

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD and AWEKE KIFLE,  
Complainants

v.

DOCKET NO. 96-BEM-2775

KINNEY SYSTEMS, INC.,  
Respondent

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Appearances:

Valeriano Diviacchi, Esquire for the Complainant  
Mark H. Burak, Esquire and Stacey L. DiJon for the  
Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about October 17, 1996, Aweke Kifle filed a complaint with this Commission charging Kinney Systems, Inc. with discrimination on the basis of race, color, and national origin, in violation of M.G.L. c.151B. Complainant later amended the complaint to include a charge of unlawful retaliation. The Investigating Commissioner issued a lack of probable cause finding and after appeal, reversed the lack of probable cause finding on the claim of retaliation only. Attempts to conciliate the matter failed, and following a certification conference, a complaint and order for certification was issued. A public hearing was held before me on February 11 and 12, 2003.

After carefully considering the evidence of record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

## II. FINDINGS OF FACT

1. Respondent Kinney Systems, now known as Central Parking Systems of Massachusetts, operates garage and commuter parking lots throughout Massachusetts.

2. Complainant Aweke Kifle resides in the Dorchester neighborhood of Boston. Complainant is a native of Ethiopia who immigrated to the United States in 1991.

3. In May 1993, Complainant began working for Respondent as a cashier. In approximately September 1993, Complainant was promoted to Assistant Manager at Respondent's John Hancock Garage. As Assistant Manager, Complainant's duties included filing daily reports, taking care of monthly tenants and supervising cashiers at various locations. In 1995, Respondent lost the management contract for the Hancock Garage, and Complainant was transferred to a facility at the MBTA's Quincy Adams Station, where he worked in the same capacity, until early

1996 when he was transferred to the Government Center Garage.

4. Complainant's supervisor at the Government Center Garage was Michael Medeiros who had transferred from a Rhode Island facility in July 1996.

5. While working at the Government Center Garage, in 1996, Complainant filed an MCAD complaint charging Respondent with discrimination on the basis of race, color and national origin. He alleged that a white co-worker was paid a higher salary than he was paid for doing the same job.

6. Complainant alleged that in October or November 1996, shortly after filing his MCAD complaint, Respondent's regional manager, Solomon Lemma, approached him at the Government Center garage, entered the office, closed the door and asked Complainant why he had filed the complaint.

7. According to Complainant, Lemma told him that he planned to give him a raise and promotion and wondered why Complainant had rushed to file a complaint. Complainant claimed that Lemma told him that the reality was that

Respondent paid blacks lower wages than whites. I do not credit this testimony.

8. According to Complainant, Lemma told him that his complaint would destroy the whole company if it were to proceed because many others would file complaints. Complainant told Lemma that he would not drop his complaint.

9. Complainant testified that Lemma came to him several more times that same week, urging him to drop his MCAD complaint. According to Complainant, Lemma told him that Respondent was very serious, and that he would be hurt or killed if he did not drop his complaint. I do not credit this testimony. I find it incredible that Complainant's life and physical safety were threatened because he filed an MCAD complaint.

10. Complainant alleged that a week later, Mark Furman, then Respondent's Regional Vice President, arrived at the Government Center Garage and told Complainant that if he dropped the complaint he would receive a raise and promotion, but that if he did not drop the complaint, there would be serious consequences. Furman denied making these

statements. I do not credit Complainant's testimony in this regard. Instead I credit Furman's testimony, which I found to be believable.

11. Complainant testified that a week or two after his discussion with Furman, he met with Mike Medeiros, the new manager of the Government Center Garage. He testified that Medeiros told him he would give him a promotion and a transfer to a new location if he dropped the case. Complainant again refused to drop the case. I do not credit this testimony.

12. In March 1997, Complainant received a written reprimand from Mark Furman advising Complainant that he was seen with his feet up on the desk at the Government Center Garage while on duty in plain view of customers. Complainant stated that it was impossible for him to put his feet up on the desk. I do not credit his testimony. There was testimony that Complainant and others could put their feet on the desk, and there was credible testimony that Complainant often sat with his feet on the desk. Further, there was credible testimony that Furman routinely sent similar memos to other employees. This written

memorandum did not contain a threat of discipline, nor did it result in any change in Complainant's employment.

13. In June 1999, Complainant was transferred to Respondent's MBTA Alewife facility. He testified that while at Alewife, various managers told him that Lemma and the company were "after him" and wanted to fire him. I do not credit this testimony.

14. In late 1998 or 1999, Solomon Lemma took over as manager of Alewife. Complainant alleged that for an eight-month period while working at Alewife, Lemma required him to perform weekend duties beyond his assigned tasks and further required him to punch out at 4:00 p.m. on Saturdays while requiring him to work until midnight without pay. I do not credit this testimony. Complainant never complained about this treatment to anyone at Respondent.

15. Complainant further testified that Lemma called him every Saturday at 4:00 p.m. to ensure that Complainant had punched out for the day. Lemma testified credibly that he never told Complainant to continue working without pay after punching out. Further Complainant produced no

corroborating evidence that he did, in fact, punch out while continuing to work without pay.

16. In July 1999, Kinney Systems was purchased by Central Parking which caused a change in supervisors at the Alewife facility. Abdi Warsame became the general manager of Alewife and his brother Mohamed Warsame became regional manager.

17. Complainant testified that shortly after the takeover, Mohamed Warsame came to him and said that Lemma had told him all about Complainant. Complainant testified that he asked Mohamed Warsame to give him a promotion and raise, but that Warsame responded that he would not receive a promotion and raise because of his claim against the company. I do not credit this testimony.

18. Complainant was transferred to Mystic Center, in Medford, where he continued to work as an Assistant Manager at the time of the public hearing.

19. Solomon Lemma was the Operational Manager for Respondent until leaving the company in 1999. Lemma testified in around the fall of 1996, Mark Furman told him

that Complainant had filed a discrimination complaint against Respondent. Lemma agreed to discuss the charge with Complainant.

20. Lemma, who is also Ethiopian, explained to Complainant that the disparity in pay between him and a Caucasian co-worker was not because of discrimination. Lemma denied pressuring Complainant to drop his complaint, but explained to Complainant that as a countryman, he would be the first to tell him if discrimination existed. Lemma testified that Complainant was adamant about pursuing his complaint, and Lemma let the matter drop. Lemma denied offering Complainant a raise or promotion in exchange for dropping his complaint. I credit Lemma's testimony.

22. Karen Poliseno has been employed by Respondent as a Human Resources Manager since January 2001. Poliseno testified that in 2002, Complainant was present at Respondent's Human Resources Office and inquired about management positions. Poliseno told Complainant to provide her with a copy of his resume. However, Complainant never followed up. I credit this testimony.

23. Michael Medeiros supervised Complainant while managing the Government Center Garage. Medeiros testified that after having been the manager at Government Center for three months, he drafted written evaluations of his three assistant managers, including Complainant. The written evaluation of Complainant did not constitute a formal review, was not shown to Complainant and did not result in any disciplinary action against Complainant.

25. In the November 14, 1996 memorandum, Medeiros wrote, in part, "Mr. Kifle lacks the innate motivation necessary to work at this facility.. In closing I feel it is inappropriate to expect a facility as busy as Government Center to have Aweke Kifle be a member of its management team." Medeiros testified that he had no knowledge of Complainant's MCAD complaint until he was subpoenaed to appear at the public hearing in this matter and therefore could not have written this negative evaluation in retaliation. I credit this testimony.

26. Mohamed Warsame is currently employed by Central Parking as Operational Manager. He started as a cashier for Allright Parking in 1983, and became an operational manager when Allright merged with Central Parking in 1998.

Warsame worked with Complainant in 1999 at the Alewife Station.

27. Warsame testified that Complainant did not hide his feelings and told him that Lemma discriminated against him by paying white employees more than black employees. Warsame did not respond to such statements. He denied telling Complainant that he would never receive a raise or a promotion unless he dropped his lawsuit. I credit his testimony.

28. Warsame testified that in December 1999 when Respondent needed to hire a manager for the Orange Line, he promoted Abdul Kadir. According to Warsame, Complainant never before expressed an interest in a promotion, then told Warsame he was interested in a promotion.

29. Following this discussion, in April 2000, a job opened up on the Red Line. Warsame discussed the job with Complainant who appeared to be very interested in the job. Warsame recommended Complainant for the position. After receiving the offer, Complainant told Warsame that the job entailed too many hours. I credit this testimony.

26. Susan Hawes, formerly a human resources manager for Respondent, testified that on the recommendation of Mohamed Warsame, she prepared an offer letter to Complainant, dated April 26, 2000, for the position of Manager of the Red Line. After learning that Complainant had not received the letter, Hawes had a telephone conversation with Complainant concerning the job offer. Complainant told Hawes that he needed to think about the offer and would get back to her, but did not do so. I credit her testimony. I do not credit Complainant's testimony that he did not receive the job offer until after it had expired and never spoke with Hawes about the job.

33. Mark Furman was the Regional Vice President of Kinney Systems from 1994 to 1997. Furman testified that although he often spoke to Complainant at the Government Center Garage, he did not recall ever speaking directly to Complainant about his charge of discrimination.

35. Furman testified that he recalled reviewing the employment of all the managers at Government Center with Michael Medeiros, but took no action as a result of the evaluation because it was merely an informal evaluation that was not shown to the employees. Furman denied ever

telling Complainant that he would be given a raise and promotion in exchange for dropping his complaint.

36. Complainant received a raise of nearly 10% within two months of filing his MCAD complaint and has continued to receive regular raises.

### III. CONCLUSIONS OF LAW

M.G.L. c. 151B, section 4(4a) makes it unlawful to retaliate against an employee for exercising his rights under this chapter. Complainant charges that Respondent unlawfully retaliated against Complainant for having filed a complaint of discrimination with this Commission. In order to establish a prima facie case of retaliation, Complainant must show that he engaged in a protected activity, that Respondent was aware of that activity, and that he was subsequently subjected to an adverse employment action and, absent other evidence establishing retaliatory intent, the adverse action followed the protected activity within such time that retaliatory intent can be inferred. Cimino v. BUT Electronics, 18 MDLR 197 (1996). I conclude that Complainant has failed to establish a prima facie case of unlawful retaliation. Complainant engaged in a protected activity when he filed a discrimination complaint against Respondent in 1996.

Further, Complainant's managers were made aware of his complaint and asked Complainant's immediate supervisor to discuss the matter with him. Thereafter, Complainant was written up for putting his feet up on a desk, and his supervisor wrote a negative memorandum to the regional director concerning Complainant's work performance. However, Complainant was not disciplined in any way following these events, nor was he threatened with any disciplinary action and did not suffer any tangible adverse employment action.

Therefore I conclude that Complainant has not established that he was subjected to any adverse action. See, MacCormack v. Boston Edison, 423 Mass. 652, 663-664(1996). I did not credit Complainant's allegations that he was continually urged to drop his complaint, or that his life was threatened for filing his complaint. Complainant continues to work for Respondent to this day, has received regular raises and has turned down at least one promotion. I do not believe he would have remained on the job for the past seven years, had he been treated as badly as he claims.

Therefore, I conclude that Respondent did not engage in unlawful retaliation in violation of M.G.L. c. 151B and conclude that the complaint in this matter be dismissed.

IV. ORDER

For the reasons stated above, this matter is hereby dismissed.

This constitutes the final decision of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal within ten days of receipt of this order and a Petition for Review within 30 days of receipt of this order.

SO ORDERED, this 17th day of July, 2003.

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JUDITH E. KAPLAN  
Hearing Officer