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 *
 BETTY JACOBSON, *
 *
 Complainant, *
 *
 v. *
 *
 DEPARTMENT OF INDUSTRY, LABOR & *
 HUMAN RELATIONS, AND *
 LABOR & INDUSTRY REVIEW COMMITTEE, *
 *
 Respondent. *
 *
 Case No. 78-PC-ER-49 *
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 * * * * *

DECISION
 AND
 ORDER

The respondents have moved in a motion, accompanied by supporting papers, filed January 23, 1981, to dismiss this complaint of discrimination on the grounds that the Commission lacks subject matter jurisdiction as to DILHR because the complaint was not filed in a timely manner, and that the complaint fails to state a claim upon which relief may be granted as to the Labor & Industry Review Committee (LIRC).

This complaint was filed September 7, 1978. The respondents assert, and this has not been disputed, that the complainant was transferred from DILHR to LIRC effective July 3, 1977. The respondents argue that to the extent that the complainant alleged that DILHR discriminated against her on the basis of sex by paying her lower wages than male attorneys from the time that she was hired by DILHR on November 11, 1974, until she was transferred to LIRC on July 3, 1977, the complaint was not timely filed, even on a continuing violation theory, since it was filed more than 300 days after her employment relationship with DILHR ended on July 2, 1977.

In a decision entered in Jacobson v. DILHR, 78-192-PC (12/4/79), the Commission held that "the time limit for appealing from continuous violations

begins to run at the time the violations are discovered, but in no case later than on the date on which the employment relationship ended...."

The same principle applies here and leads to the conclusion that this complaint was not timely as to the Department of Industry, Labor and Human Relations (DILHR).

The respondents further argue that although the complainant alleged that LIRC perpetuated DILHR's past discrimination by continuing to pay her lower wages than male attorneys and by assigning her to a regrade point in the attorney's pay plan lower than where she would have been assigned but for DILHR's alleged past discrimination, she does not allege that LIRC assigned her to the regrade point contrary to the provisions of the pay plan, that her assignment was based on sex per se, or that the pay plan itself is sex discriminatory. It is argued that LIRC is not liable for prior actions by DILHR on any theory of successor liability, citing the aforesaid Commission decision, and that LIRC cannot be liable on any continuing violation theory because the complainant did not file a timely complaint of sex discrimination against DILHR after her employment relationship with DILHR terminated. The respondents cite United Air Lines v. Evans, 431 v.s. 553, 14 FEP Cases 1510, 1512 (1977), as follows:

"[Evans] is correct in pointing out that the seniority system gives present effect to a past act of discrimination. But United was entitled to treat that past act as lawful after [Evans] failed to file a charge within the [applicable statute of limitations] A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely an unfortunate event in history which has no present legal consequences.

[Evans] emphasizes the fact that she alleged a continuing violation. United's system does indeed have a continuing impact on her pay and fringe benefits. But the emphasis should not be placed on mere continuity; the critical question is whether any present violation exists."

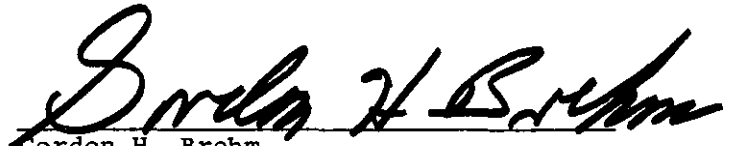
The Commission agrees that for the aforesaid reasons the complaint fails to state a claim upon which relief can be granted against LIRC.

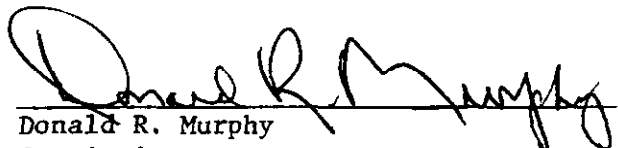
ORDER

This complaint of discrimination is dismissed as untimely filed as to DILHR and for failure to state a claim upon which relief can be granted as to LIRC.

Dated April 23, 1981

STATE PERSONNEL COMMISSION


Gordon H. Brehm
Commissioner


Donald R. Murphy
Commissioner

AJT:mek

Parties:

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