

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & ROBERT DELORGE,
Complainants

v.

DOCKET NO. 02-SEM-01274

METSO AUTOMATION, INC.,
Respondent

Appearances:

Michael C. O'Doherty, Esquire for Complainant Robert DeLorge

Susan G. Fentin, Esquire and Jay M. Presser, Esquire for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 12, 2001, Robert DeLorge filed a complaint with this Commission charging Respondent Metso Automation, Inc. with age discrimination when it failed to hire him for the position of Valve Repair Technician/Service Technician on account of his age. The Investigating Commissioner issued probable cause determination. Attempts to conciliate this matter failed, and the case was certified for public hearing. A public hearing was held before me on June 5 and 6, 2006 in Worcester, Massachusetts. After careful consideration of the entire record and the post-hearing submission of the Respondent,¹ I make the following findings of fact, conclusions of law, and order.

¹ Complainant did not file a post-hearing brief.

II. FINDINGS OF FACT

1. Respondent Metso Automation, Inc. was formed in January 2002 through the consolidation of two manufacturers of different types of industrial valves; Metso Automation USA, Inc., which manufactured the Neles line of valves and Jamesbury, Inc. which manufactured the Jamesbury line of valves.² Respondent currently employs approximately 425 people at its Shrewsbury, Massachusetts facility.

2. Complainant Robert DeLorge resides in Worcester, Massachusetts. He was born on July 21, 1945. In late 2001 he was 56 years old. Complainant worked for Respondent and its predecessor for over 34 years, beginning in 1968. For the first two years of his employment, Complainant worked on a “burr bench” where he took sharp edges off valve components. In 1970, Complainant was transferred to the Jamesbury light assembly area, where he assembled “soft-seated” Jamesbury valves. Complainant remained in the assembly area for the balance of his career at Respondent.

3. In 1975, Complainant became a group leader for approximately a 10-year period. In this position, Complainant was responsible for showing assemblers how to assemble the soft-seated valves and checking their work for errors. He also performed all the material handling for the department, physically moving skids and parts and transporting completed valves to the shipping department. Complainant lost his group leader position when Jamesbury transferred a portion of its manufacturing operations to Mexico.

4. After losing the group leader position in the mid 1980’s, Complainant returned to an assembler position, attaching actuators or other parts on the completed valves. He

² Respondent has had a convoluted history of mergers and divisions of no relevance to this claim.

worked in this position for approximately 10 years, until the company began training Mexicans to perform the job in anticipation of moving the manufacturing to Mexico.

5. Thomas Hughes has worked at Respondent and its predecessors since 1978 and has been Manager of Respondent's Northeast Service Center since 1993. His date of birth is April 20, 1945. Hughes knew Complainant personally because the two had worked at Respondent and its predecessor for approximately the same length of time.

6. In 1999, the Neles division of Respondent experienced a downturn in business because of foreign competition and higher labor expenses in the United States. In November of that year, Respondent formally announced that the manufacturing and assembling of its Neles product line was going to be transferred to Mexico. All effected employees, including Complainant, were informed that the transition of this product line would take approximately two years and as a result, all other employees of the Neles division, including Complainant, would lose their jobs by late 2001.

7. Respondent provided employees with two years of advanced notice to allow them to seek retraining for alternate employment elsewhere. State unemployment counselors were invited to the company to assist workers in finding new jobs. Complainant was aware that if he did not obtain another position with Respondent, he would lose his job sometime in the fall of 2001.

8. Complainant testified that he did not participate in any of the offered training because he believed that due to his longevity with the company, he would always have a job with Respondent.

9. During the transition period, Complainant was offered comparable employment and rejected two job offers, including an offer from a valve company located

next door to Respondent. He was hoping to be placed in a Jamesbury job because of his seniority even though he had not been told that was likely to occur.

10. The Jamesbury division was to continue in operation after the Neles division was closed. Employees from the two divisions were not allowed to bid on vacancies in the other division until after all candidates from within the division where the opening originated had been considered.

11. Notwithstanding the transfer of Neles manufacturing operations to Mexico, the company still had to service the valves it had sold, especially the expensive, metal-seated, Neles valves. Accordingly, the Neles Service Center was moved under the umbrella of the Jamesbury division and into the Northeast Service Center located in Shrewsbury, MA. Most of the valves repaired at the Northeast Service Center were Neles valves, although some Jamesbury and other valves were also serviced. The Northeast Service Center generally employs five or six service technicians.

12. In the fall of 2001, Respondent posted a vacancy for the position of Service Technician in the company's Northeast Service Center. Complainant bid for the position in mid-November 2001. Initially, Complainant was the only applicant for the position.

13. Thomas Hughes testified that the requirements of the Service Technician position include the ability to repair the Neles, metal-seated valves that were sent to the Service Center for repair. The position also involved travel to the sites of customers in order to service their valves during planned shut-downs. Hughes has sent Service Technicians throughout the United States and Canada, and occasionally overseas, to Qatar and India. The service center utilized a tractor trailer that contained a traveling repair shop that the technicians pulled to job sites by truck when valves could not be sent

to the shop for repair. The Service Technicians were required to be able to drive the truck pulling a trailer. The position also required travel to various customer work sites on short notice where valves needed repair. This might involve responding to a service call in the middle of the night. Service Technicians needed to deal with angry customers whose production was shut down because of a malfunctioning valve and who were likely to blame Respondent for the loss of productivity. Hughes testified that he sought people with a machinist background who understand dimensions and tolerances and who are familiar with the processes of machining and who have mechanical skills. Hughes believed that that one of the most important skills was the ability to handle oneself in pressure situations and avoid saying negative things about the company or a particular valve to customers at a work site. Hughes testified that Technicians were also expected to act as salespeople; when on site at a new customer's workplace, they were expected to determine whether the customer utilized other Metso products and to offer to come out and service the valves in future shut-downs. I credit his testimony.

14. Complainant had no experience manufacturing the parts that are used to build a valve and was not familiar with the machinery used to manufacture spare parts. Complainant did not know how to repair metal-seated valves but assumed that he would be able to learn the necessary skills.

15. Complainant had no experience with the diagnosis or repair of the company's metal-seated valves and had never done any machine work. The bulk of Complainant's experience came from his assembly work on the Jamesbury line of soft-seated valves and his familiarity with the Neles line of metal-seated valves was limited to assembly work.

16. Complainant had never traveled for his job, had never performed customer service work for the company and had not had direct customer contact since 1970.

Complainant was driven to work by his wife. Complainant's most recent trip outside Massachusetts was in the late 1990s and he had only been on an airplane twice in his life.

17. Thomas Hughes interviewed Complainant for the position, as was a company requirement as well as "common courtesy." He discussed with Complainant the nature of repair work involving metal-seated valves, the travel requirement and the ability to deal with customers. Hughes explained to him that the position was not the sort of "sit-down" job that Complainant had performed throughout his career, wherein "you put your tools away at 3:30 and go home." He told Complainant that Service Technicians might receive a call in the middle of the night requiring them to travel to a work site far from home.

18. Hughes testified that Complainant had worked in a very structured environment, whereas the Service Center Technician job required independence. He thought Complainant would be in over his head; however he did not tell him so after the first interview because he considered Complainant a friend and did not want to be that direct with him. I credit this testimony.

19. After his initial interview, Hughes arranged for Complainant to visit the Service Center and speak to the workers there in the hopes that Complainant would see that the job was too challenging for him. The following day, Complainant received permission to leave his work site and visit the Service Center for eight hours.

20. Hughes testified that although he believed that Complainant might ultimately be trainable in some of the job functions of the Service Technician, he was concerned about Complainant's lack of relevant experience and believed that Complainant would

not be comfortable traveling long distances on short notice or be able to deal with angry customers whose goal was fast repair of valves on site. The Technicians had their own credit cards and made their own travel arrangements, rented equipment and performed many other independent tasks with which Complainant had no experience. Hughes stated that he did not want to invest in a year's training of Complainant and then conclude that he could not perform the job. I credit this testimony.

21. Hughes testified that he and Complainant talked about the position again after Complainant observed the activities at the Service Center. Complainant testified that during this conversation, Hughes told him that he might use age as a factor in making his hiring decision. Hughes denied making such a statement. I do not credit Complainant's testimony that Hughes told him he might consider Complainant's age in the hiring process. I credit Hughes' testimony that he did not make such a statement.

22. Hughes testified that during this conversation he and Complainant discussed their long careers at the company. Although unsure of his exact words, Hughes stated that he told Complainant that, after having been in assembly for his entire career, at this stage of his life, he would be in over his head in the Service Technician position because of his lack of travel experience, driving ability, the ability to work independently and to present himself with confidence and in a professional manner. I credit Hughes' version of this conversation and believe that these were the shortcomings he focused on.

23. When he returned to his work site after the second discussion with Hughes, Complainant told a co-worker that Hughes had told him that age might be a factor in his hiring decision. The co-worker told Joseph George, then Director of Human Resources, who called Hughes, who denied having made such a statement.

24. A day or so later, Andrej Macko, whose date of birth is September 24, 1960, put in a bid for the position. Macko had worked for Respondent for 15 to 18 years, had “come through the ranks” and worked as a machinist. Macko could operate various machinery such as CNC equipment, millers and Bridgeport lathes and was able to create parts from a blueprint. On one occasion, Macko had received recognition for excellent work in discovering an incorrectly installed valve component that others had missed. Macko could also fabricate parts out of blank stock for some projects requiring repair. Macko had in-depth experience with the Neles line, both as an assembler and as a machinist.

25. Macko had considerable experience with business travel and had traveled to Respondent’s facility in Chihuahua, Mexico in order to train workers there. Macko was considered to be a valuable employee and had been given a “stay-on” bonus to ensure he would not leave his job at Metso until the transfer of Neles operations to Mexico was complete.

26. According to the testimony of Hughes and George Nunes, after Macko applied for the Service Technician position, Nunes, who worked in the same factory as Macko, called Hughes to recommend Macko, telling Hughes of Macko’s machining and electronic skills and his extensive travel for Neles. I credit their testimony. Hughes testified that in addition, Steve Boyle, one of Respondent’s resident engineers, also called Hughes on behalf of Macko, telling him that he had worked in the lab on diagnostic projects and had performed well. I credit this testimony.

27. Hughes interviewed Macko and determined that Macko was better qualified and suited to the nature of the position than Complainant and decided to hire him.

Hughes testified credibly he hired Macko because of his machining experience, his travel experience, his electronic skills and ability to read blueprints. Hughes stated that Complainant's age was not a factor in his decision to hire Macko. I credit this testimony.

28. Hughes notified Complainant that he had not been awarded the job. He told Complainant he was sorry he could not give him the job and wished him luck.

29. Shortly after the decision was made, in November 2002, Complainant's department was shut down, and all of the employees lost their jobs.

30. Hughes had previously hired two men in their fifties for Service Technician positions. On September 7, 2000, Hughes had hired a man named Albrecht, whose date of birth is March 28, 1946, for a Service Technician position. In June 2001, Hughes hired David Schwartz whose date of birth is April 25, 1942, as a Senior Service Center Specialist.

III. CONCLUSIONS OF LAW

M.G. L. c. 151B, §41B prohibits discrimination in hiring based upon age. In order to establish a claim of discrimination Complainant must demonstrate that he is a member of a protected class. Complainant must also establish that he was qualified for the job in question and that he was rejected for the job and that the job was filled by a similarly situated person, who was not a member of Complainant's protected class. Complainant must also demonstrate that the successful candidate was at least five years younger than he was or present other evidence that the termination occurred under circumstances that would raise a reasonable inference of unlawful age discrimination. Knight v. Avon Products, Inc., 438 Mass 413 (2003).

Complainant, a long time employee of Respondent and its predecessors, faced the elimination of his job in 2001 because operations were being moved to Mexico. Thus, he applied for the position of Service Technician with Respondent. As a 56 year old man, Complainant is protected by G.L. c. 151B. Complainant demonstrated that he was competent in the position of assembler and group leader, positions that he had performed during his career. Complainant contended that he was qualified for the position of Service Technician by virtue of his skills and seniority with Respondent; however he was rejected for the position in favor of a 41 year old applicant whom Respondent asserted was better qualified. Assuming for the purpose of this analysis that Complainant was at least minimally qualified for the position of Service Technician because of his good work record, seniority and work skills as a valve assembler and group leader, I conclude that Complainant has established a prima facie case of age discrimination.

Once Complainant establishes a prima facie case of discrimination, Respondent must articulate a legitimate, non-discriminatory reason for its failure to hire Complainant. Abramian vs. President & Fellows of Harvard College & others, 432 Mass. 107 (2000); Wheelock College v. MCAD, 371 Mass. 130 136 (1976); Blare v. Husky Injection Molding Systems Boston, Inc. 419 Mass 437 (1995). Respondent must "produce credible evidence to show that the reason or reasons advanced were the real reasons." Lewis v. Area II Homecare, 397 Mass 761, 766-67 (1986).

Respondent's articulated reasons for rejecting Complainant for the position were his lack of relevant skills, and concerns about his ability to handle many of the job criteria, including dealing with emergency customer service issues and the required travel to customer sites to repair valves. The evidence presented at the hearing showed that the

position of Service Technician required skills and abilities beyond those possessed by Complainant, who had worked in the limited capacity of assembler for most of his career at Respondent. Service Technicians are required to diagnose and repair mal-functioning valves, both at Respondent's Shrewsbury location and at customers' worksites. Service Technicians are required to be on call to travel long distances on short notice in order to analyze and repair broken valves. The job also requires someone with sufficient tact and composure to deal with anxious customers. According to Hughes, a Service Technician should have also experience with both metal-seated and soft-seated valve construction. Complainant did not have machining skills, nor had he traveled at all for work and his only experience working with customers was minimal and dated back to the 1970s. The evidence showed that Respondent legitimately believed Complainant lacked the sophistication and relevant experience to perform the Service Technician position. I found this assertion to be credible. Respondent also produced credible evidence of the superior qualifications and experience of the successful candidate as a machinist with travel experience and the ability to work with customers, all of which made him a better candidate for the position of Service Technician. Moreover there was evidence that Hughes had, in the 18 months prior to hiring Macko, hired two Service Technicians who were 54 and 59 years old at the time of their hire, thus demonstrating that he was not motivated by improper considerations of age in making his hiring decisions.³

³ Hughes acknowledged telling Complainant that he would be in over his head at this stage of his life with the Service Technician position. Hughes testified credibly that this statement referenced Complainant's experience, most of which took place within the controlled environment of an assembler, whereas the service technician position required greater independence and broader experience. Given that Hughes had hired candidates in their 50's for similar positions, I find that the statement was not direct evidence of age animus. Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294 (1991)

Once Respondent has set forth evidence of a legitimate, non-discriminatory reason for its actions, the Complainant must show that Respondent's reasons were a pretext for unlawful discrimination. Complainant did not offer credible evidence of pretext and he failed to demonstrate that the reasons articulated by Hughes were not the real reasons or that Hughes was motivated by discriminatory intent, motive or state of mind. Lipchitz v. Ratheon Company, 434 Mass. 493, 503 (2001). Therefore, I conclude that Respondent's failure to hire Complainant for the position of Service Technician was for reasons related to his skills and experience and unrelated to his age and I order that the complaint in this matter be dismissed.

IV. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that this matter be dismissed.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within 30 days of receipt of this order.

SO ORDERED, This 11th day of December, 2006.

JUDITH E. KAPLAN
Hearing Officer