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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

ROBERT LARSON'S CHRYSLER
PLYMOUTH OF TACOMA, INC. d/b/a
ROBERT LARSON AUTOMOTIVE
GROUP and LARSON MOTORS, INC.,

Defendants.

Case No. C00-5079RJB

ORDER AFFIRMING
DETERMINATION OF
SETTLEMENT FUND
ADMINISTRATOR AND
DISMISSING APPEAL

This matter comes before the court on the Notice of Appeal of Decision of Settlement Fund Administrator, filed by Connie R. Hicks. Dkt. 65. The court has considered the pleadings filed in support of the appeal, and the remainder of the file herein.

In this case, a settlement fund was established pursuant to the consent decree entered on January 24, 2001 (Dkt. 58). The Honorable Judge Robert Peterson, Retired Pierce County Superior Court Judge, was appointed Settlement Fund Administrator. Judge Peterson was responsible for reviewing claims from a pool of potential claimants, identifying eligible claimants entitled to monetary relief, and determining the amount of monetary relief to be awarded to eligible claimants. *Id.* at 7-8. A claimant who wished to appeal the decision of the Settlement Fund Administrator was entitled to appeal the decision to this court. *Id.* at 10-12.

Claimants eligible for relief under the settlement fund are defined as follows:

1 25. **Eligible Claimants.** Eligible Claimants shall include only those claimants who
2 satisfy **each and all** of the following criteria:

- 3 (i) The claimant is of African American descent and was employed by the Larson
4 Group at any of its Tacoma dealerships at any time between June 1, 1997 and the
5 date of entry of this Consent Decree;
- 6 (ii) The Settlement Fund Administrator timely receives from the claimant a completed
7 Claim Form and Release; and
- 8 (iii) The Settlement Fund Administrator receives credible evidence that the individual
9 was (a) subjected to racial discrimination or race-based harassment, (b)
10 constructively discharged as a result of racial discrimination or race-based
11 harassment, and/or (c) retaliated against because he or she opposed racial
12 discrimination or race-based harassment or participated in any proceeding relating
13 to a complaint of racial discrimination, race-based harassment or retaliation.

14 Dkt. 58, at 8.

15 Claimant Connie Hicks, an employee of defendant Robert Larson Automotive Group and Larson
16 Motors, Inc. (Larson), filed a claim, contending that she was subjected to racial harassment, racial
17 discrimination, or retaliation for opposing racial harassment or discrimination or for participating in any
18 investigation or other proceeding relating to a complaint of race discrimination, racial harassment or
19 retaliation. Dkt. 67, Claim, at ¶ 7. The claim was based upon the following factual allegations:

20 On October 12, 2000 I was asked by Mr. Larson's Human Resources Director, Beth Cross, to sign
21 a statement accusing our prior office manager, Lee Hermsen, of being abusive toward me. I told
22 Ms. Cross that I would not sign a false accusation against Ms. Hermsen. Ms. Cross said that "As
23 you are the only black person up here your statement is important." She also said that everyone
24 had to be nice to me and then added, "Not just because you're black." I started crying and told Ms.
25 Cross that I wanted nothing to do with getting Lee Hermsen fired.

26 On December 26, 2000 Beth Cross asked me if I was having "A good Kwanza?" I asked Ms.
27 Cross why she though[t] I was celebrating Kwanza and she said: "Well, aren't you African
28 American?"

29 On January 25, 2001 Beth Cross asked me to sign a written agreement relating to maintenance of
30 company files. Ms. Cross told me that I was the only employee she was asking to sign the
31 document. I felt that I was being singled out as untrustworthy for no reason other than my color.

32 In addition to the foregoing, I have been paid a lower wage than others who have performed the
33 same and similar job functions.

34 Dkt. 67, Claim Form, Exh. 1.

35 Judge Peterson considered Ms. Hicks' claim at a hearing on September 17, 2001. He denied Ms.
36 Hicks' claim. Judge Peterson has provided the court with a letter describing the testimony at the hearing,
37 and his findings and conclusions. Dkt. 67. Ms. Hicks has appealed that decision, contending that (1) Ms.

1 Cross asked her to make a false charge of racial harassment against Ms. Hicks' white supervisor, Lee
2 Hermsen, because Ms. Hicks was black; (2) Ms. Hicks was the only person asked to sign a written
3 statement promising that she would honestly and competently perform her duties as Payroll Administrator
4 even though Ms. Hicks' former co-workers testified that she was a good, hard worker. Dkt. 65.

5 On April 29, 2002, attorney James M. Shaker filed a letter, concurring with the decision of Judge
6 Peterson, and presenting some additional factual support for Judge Peterson's decision. Dkt. 70. Mr.
7 Shaker did not indicate the identity of his client, nor does it appear that he has filed a notice of appearance
8 in this case. His office did, however, inform the court by telephone that Mr. Shaker represents Robert
9 Larson Motors. To the extent that the facts as presented by Mr. Shaker conflict with and/or add to those
10 facts set forth by Judge Peterson, the court has not relied on such facts. The court notes that Mr. Shaker
11 concurs with the decision of Judge Peterson.

12 *October 12, 2000 Incident.* Ms. Hicks contends that Ms. Cross asked Ms. Hicks to sign a false
13 accusation against Ms. Hermsen. Judge Peterson found that (1) Ms. Cross did not ask Ms. Hicks to sign a
14 statement against Ms. Hermsen because Ms. Hicks was black; (2) Ms. Cross only inquired of Ms. Hicks if
15 she wanted to make a complaint, which Ms. Hicks declined to do; (3) no written complaint against Ms.
16 Hermsen was prepared by Ms. Cross; (4) although Ms. Hicks was clearly upset by Ms. Cross' inquiry, this
17 was not a racially motivated inquiry; and (5) Ms. Cross' testimony was more believable than that of Ms.
18 Hicks. These findings were made on disputed testimony. Ms. Cross denied that she said anything about
19 Ms. Hicks being the only black person in the department and that she had prepared a written statement for
20 Ms. Hicks to sign, while Ms. Hicks testified consistent with the statement she had made in her claim. The
21 court defers to the findings of Judge Peterson in this matter since he was in the best position to determine
22 credibility of witnesses. Based upon the factual findings of Judge Peterson, the court concludes that this
23 incident was not the result of racial discrimination or race-based harassment.

24 *January 25, 2001 Request to Sign Written Statement.* Ms. Hicks contends that she was asked to
25 sign a written statement regarding maintenance of company files. She claims that she was the only
26 employee of whom Ms. Cross made that request. She believes that the request was racially motivated.
27 Judge Peterson found that Ms. Cross did make that request; that Ms. Hicks declined to sign the statement;
28 and that Mr. Robert Nolan, Ms. Cross' superior, "told her to just drop the subject and that when job

1 descriptions were revised in the future the matter would then be considered.” Dkt. 67, at 3. Judge
2 Peterson did not believe that Ms. Cross’ request was a racially motivated incident. *Id.* The court defers to
3 Judge Peterson’s determination that the request that Ms. Hicks sign a statement regarding expectations of
4 her position was not racially motivated. In fact, no action was taken against Ms. Hicks when she declined
5 to sign the document, and Mr. Nolan’s statement that such matters would be considered in the future when
6 job descriptions were revised suggests that this request was related to employee management and
7 expectations, and was not a racially motivated incident. Based upon the factual findings of Judge
8 Peterson, the court concludes that this incident was not the result of racial discrimination or race-based
9 harassment.

10 *December 26, 2000 Statements Regarding Kwanza.* Judge Peterson found that the facts related to
11 this incident are not in dispute. He concluded that he “did not regard this as a matter involving hostile
12 work environment or anything much more than an inquiry which, in retrospect, probably should not have
13 been made by a Human Resources person.” Dkt. 67, at 2. Ms. Hicks did not specifically address this
14 issue in her appeal. However, it appears that Ms. Cross’s statements to Ms. Hicks regarding Kwanza were
15 nothing more than ill considered, and Ms. Cross apologized when Ms. Hicks told her that she had been
16 offended. This incident is not sufficient to establish a hostile work environment.

17 *Discrimination in Wages.* In her claim, Ms. Hicks contended that she was paid a lower wage than
18 others similarly employed, and that this was motivated by race. Ms. Hicks contended that another
19 employee, Janis Stensrud, who was white, was paid more than she. Ms. Hicks does not raise this issue on
20 appeal. However, Judge Peterson found that Ms. Stensrud had worked longer than Ms. Hicks and had
21 more responsibility and duties than did Ms. Hicks. Judge Peterson’s conclusion that Ms. Hicks had not
22 shown that she was treated differently than other similarly situated employees on account of her race is
23 supported by the record.

24 The determination of Judge Robert Peterson, Settlement Fund Administrator, denying Ms. Hick’s
25 claim for relief under the settlement fund should be affirmed. The appeal should be dismissed.

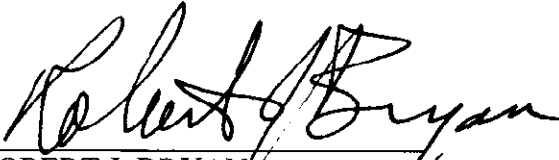
26 Therefore, it is hereby

27 **ORDERED** that the determination of Judge Robert Peterson, Settlement Fund Administrator,
28 denying Ms. Hick’s claim for relief under the settlement fund is **AFFIRMED**. The appeal of Ms. Connie

1 R. Hicks is **DISMISSED**.

2 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any
3 party appearing *pro se* at said party's last known address.

4 DATED this 3d day of May, 2002.

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7 ROBERT J. BRYAN
8 United States District Judge
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United States District Court
for the
Western District of Washington
May 3, 2002

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05079

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Judge Bryan