

**State of Wisconsin
Labor and Industry Review Commission**

Oscar Lozano, Complainant

The Carlson Co., Respondent
2305 Daniels Street
Madison, WI 53718

ERD Case No. CR201501598
EEOC Case No. 26G201500942C

Fair Employment Decision¹

Dated and Mailed:

December 30, 2019
lozanos_rsd.doc:164

The decision of the administrative law judge is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/ _____
Michael H. Gillick, Chairperson

/s/ _____
David B. Falstad, Commissioner

/s/ _____
Georgia E. Maxwell, Commissioner

¹ **Appeal Rights:** See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the complainant's allegation that the respondent discriminated against him based upon his race, color, and/or national origin, in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division of the Department of Workforce Development held a hearing and issued a decision finding that no discrimination occurred. The complainant filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted at the hearing. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own.

Memorandum Opinion

During the relevant time period, the respondent operated five departments: woods, electrical, finishing/paint, warehouse, and metals, and it employed one or more "team leaders" in each department. The complainant was the team leader in the metals department and was the only brown/Latino team leader working in the plant--all the others were white/Caucasian. The team leaders were compensated on an hourly basis and their rates of pay varied, with the complainant's being the lowest. The issue presented in this case is whether the complainant met his burden of establishing by a preponderance of the evidence that he was compensated at a lower hourly rate based upon his race, color, or national origin.

At the hearing the respondent explained that not all of the team leaders' jobs were similar, and that the duties and levels of responsibility of each team leader varied. It asserted that the complainant's job did not require the same skill level as that of other team leaders and that the other team leaders had more responsibilities than the complainant did. Internal payroll documentation submitted by the respondent indicates that the complainant's job was coded as skill level "6," while the other team leaders were coded as skill level "8." The respondent indicated that team leaders in other departments were more difficult to replace than team leaders in the metals department due to the skill set required. Finally--and significantly--it presented evidence showing that two metals team leaders who were hired after the complainant stepped down from the position of team leader, neither of whom are Latino, were compensated at a lower hourly rate than the complainant.²

The complainant failed to demonstrate that the explanation provided by the respondent for the differing rates of pay was false or a pretext for discrimination. While the complainant testified that he did not think it was reasonable for other

² In fact, although the complainant voluntarily demoted to a production worker position, he was permitted to retain his team leader premium and was paid more than the individual who replaced him as team leader, Michael Connors. Connors' race is white/Caucasian.

team leaders to be making more than he was, he presented no competent evidence showing the job duties that the various team leaders performed and did not establish that the jobs were sufficiently comparable as to warrant similar pay. Moreover, the complainant offered nothing to rebut the respondent's contention that the job of metals team leader required lesser skills than that of other team leaders. Indeed, he testified that he did not believe he had the skills or qualifications to work in any department other than metals.

The commission has considered the arguments raised by the complainant in the brief in support of his petition, but does not find them persuasive. The record contains no evidence of discriminatory animus on the part of the respondent, and the complainant's entire case is premised on a comparison between his hourly rate of pay and that of other team leaders whose jobs were not shown to be similar to the complainant's, ignoring the fact that individuals subsequently hired in the exact same position who are not part of the protected class were compensated at a lower hourly rate than the complainant. Given all the facts and circumstances, the commission agrees with the administrative law judge that discrimination was not established.

cc: Douglas J. Phebus
Michael R. Gotzler