



2. On February 21, 1979, the appellant filed with this Commission a civil service appeal with respect to the same transaction. In addition to alleging violations of the civil service code (Subchapter II of Chapter 230), the appeal also alleged discrimination "against me because of my sex and to retaliate against me because of my grievance and sex discrimination complaints, all in violation of sections 230.18, 111.325, 111.32(5)(g)1., 1m., and 2. of the Wisconsin Statutes and 42 USC sec. 2000e, et seq." This appeal was assigned number 79-28-PC.

3. Following eight days of hearing in 79-28-PC, the Commission entered a Final Decision and Order in that matter on April 10, 1981.

4. The aforesaid decision contained in part the following in the Opinion at pp. 16-17:

"Although this matter was not filed under Subchapter II of Chapter 111 as a complaint of discrimination, it partakes of many of the legal attributes of such a proceeding due to the nature of the appellant's allegations. She alleges, among other things, that she was not hired because of her sex and because of her prior complaints of discrimination.

\* \* \* \* \*

These kinds of allegations of sex and retaliation discrimination in hiring, illegal under Subchapter II of Chapter 230, are also cognizable under and proscribed by Subchapter II of 111, see §§111.33(2), 111.32(5)(g), 1., 2., Wis. Stats. Therefore, it seems appropriate to advert to the body of law developed in the discrimination area to analyze this facet of this case. In her closing argument the appellant urged the use of the type of analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and the respondent did not object to this approach."

5. The aforesaid decision contained in part the following findings of fact:

"57. The reasons advanced by the respondent, through his agents, for failing or refusing to appoint appellant to a court attorney position, were not pretexts to shield an alleged motivation for the decision related to the appellant's sex or prior complaints or claims of discrimination against respondent or his agents....

58. The respondent, through his agents, was not motivated in his failure or refusal to appoint the appellant to a court attorney position either because of her sex or because she had filed claims of discrimination against the respondent or his agents."

#### CONCLUSIONS OF LAW

This complaint of discrimination is barred by the doctrine of issue preclusion or collateral estoppel, with respect to another appeal, 79-28-PC, involving the same parties and arising out of the same transaction.

#### OPINION

In Martin v. DOT, Wis. Pers. Bd. No. 75-69 (4/11/78), the appellant had filed a grievance with the Board alleging that the respondent had denied him a promotion from Engineering Technician II to Engineering Technician III "on account of race discrimination in violation of §111.31-.37, Wis. Stats." The appellant also had filed a complaint with the Equal Rights Division, DILHR, also alleging that he had been denied promotion from Engineering Technician II to Engineering Technician III based on race discrimination. This complaint was decided against the appellant and dismissed. DOT then moved to dismiss the appeal before the Board. The Board proceeded to grant the motion and dismiss the appeal on the ground that it was barred by the doctrine of res judicata. The Board expressed the following opinion:

"The doctrine of res judicata may be broadly stated as follows:

'...an existing final judgment rendered upon the merits is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.' See 45 Am. Jur. 2d. Judgments §394; Van Susteren v. Voigt, Wis. Pers. Bd. 73-126,128 (12/11/75).

Under appropriate circumstances, this doctrine is applicable to administrative decisions. See 2 Am. Jur. 2d. Administrative Law §502. While the Wisconsin Supreme Court has said that the doctrine of res judicata has no application to the proceedings of an administrative agency, Fond du Lac v. DNR, 45 Wis. 2d. 620, 625, 173 N.W. 2d. 605 (1970), this was with respect to legislative-type determinations in the context of the continuing exercise of ongoing regulatory authority subject to continually changing facts and circumstances. Quasi-judicial or adjudicative administrative action presents different considerations. See Davis, Administrative Law Text (3d Edition), Chapter 18, who points out that such proceedings usually involve decisions about past facts, not constantly-changing circumstances. There is public interest in finality which is not served if a party to a controversy is permitted to relitigate if following an unfavorable decision.

The elements of res judicata or collateral estoppel are an identity between the parties and an identity between the 'cause of action or the issues sued on,' Leimert v. McCann, 79 Wis. 2d. 289, 294, 255, N.W. 2d. 526 (1977).

The parties to this appeal are identical to the parties to the Equal Rights Division proceeding. Furthermore, the allegations made in the grievance appealed to this Board are the same as those made in the Equal Rights complaint. In both cases the appellant alleges denial of a promotion on account of race. Under such circumstances it is the opinion of the Board that having obtained a final determination on this question in DILHR, the doctrine of res judicata should be applied to prevent the relitigation of exactly the same question in another forum."

See also, Miller v. UW, Wis. Pers. Commn., No. 76-238 (2/8/79).

In the situation before the Commission, the same issue raised by this complaint was heard and decided in the appeal proceeding represented by No. 79-28-PC. This appeal dealt specifically with allegations of discrimination on account of sex and retaliation and the decision of the appeal

utilized the same kind of analysis set forth in McDonnell Douglas Corp. v. Green, supra, which is used in both Title VII and cases brought under Subchapter II of Chapter 111.

Closely related to the doctrine of res judicata is that of issue preclusion or collateral estoppel. See 46 Am. Jur. 2d. Judgments §415.

"The rule precluding the relitigation of facts or questions formerly in issue applies...even though the subsequent action is a different form of proceeding, is upon a different cause of action, and involves a different subject matter, claim, or demand, than the earlier action. In such cases, it is likewise immaterial that the two actions have a different scope, or are based on different grounds, or are tried on different theories, or are instituted for different purposes, and seek different relief."

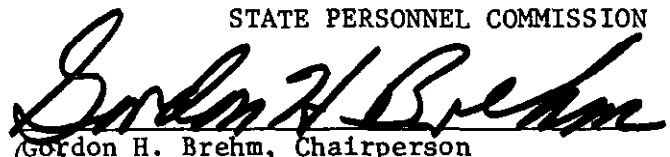
In this case, even if it were considered that the two proceedings (79-28-PC and 79-PC-ER-11) present different claims or causes of actions, it is clear that in 79-28-PC the exact issue of discrimination raised by 79-PC-ER-11 was raised and decided. Therefore, even though 79-28-PC presented issues regarding the violation of the civil service code (Subchapter II, Chapter 230, Wis. Stats; Title Pers., Wis. Adm. Code), the doctrine of issue preclusion or collateral estoppel operates to preclude relitigation of the question of discrimination presented by 79-PC-ER-11.

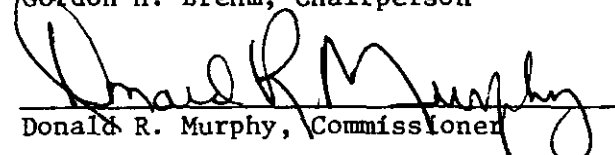
ORDER

This complaint of discrimination is dismissed on the ground that it is barred by issue preclusion or collateral estoppel.

Dated June 3, 1981

STATE PERSONNEL COMMISSION

  
Gordon H. Brehm, Chairperson

  
Donald R. Murphy, Commissioner

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Case No. 79-PC-ER-11  
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