore accrues until the time the backpay is actually paid, whether the delay is long or short. NLRB v. J.H. Rutter-Rex Manufacturing Co., 396 U.S. 256, 264-265 (1969); Donovan v. Sovereign Security, Ltd., 726 F.2d 55,58 (2d Cir. 1984). While the ALJ prescribed interest at a rate of 10.6 percent for the entire period of non payment, the interest rates normally used by the Department of Labor are those established under 26 U.S.C. § 6621 (1982). See 29 C.F.R. § 20.58(a) (1986). The N.L.R.B. follows a similar course. While the language of 29 C.F.R. § 20.58(a) (1986) does not refer specifically to interest collected from governmental agencies, the rationale behind the regulation does not lend itself

to any different treatment for governmental agencies. As the United States Court of Appeals for the Second Circuit held in Equal Employment Opportunity Commission v. County of Erie and the Erie Medical Center, 751 F.2d 79 (1984) (a case under the Fair Labor Standards Act):

[W]e note that one of the principal purposes of the Equal Pay Act is to make whole employees who have unlawfully been deprived of wages. See, e.g., Marshall v. Board of Education, 470 F.Supp 517, 519 (D.Md.1979), aff'd, 618 F.2d 101 (4th Cir. 1980). In 1974, amendments to the Equal Pay Act redefined "employer" to include public agencies that are political subdivisions of a state, see 29 U.S.C. §§ 203(d), (x); Pub.L. No. 93-259, § 6, 88 Stat. 55, 58-62 (1974); and as a practical matter, we cannot see that an employee whose wages have unlawfully been withheld is any the less injured because her employer was a municipal entity rather than a private entity. We thus see no valid reason to distinguish between municipal employers and private employers in determining what award should be made to the victims of the employer's discriminatory practices in violation of the Equal Pay Act. See Marshall v. Board of Education 470 F.Supp. at 519; Brennan v. Board of Education 374 F.Supp. 817 (D.N.J.1974).

751 F.2d at 81.

The rates prescribed in 29 C.F.R. § 20.58 are based on prevailing market rates in commercial transactions, and have been held to be the most appropriate measure of interest in cases involving backpay because they represent the benefit to an employer of withholding monies from a victim of the employer's unlawful conduct. Association Against Discrimination in Employment Inc. v. City of Bridgeport, 572 F. Supp. 494 (D.Conn. 1983). Further, under Department of Labor policy, these rates are to be used in

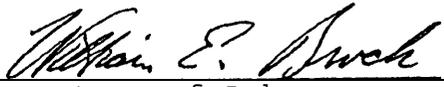
all back wage recoveries obtained in litigation. I find that they represent the most appropriate rates to be applied in this case. The rates of interest are simple interest, to be applied to the entire amount of back pay owing for each period or part of a period involved. A table of rates is attached.

Accordingly--

(1) Respondent is to pay Complainant Kenneth Taylor, at the rate of pay in existence at the time of Kenneth Taylor's CETA sponsored employment, for the balance of the eighteen months that Mr. Taylor did not receive, less any wages he earned during the balance of the eighteen months.

(2) Respondent is to pay interest on the backpay in accordance with the rates set forth under the provisions of 26 U.S.C. § 6621 and 29 C.F.R. § 20.58(a).

SO ORDERED.

  
Secretary of Labor

Washington, D.C.

INTEREST RATES ESTABLISHED BY THE SECRETARY  
OF THE TREASURY UNDER 26 U.S.C. 6621

<u>Period</u>	<u>Rate</u>
Through June 30, 1975 .....	6%
July 1, 1975, through January 31, 1976.....	9 %
February 1, 1976, through January 31, 1978.....	7 %
February 1, 1978, through January 31, 1980.....	6 %
February 1, 1980, through January 31, 1982.....	12 %
February 1, 1982, through December 31, 1982.....	20 %
January 1, 1983, through June 30, 1983.....	16 %
July 1, 1983, through December 31, .....	11%
January 1, 1985, through June 30, 1985.....	13 %
July 1, 1985, through December 31, 1985.....	11%
January 1, 1986, through June 30, 1986.....	10 %
Beginning July 1, 1986.....	9 %

SOURCE: Department of the Treasury  
Internal Revenue Service