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United States District Court, S.D. New York.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION Plaintiff,
v.
JOINT APPRENTICESHIP COMMITTEE, Joint
Industry Board of the Electrical Industry,
Defendant.

No. 84 CIV. 3373 (WK).
|
June 21, 1996.

Attorneys and Law Firms

Louis Graziano, Equal Employment Opportunity
Commission, New York City, for plaintiff.

Norman Rothfeld, New York City, for defendant.

MEMORANDUM AND ORDER

WHITMAN KNAPP, Senior District Judge.

***1** This case was referred to Magistrate Judge Buchwald on November 1, 1993. After a hearing on back pay, Judge Buchwald issued a Report and Recommendation ("First Report") on March 25, 1996 regarding various claimants' entitlement to back pay. For five of the seven claimants who had been found to have made out a prima facie case for back pay, Judge Buchwald terminated the back pay period as of the date they began earning more money than they would have earned as apprentice electricians and, consequently, found that none of them were entitled to damages. In that Report, Judge Buchwald observed that "were it not for the rather peculiar procedural history of this case, in which an approximately twelve-year period separates the filing of the action from the resolution of the damages phase, the amount of back pay requested by the EEOC would be considerably less significant." First Report at 16-17. She also expressed her concern that

"[a]ccepting the EEOC's position that back pay awards for these claimants should run to the date of judgment would thus be akin to making the discriminating employer a guarantor of a claimant's income level for every year of the potential back pay period." *Id.* at 16.

On May 21, 1996, we substantially adopted the First Report, except with respect to claimant Beverly Mundle, whose claim for back pay was remanded for reconsideration. On May 29, 1996, Judge Buchwald issued a Report and Recommendation ("Second Report") concerning Ms. Mundle in which she adhered to her previous conclusion and recommended that back pay be denied to Ms. Mundle for the same reason that other claimants were denied damages, because each secured a job paying a higher salary than that of a first-year apprentice.

The EEOC, besides renewing its objections to the First Report, objects to this particular conclusion on the ground that automatically and formalistically terminating damages when a claimant begins to earn more money for a period of time, without regard to the duration of that period, undermines the remedial requirements of the law. We have again subjected the First Report to *de novo* review and again express our admiration for Judge Buchwald's resolution of an extremely complicated set of problems.

However, we are troubled by a denial of back pay in the case of Ms. Mundle whose situation differs from that of most of the other claimants who for at least five years earned more than they would have earned as electricians with the same seniority. She for only two years earned more than that she would have earned as an apprentice electrician. In the exercise of our discretion, we conclude that Ms. Mundle's back pay period should not end as of the date she began working for the Port Authority but should extend another five years, that is, through 1985. The EEOC has conceded that Ms. Mundle is not owed any back pay for the period through 1982. Accordingly, we remand the matter to Judge Buchwald for a determination of the back pay that should be awarded for the approximately three years in question.

***2 SO ORDERED.**

All Citations

Not Reported in F.Supp., 1996 WL 345873