DOL Complaint by 5 Former Vogtle Employees

1/16/85 [redacted], was discharged for refusing to submit to a drug urinalysis.

1/24/85 [redacted], was discharged for insubordination, excessive absenteeism, and unsatisfactory job performance.

2/5/85 [redacted], was discharged for misconduct and violation of work rules.

2/27/85 [redacted] was discharged for failing to pass a drug urinalysis.

3/1/85 [redacted], was discharged for refusing to submit to a drug urinalysis.

5/13/85 All five former employees submitted a complaint with the Department of Labor (DOL) alleging retaliation by Georgia Power Company (GPC) for having engaged in protected activities.

7/10/85 All five complaints were dismissed by DOL as not having been timely filed. (Complaints must be filed within 30 days under section 210 of the Energy Reorganization Act (ERA)). All five former employees appealed the initial DOL decision and requested a hearing.

8/20/85 A DOL hearing was held in Augusta, Georgia to determine if the 30 day limitation for filing of complaints had been tolled due to a) Failure of GPC to post NRC Form 3 or b) the former employee's oral communications to an official of the NRC (Bruno Uryc).

1/24/86 The DOL Administration Law Judge (ALJ) issued a recommended decision to the Secretary of Labor which dismissed the complaints because the 30 day time limit had not been met. The ALJ found that GPC had properly posted NRC Form 3. The fact that the 8/82 version rather than the 9/84 version was posted was dismissed by the ALJ as not mattering since the former employees denied ever having seen the form. The ALJ also found that only two of the five former employees had contacted Bruno Uryc within 30 days of their dismissal, that Mr. Uryc was not aware they were complaining of discrimination, and that the two failed to respond to a summation of their complaints sent to them by Mr. Uryc on February 26, 1985.

2/21/86 The Secretary of Labor granted the five former employees request to file briefs before him. The Secretary's decision is still pending.

In the Matter of Arbitration Between		
Georgia Power Company Vogtle Nuclear Project Construction		OPINION
and		AND
Local Union No. 424, International Union of Operating Engineers, AFL-CIO. AAA Arb Case No. 30-30-0251-81 August 12, 1982		AWARD [redacted] Grievance

ARBITRATOR:

Thomas J. McDermott was selected as the neutral arbitrator for this arbitration in accordance with the procedures of the American Arbitration Association.

APPEARANCES:

The hearing for this arbitration was conducted in the conference room on the Vogtle Nuclear Project construction site, Burke County, Georgia, on April 28, 1982. The receipt of the transcript and the filing of post-hearing briefs were completed on August 4, 1982. At the hearing the representatives for the parties were as follows:

For the Union

Wallace D. Brannon	International Representative, I.U.O.E.
Hubert Keen	Business Manager, Local 474, I.U.O.E.
Wald Howard	Asst. Business Agent Grievant

For the Company

Charles W. Whitney, Esq. Troutman, Sanders, Lockerman & Ashmore Harry H. Gregory III	Attorney
L. Tom Garner	Construction Project Manager Ga. Power Co. Vogtle Project Supervisor Safety, Labor Relations

Frederick R. McCarty	Project Manager Walsh Construction Co.
Edwin D. Groover	Quality Assurance Site Supervisor
John L. Mercer	Investigator
Capt. Wm. E. Johnson, L. Johnson Richmond County Sheriff's Dept.	Witness

THE GRIEVANCE

The grievance of [ ] was filed on November 17, 1981. It states the following:

> [ ] was removed from the job by Ga. Power Security for a drug arrest 2/13/81. [ ] has been barred from Ga. Power Project. [ ] arrest(ed) on the job, but his sale of narcotics was not job related.

BACKGROUND

The grievance arose at the construction site of the Alvin W. Vogtle Nuclear Project, Unit 1 and 2, which is located in Burke County, Georgia, near Augusta, Ga. The plant, when completed, will consist of two 1100 megawatt units with two pressurized water reactors designed by Westinghouse. The Georgia Power Company, who is the owner of the plant, is also the General Contractor for the entire construction project. Initial construction began in 1974. Shortly thereafter, the project was shut down. In 1977, it restarted, and the first unit is due to come on line in the Spring of 1987, while the second unit is due to be on line in the Fall of 1988. Over the construction period approximately 30 contractors will be involved. At the time of the arbitration, there were approximately 8000 persons employed on the project, of whom around 850 are employees of Georgia Power Company.

In 1974, the Company, on behalf of itself and its contractors and sub-contractors, signed a Project Agreement with the International and Local Unions

affiliated with the Building and Construction Trades Department AFL-CIO and th General Teamsters. Operating Engineers Local 474 was one of the signators Contained in that agreement are the following provisions, which are applicable to thi case:

ARTICLE 4

Referral of Men

> (1).....Applicants for the classifications of journeymen, apprentice or trainee, and helper required by the Employer on said construction project, shall be referred to the Employer by the Unions. The Employer shall have the right to reject any applicant referred by the Unions...
>
> These general work rules for Plant Alvin W. Vogtle Nuclear System will become part of this agreement.
>
> (2). Alcoholic beverages or narcotics will not be allowed. Anyone caught drinking or under the influence of drugs or alcohol will be terminated and barred from the job.
>
> (8). Any employee terminated for violation of these work rules will not be hired by any other contractor on job site....

In addition, in the General Work Rules promulgated by the Company, dated August 1, 1980, rule number 19 states the following:

> Any employee terminated for violation of these work rules will not be hired by any other contractor on the job site for a period of no less than thirty (30) working days. Severity of the violation will determine if the employee will be barred from the job indefinitely.

The Union involved in this grievance is Local Union number 474 of the

International Union of Operating Engineers, AFL-CIO, which is one of the signators the Project Agreement. It is the bargaining representative for approximately 4 Engineers employed on the construction site by four contractors. The Grievant, [ ] began his employment as a Crane Operator with Walsh Constructi Company in February, 1980. He has been a member of Local 474 for about f years.

The events leading to the incident of the removal of the Grievant from t construction site began during the Spring of 1980, when the Company became aware a serious drug problem involving the construction site. Contact was made with t Burke County Sheriff's Department and the Georgia Bureau of Investigation. T Company obtained the services of an undercover investigator, who was deputized the Burke County Sheriff's Department. He sought and obtained a job with Wal Construction Company, first as a Cement Finisher and later was placed in the To Shed. His work on the site began on August 18, 1980, and it was to be terminat on January 30, 1981. The investigation was to be culminated on February 13, 198 with the arrest of 15 employees of various contractors. Of the 15, twelve arres were based upon the evidence supplied by the Company's undercover investigato Among them was the Grievant, [ ] who was arrested on two counts of sellir marijuana.

Subsequently, the Grievant, along with 12 other employees of Walsh Constructio Company, were terminated by that Company. The notation placed on their terminatio slips was "not for rehire". In a letter, dated April 8, 1981, to Business Manager Ke of Local 474, the Construction Project Manager for Georgia Power Company, M Gillespie, stated the following, as it related to the Grievant and another Enginee who had been fired by the Walsh Company:

> ....In view of the sensitive nature of this construction project, and the great responsibility which has been placed on Georgia Power Company as owner in order to ensure that this nuclear plant is built safely and

efficiently, Georgia Power Company is no longer willing to allow [ ] or [ ] to return to its property.

We shall review this matter after the issues involved with their arrest on criminal charges have been resolved. In the interim, please do not refer either person to any contractors who are working at this site.

However, [ ] did return to work on the project site. Following discharge by Walsh Construction Company, the Grievant was hired on a daily basis as Operator/Oiler by Sims Crane Service, a crane-rental firm. On September 1981, he was dispatched by the firm's Augusta rental office to the Kelly Dewater Company, which had a contract to install a dewatering system at the Vogtle Plant. Lorain Rough Terrain Crane and operator were rented by Kelly for work on t project.

When [ ] arrived on the job, he was given a temporary security badge, and worked as an employee of Sims on the Kelly project from September 23rd to Novem 9, 1981. According to Company witnesses, they were unaware that he was working the construction site. Shortly before November 9th, Management was contacted another employee, who had been barred from the project, and he complained about t fact that [ ] was working on the site. At about the same time, [ ] was given opportunity to work directly for Kelly Dewatering, and he applied for a perman security badge. Georgia Power Company contacted Kelly Dewatering and directed t Contractor to remove him, as he was barred from the project site. That action g rise to the filing of the grievance.

The Grievant's involvement in the drug-bust incidents developed out of t contacts he had with the Company's undercover agent, Mr. Mercer. According to t latter, around a week prior to November 7, 1980, he met the Grievant for the fi time, and in the conversation he had with him, he stated that he was interested buying some drugs, and he asked him if he knew where there was some he could b

[ ] told him that he did not have any at that time, but that he would let him know when he could get some.

On the afternoon of November 7, 1980, the Grievant approached Mercer in the Tool Shed and told him that he had some good pot. He wanted to know if Mercer was interested in buying some. The latter said that he would like to buy a bag, in order to try it out. [ ] then stated that, if he would go to his house after work, he would sell him a bag of pot.

That night around 9:00 P.M., the Investigator went to the Grievant's trailer home, and he was brought into the latter's bedroom. [ ] pulled out a large plastic bag containing approximately one pound of marijuana. He mentioned that he did not have a scale, but that he would pull out what he estimated to be an ounce. If it came up short in weight, the Investigator was told to let [ ] know, and he would make it up. The marijuana was put in a smaller bag, and Mercer paid [ ] $35.00. At the same time, he asked [ ] about the possibility of getting a quarter or a half pound. [ ] told him he would let him know. Subsequently, the substance that was purchased by the Investigator was subject to a laboratory analysis, and it was found to be less than 1 ounce (11.9 grams) of marijuana.

A week later, on November 14, 1980, around 10:00 A.M., the two met again in the Tool Shed, and [ ] told the agent he had a quarter of a pound and asked, if he was interested in buying it. Mercer said he was and they arranged to meet in the Walsh Construction parking lot. The Investigator went to his car, while [ ] walked to his motorcycle, lifted the seat and took out a plastic bag of marijuana. He brought the bag over to Mercer's car, got inside and handed it to him. He then suggested that they drive to a convenience store off the project site for lunch. At that location, Mercer paid [ ] $110.00 in cash for the purchased substance. The later laboratory report confirmed that it was marijuana with a weight of 3.1 ounces.

The Grievant's testimony relative to these transactions differed from th

testimony of the Investigator. According to [ ] he knew Mercer for about six months prior to the first transaction, and that they socialized frequently. His initial testimony was that sometime before the first transaction Mercer came to him and told him he was going to Macon to see his mother in the hospital that he was new in town and did not know anyone who would have any drugs. He then stated that Mercer asked him if he could find any. [ ] stated that his answer was that he would check it out, and that Georgia Power was full of dope dealers, so that all you had to do was go out and look.

[ ] then stated that a couple of weeks later he found some dope in town, and he "bought what he wanted and came and sold it to him for what he paid for it". The delivery was made in his trailer, and he admitted it was from a larger bag, but his claim was that it was not his, but a friend's. He also claimed that he told Mercer he was not making any money from the transaction, and that Mercer said "You are a real friend to do that". His further testimony was that Mercer paid for it with a check, which later bounced. However, at a subsequent date he got his money from Mercer.

With respect to the November 14, 1980, incident, his initial testimony only related to the November 7th sale. Also, he denied that he admitted to Captain Johnson that he made other sales. On further examination he admitted to the November 14th sale. His testimony was that Mercer approached him a week or two after the first sale and told him the pot he got was real good. He also asked him to get some more. He then stated that he got the pot from the boy and paid $110 for it. When he told Mercer he had it, the latter asked him to bring it out to the project. At lunch time, he got the marijuana out of his motorcycle, and when Mercer started to look at it, [ ] suggested that they drive to the convenience store.

After his arrest, and on the advice of his attorney, he pleaded guilty to the sale of less than an ounce of marijuana. His sentence was a $1,000 fine and 4 years

probation. On November 11, 1981, he prepared and signed a statement in which he related only to the first instance of selling the marijuana. The statement also claimed that about a month after the sale, Mercer approached him at work, identified himself as an undercover agent, and told him he, [ ] was in big trouble, and that he would get him off the book, if he would help him bust more people. The offer was refused by the Grievant, because he believed it to be wrong to get someone's friendship and then bust them.

Investigator Mercer denied using a check to pay for the marijuana, and he denied he ever told the Grievant he would get him off, and that he was an undercover agent, because that would have endangered his life and the investigation. He further denied that they socialized frequently, and he stated that he met the Grievant only a relatively short time before the first drug transaction.

POSITIONS OF THE PARTIES

The basic Company position is that the right to bar certain people from its property is an inherent right of management, which it has never relinquished in negotiations with any Unions. It also relies upon Article IV, Paragraph (1) of the Project Agreement, which gives to Georgia Power Company the right to reject any applicant referred to it by a Union. This, the Company states, is what it did in the case of [ ] and it is this rejection that the Union is seeking to erase. Thus, the Union now seeks to gain in arbitration what it voluntarily gave away in negotiations.

The Company stresses its right to promulgate and enforce reasonable work rules, and it stresses that its policy relative to drugs is a very reasonable one. It holds that the use or sale of drugs by plant employees would detrimentally affect the safety and efficiency of construction operations for obvious reasons. In support of this

contention, it cites not only the testimony of Company witnesses, but also that of the Union's Business Manager. In the Grievant's case, his employer Walsh Construction Company, was particularly concerned, because he was operating a tower crane, "an extremely large, important and potentially dangerous piece of equipment". The Company also cites the very extensive quality assurance program it maintains, and states that a toleration of drugs on the Plant Vogtle construction site would seriously impair the efficiency of construction.

With respect to specific violations by the Grievant, the Company points to the Grievant's admission of having possession of over a quarter pound of marijuana on the site. That mere possession of drugs was justification for his discharge by Walsh Construction Company. Barring him from the job site, which is a less drastic step, is certainly justified. It further cites the two sales of drugs made by the Grievant, and to his admissions to the Police Captain, who gave him his polygraph examination, that he had admitted he used Quaaludes, speed, pot and cocaine.

Finally, the Company stresses the fact that the Plant Vogtle project involves the construction of a nuclear power plant. As a result, the dangers that are present, when workers use drugs, are particularly acute when the work involves that kind of construction work. Not only are the possible accidents a factor, but employees under the influence of drugs may perform poor work, which may leave hidden and fatal flaws in construction, which may cause a disaster months or even years later.

The Company further refers to the responsibilities that the Company has to the Nuclear Regulatory Commission. That agency is very concerned with the impact of drug abuse at a nuclear plant on the safety of both the workers and the public. In support of this contention, it cites reports of concern with drug use in several atomic energy plants in the country.

Finally, the Company holds that public opinion must be satisfied that there are no drugs at Plant Vogtle. Particularly, is it concerned that the belief that there is a

drug problem can give ammunition to public interest groups like Georgians Against Nuclear Energy. Actions by hostile public interest groups can wreak significant havoc with a construction schedule.

The Union position is that the Grievant in this case was not a drug dealer, as the Company charges. It agrees that [ ] made an error in judgment, but it contends that it should not be a basis for barring him from the construction site.

The Union contends that in the presentation of the case, there was not one shred of evidence that would indicate that the Grievant ever used or was under the influence of drugs on the job. It calls attention to the testimony of the Walsh Construction Company's Project Manager, who stated that he had never received any complaint from [ ] supervisor concerning his job performance or dependability. That, it states, is not the pattern of a user of drugs.

The Union further argues that the Grievant was maneuvered into the two sale situations by Investigator Mercer. It charges that the latter's intent was to get him into such a situation where he would have to assist him in his investigation by turning in pushers.

The Union also charges that the Company is more concerned with making an example of the Grievant. It calls attention to the fact that [ ] went back to work on the project, and it was only after a disgruntled employee, who also had been barred, complained about [ ] presence, that the latter was then barred.

DISCUSSION AND FINDINGS

The parties agree that this is not a discharge case, but a matter of barring the person from employment on the Vogtle property. Therefore, this action does not forestall the contracting employer from rehiring the Grievant and using him on construction projects for other customers.

Under Article IV, Paragraph (1) of the Project Agreement the Georgia Power Company does have "the right to reject any applicant referred by the Unions". This right to refuse to accept persons for employment, who have been referred to the Company by a Union, clearly gives to the Company the right to bar a potential employee from its property. However, as the Company has acknowledged, this right to bar an employee from its property is not a right, which may be exercised arbitrarily, capriciously or discriminatorily. There must exist a reasonable basis for such action.

The Project Agreement between the parties also contains a set of general work rules. Rule Number 2 states that alcoholic beverages or narcotics will not be allowed. Although it does not specifically use the words "on the Plant Vogtle construction project", there is no other meaning that can be attached to the cited sentence. Thus, there is an agreed to rule between the parties which clearly encompasses the forbidding of the possession of beverages or narcotics on the Plant Vogtle site.

Rule 2 also states that "anyone caught drinking or under the influence of drugs or alcohol will be terminated and barred from the job". This work rule does not specifically mention the selling of alcohol or drugs to fellow employees, who may use such on the work site. However, it is obvious that a person, who was guilty of selling drugs to workers, who may use them in such a fashion that they would be under the influence of the drugs on their jobs, would have far more potential for injury to property and persons, than a single employee, who has been drinking or taking drugs. The latter's potential for injury, as great as it may be, is nevertheless limited to his own area of work. The person selling, on the other hand, must accept responsibility for all possible employees, to whom he may provide the drugs, and he must share responsibility for any or all potential injury, which may occur.

Rule Number 8 provides in part that "any employee terminated for violation of these work rules will not be hired by any other contractor on job site". Thus

effect exchanged the four ounce bag in the parking lot, although the money was no exchanged until after the two had left the construction project. The fact tha through the plea bargain that sale was dropped from the legal charges does not mak the infraction any less real.

The Union's contention that Investigator Mercer maneuvered the two transactio so as to get the Grievant to help him with his investigation is only based on th Grievant's claim that Mercer told him he was an undercover man, and asked him t help him. The entire conversation was denied by Mercer, and his explanation of wh he would never disclose his identity as an undercover agent was most plausible.

The Union also stresses that there is no evidence to prove the Grievant eve used or had been under the influence of drugs on the job. However, there are th admissions made by the Grievant to Investigator Mercer and Captain Johnson. To th former, he told of taking speed on one day on the job, and to the latter, he admitte that in the past he had used quaaludes, speed, pot and cocaine. While there is n evidence that the Grievant is an addict, this testimony is just one more factor i support of the barring action. It is more support for why the Grievant should not b given special treatment, while other former employees remain barred.

Thus, we have an employee, who admitted selling drugs to a fellow employee o two occasions. He may not be a regular dealer in drugs, but there is no way o knowing how many other sales he may have made to other employees. He was foun guilty of selling drugs, and he was discharged by his employer, Walsh Constructio Company. No grievance was filed against that discharge. The Georgia Powe Company acted within its right, when it barred [ ] along with the other convicte employees from the construction project. The fact that [ ] was able to work fo another contractor on the site for a period of several weeks, without Management' knowledge, did not minimize or revoke its right to bar him from its property. Ther did exist a reasonable basis for the Company action.

AWARD

It is therefore my award that the grievance be denied.

Thomas J. McDermott

Arbitrator

Given at San Antonio, Texas, this 12th day of August, 1982.

JUDGMENT IN A CIVIL CASE

United States District Court	DISTRICT SOUTHERN DISTRICT OF GEORGIA AUGUSTA DIVISION
CASE TITLE [ ] V. WALSE CONSTRUCTION COMPANY, a division of GUY F. ATKINSON CO.	DOCKET NUMBER CV184-084
	NAME OF JUDGE OR MAGISTRATE B. AVANT EDENFIELD

☐ Jury Verdict. This action came before the Court and a jury with the judicial officer named above presiding. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial ~~or hearing~~ before the Court with the judge ~~(or magistrate)~~ named above presiding. The issues have been tried ~~or heard~~ and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that in accordance with such decision, rendered on the 10th day of January, 1985, JUDGMENT is hereby entered in favor of the defendant, WALSE CONSTRUCTION COMPANY and against the plaintiff, [ ] The complaint stands dismissed and the parties are instructed to pay their own costs.

CLERK HENRY R. CRUMLEY, JR.	DATE JANUARY 10, 198[illegible]
(BY) DEPUTY CLERK Betty W. Hall	

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

[redacted]
Plaintiff

vs.

CV184-084

WALSH CONSTRUCTION COMPANY,
a Division of Guy F. Atkinson
Company, a Nevada Corporation,
Defendant

O R D E R

Plaintiff [redacted] who is ethnically identifiable as black, brought this employment discrimination action against his former employer, defendant Walsh Construction Company, alleging that defendant by its actions discriminated against him on account of his race, in violation of 42 U.S.C. § 2000e, et seq., otherwise known as Title VII of the Civil Rights Act of 1964, as amended. The Court's jurisdiction over this action is unopposed by defendant.

On December 11, 1984, the matter came before the Court for trial without a jury. On the basis of the pleadings, the testimony of the witnesses, and review of the evidence received and the arguments made by counsel following the close of the evidence, the Court makes these pertinent findings of fact and conclusions of law.

I. Findings of Fact

1. Georgia Power Company ("Georgia Power"), along with Oglethorpe Electric Membership Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, owns a nuclear power plant under construction in Burke County, Georgia, known as Alvin W. Vogtle Nuclear Plant Units Numbers 1 and 2 ("Plant Vogtle").

2. On October 21, 1980, plaintiff [ ] worked as a laborer employed by defendant Walsh Construction Company at the construction site of Plant Vogtle.

3. Georgia Power has promulgated certain rules of conduct and safety for the project. These rules are accepted and agreed to by each contractor before the contractor and its employees are admitted to the job site.

4. Among the exhibits received into evidence was the Plant Vogtle Project Agreement, effective March 27, 1974 (Defendant's Exh. 7), which provides that

> [a]lcoholic beverages or narcotics will not be allowed. Anyone caught drinking or under the influence of drugs or alcohol will be terminated and barred from the job.

Id. at page 22, ¶ 2. This agreement was amended August 18, 1981, which amendment did not affect the above rule.

5. In an interoffice memorandum communicated by Georgia Power to all supervisors and on-site contractors at Plant Vogtle, dated August 1, 1980 (Plaintiff's Exh. 4), Georgia Power issued new work rules to be strictly enforced. These new rules supercede the General Work Rules previously issued." Specifically, as those rules relate to this case, Georgia Power stated that

> [a]lcoholic beverages or narcotics will not be allowed. Anyone caught or suspected of drinking or being under the influence of drugs or alcohol will be terminated.

Id. at Rule 2. Furthermore,

> Any employee terminated for violation of these work rules will not be hired by any other contractor on the job site for a period of no less than thirty (30) working days. The severity of the violation will determine if the employee will be barred from the job site indefinitely.

Id. at Rule 19.

6. Also received into evidence were the Rules of Conduct and Safety for General Plant construction and Maintenance Projects, effective January 1, 1984 (Defendant's Exh. 9). Those rules provide that

> [a]nyone possessing, under the influence of, or participating in the sales, purchase, or distribution of any narcotics and other controlled substances (except if prescribed by a physician to the person found in possession of the controlled substance or narcotic) on the job.

Id. at "Rules of Conduct, Category One Violations," "[will be

terminated] and not eligible for rehire upon any Georgia Power Company project governed by these rules.". Id. at "Penalties for Category One Violations, for First Violation."

[illegible] work rules "to be strictly enforced. [illegible] [illegible]. [ ], then General Superintendent of construction at Plant Vogtle for Walsh Construction Company, since October, 1977, testified that on November 8, 1979, [ ] Georgia Power Safety Co-ordinator, informed him that he had witnessed from a distance of approximately 150 yards [ ] of Walsh Construction Company and [ ] of Georgia Power passing what appeared to be a marijuana cigarette between themselves in a washed out area on the Georgia Power premises. [ ] testified that upon receiving this report, he called [ ] to his office for questioning. According to [ ] first denied but later admitted as true the allegations asserted against him by [ ] [ ] discharged [ ], reportedly for "Violation of job rules [and] agreement." See Plaintiff's Exh. 5, dated November 8, 1979. No other notation was made on [ ] termination notice. [ ] explained that the discharge notice did not specify violation of a particular work rule because no evidence was found on [ ] proving that he had been smoking marijuana.

8. [ ] had been employed by Walsh Construction Company as a journeyman, and is ethnically identifiable as white.

terminated] and not eligible for rehire on any Georgia Power Company project governed by these rules.". Id. at "Penalties for Category One Violations, for First Violation."

new work rules "to be strictly enforced. [redacted] then General Superintendent of construction at Plant Vogtle for Walsh Construction Company, since October, 1977, testified that on November 8, 1979, [redacted] Georgia Power Safety Co-ordinator, informed him that he had witnessed from a distance of approximately 150 yards [redacted] of Walsh Construction Company and [redacted] of Georgia Power passing what appeared to be a marijuana cigarette between themselves in a washed out area on the Georgia Power premises. [redacted] testified that upon receiving this report, he called [redacted] to his office for questioning. According to [redacted] first denied but later admitted as true the allegations asserted against him by [redacted] discharged [redacted], reportedly for "Violation of job rules [and] agreement." See Plaintiff's Exh. 5, dated November 8, 1979. No other notation was made on [redacted] termination notice. [redacted] explained that the discharge notice did not specify violation of a particular work rule because no evidence was found on [redacted] proving that he had been smoking marijuana.

8. [redacted] had been employed by Walsh Construction Company as a journeyman, and is ethnically identifiable as white.

9. According to [ ] a blanket hiring call was placed on November 9, 1979 to the union supplying laborers to Walsh Construction Company. On that date [ ] applied for a job with defendant as such a laborer. [ ] testified that the clerk hired [ ] notwithstanding the fact that he had been terminated the previous day for violating the rules.

10. [ ] testified that there was nothing in [ ] file to indicate that he should not be rehired. As found above at paragraph 5, the rules changed in August, 1980, to disallow the rehire of a discharged employee within 30 days of termination. The Court notes that this rule was not in effect at the time Mr. Peterson was discharged and subsequently rehired.

11. On a later date, [ ] was discharged for poor work performance.

12. On October 21, 1980, plaintiff [ ] was employed as a laborer with defendant Walsh Construction Company at Plant Vogtle. Plaintiff concedes that he was subject to Georgia Power's work rules in effect on that date.

13. As plaintiff was exiting from the work site on that date, a Georgia Power security guard, in the course of conducting a routine lunch box search, observed a clear plastic bag in plaintiff's lunch box. This bag contained a leafy material which the security guard suspected to be marijuana. This security

guard asked plaintiff to remove the bag, which plaintiff did, handing it to the guard. The guard notified the Burke County Sheriff's office of the incident, and the suspected material was turned over to the Burke County investigator. The guard also notified [ ] in his capacity as General Superintendent of Walsh Construction Company.

14. Plaintiff was discharged from his job with Walsh Construction Company on October 22, 1980. [ ] issued him a termination notice, which stated that the reason for his discharge was "[p]ossession of marijuana on job site. Not for rehire."

15. The Georgia Bureau of Investigation Crime Laboratory issued an official report on December 8, 1980, confirming that the substance taken from plaintiff on October 21, 1980 was marijuana (less than 1 ounce, specifically 7.3 grams). (Plaintiff's Exh. 8).

16. The notation "[n]ot for rehire" inscribed on his termination notice effectively has served to bar plaintiff from the Plant Vogtle premises. Plaintiff has not been rehired by any contractor on the site since his October 22, 1980 discharge.

17. [ ] explained that when a discharged employee is qualified as "[n]ot for rehire," a card is placed in his job file to flag a hiring clerk's attention, signalling to such clerk that

a job application is not to be issued to the requesting individual.

18. Following his discharge and denials for reapplication, plaintiff filed a timely charge against defendant with the Equal Employment Opportunity Commission ("EEOC"), asserting employment discrimination on the basis of race. Plaintiff is ethnically identifiable as black.

19. Plaintiff received a determination letter from the EEOC on March 16, 1982. Plaintiff's Exh. 2. That letter recites the two incidents of job termination described in the above findings made by this Court. By that letter, the EEOC informed plaintiff that there was reasonable cause to believe that his charge against defendant was valid.

20. Plaintiff filed this action pursuant to that EEOC determination. Jurisdiction of this Court is unopposed.

21. [ ] testified that he knows in his capacity as project manager for Walsh Construction Company at Plant Vogtle that since plaintiff's discharge from the site, approximately ninety (90) other employees have been terminated for drug-related reasons, and those employees have not been reinstated.

II. The Law and Analysis

The issue to be decided by this Court is whether defendant by its actions discriminated against plaintiff on account of his race, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. seq.

In considering this question, the Court first notes that "Title VII is not a shield against harsh treatment at the workplace." Jackson v. City of Kileen, 654 F.2d 1181, 1186 (5th Cir. 1981). "Nor does the statute require the employer to have good cause for his decisions. The employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminating reason." Nix v. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1187 (11th Cir. 1984) (citing Megill v. Board of Regents, 541 F.2d 1073, 1077 (5th Cir. 1976); Sullivan v. Boorstin, 484 F. Supp. 836, 842 (D.D.C. 1980)).

Essentially, plaintiff's sole contention is that he is black, [ ] is white, and [ ] was treated better, in that he was rehired after being discharged. Implicit in this argument is plaintiff's belief that he and [ ] were similarly situated employees. However, the Court finds that the evidence does not support this premise.

First, while plaintiff was caught in possession of a suspected substance, [ ] was observed from 150 yards engaging in a suspected activity. No marijuana was found on [ ] person; rather, his termination resulted from his

admission that he had smoked some marijuana, not from proof that he had engaged in such activity. Nor is there any evidence that such activity influenced his behavior. Clearly, there was better evidence available to prosecute a case against plaintiff than against [ ].

Secondly, the Court notes that the work rules promulgated by Georgia Power were reissued on August 1, 1980, "to be strictly enforced." These new rules followed [ ] initial determination, but preceded and therefore were in effect at the time of plaintiff's discharge. The new rules added a charge of "suspicion" to the previous requirement of direct evidence against an employee. Moreover, the new rules specified that violation of the work rules could result in a discharged employee being indefinitely barred from the work site. The Court speculates that under the rules in effect at the time of plaintiff's discharge, [ ] would have qualified for the same action taken against plaintiff, who was permanently barred from the premises. However, because the work rules in effect at the times of initial discharge of these two employees were different, the two situations are not comparable.

Accordingly, the Court concludes that plaintiff and [ ] are not "similarly situated" individuals for purposes of Title VII. Consequently, the different treatment each was accorded by defendant does not support a judgment for plaintiff, merely because he is black. See Nix, 738 F.2d at 1187. Rather, review of the exhibits and defendant's actions with regard to these two individuals demonstrates to this Court an evolution in

the policy conceived and enforced by Georgia Power to maintain safety at a nuclear power plant under construction.

Specifically, the Court reasons that as a nuclear power facility grows closer to completion, the security of the system necessarily becomes more burdensome, and that security and the responsibility for maintaining it falls most heavily on the persons currently located on the site. Yearly institution of new work rules to preserve control and prevent accidents should be anticipated by anyone who chooses to work at the site. Compliance with such rules, in this Court's opinion, should be liberally interpreted and strictly enforced. See Nix, supra, at 1187. ("Title VII does not take away an employer's right to interpret its rules as it chooses, and to make determinations as it sees fit under those rules."). Even the suspected use of drugs that may affect acuity, reflexes, or coordination, should be absolutely and forever barred, which policy justifies the express penalty currently in effect at the facility.

"The 'factual inquiry' in a Title VII case is '[whether] the defendant intentionally discriminated against the plaintiff.'" United States Postal Service Board of Governors v. Aikens, 460 U.S. 711 (1983) (citing Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981)). "In other words, is 'the employer ... treating some people less favorably than others because of their race, color, religion, sex, or national origin.'" Aikens, supra, at 715 (citing Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978), quoting Teamsters v. United States, 431 U.S. 324, 335, n.15 (1977)). The Court finds

after reviewing the evidence received and testimony given in this matter that plaintiff has failed to produce evidence establishing a prima facia case of discriminatory intent; therefore, consideration of this case under the Title VII standard of review declared in Burdine, supra, is unnecessary. Smith v. State of Georgia, No. 83-8753, slip op. at 1386 (11th Cir. Jan. 2, 1985).

III. Conclusion

For the reasons stated, the Court must find in favor of defendant and against plaintiff. This action is hereby dismissed, on the merits. The parties are instructed to pay their own costs.

SO ORDERED, this 16th day of January, 1985.

JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

INTERNATIONAL BROTHERHOOD of

Painters and Allied Trades

PHONE 404 · 724-2161

OFFICE OF Chester L. Davidson, F. S.
and Business Representive
1251 Reynolds St.
Augusta, Georgia-30902

February 21, 1985

Williams Contracting Company
Mr. Art Bell
P. O. Box 282
Waynesboro, Georgia
30830

Dear Sir:

Enclosed please find letters of grievance from [ ] and [ ] Trusting that you will give this matter your earliest attention, I remain

Sincerely yours,
Chester L Davidson
Chester L. Davidson
F. S. and B. R.

CLD:mb
opeiu #21
afl-cio
enc. 3 Grievances

cc: Personal File
GPC Labor Representative,
Jim Love, Painters' Int'l Rept.
Virgil Williams, Owner of Williams Contr. Inc.

Jt. 4

February 1, 1985

TO WHOM IT MAY CONCERN:

My foreman come and got me of the off the job and told me to wait in Room 127.[ ]were brought in, and[ ] people were told they had the option to work or go home about one-half earlier. I asked[ ]what was going on, he turned to[ ] and asked if he was goint to go home,[ ]left, then[ ]told me, [ ]that we had been called in for a drug test. I learned later that[ ]also knew that[ ]had been called in too. He was given the opportunity to leave, he had to take the test the next day, and the day after because they said the machine had to be recalibrated. [ ]and I went and took the test, we were sent back to the Hole. At 5:45, they came and got us, said they wanted us at the safety trailer when we got there they said, we had a small amount or tracer of cannibold in our sample, at that point I knew something was not right, because I know that I don't fool around with drugs of any type, so I refused their test at Humana Hospital. I went to the University Hospital and paid $135.00 for a test, and had it witnessed by a doctor, the results were negative.

[ ]

February 1, 1985

TO WHOM IT MAY CONCERN:

While at work at Plant Vogtle I, [ ] was asked to take a drug test. I was told by [ ] there was a phone call saying that [ ] and [ ] was smoking dope at DeLaigle's Store. This was stated by a grudge call to Williams Contracting, Inc.

I took the test at Plant Vogtle for drugs and it was not positive. After this I was told I was going to have to go to Humana Hospital for another drug test and I refused to go so I was fired for this. So this was on February 1, 1985.

On February 2, 1985, I, [ ] and we requested Chester L. Davidson, Business Representative and we went to the hospital for another drug test. [ ] and [ ] took a witnessed urine test for drugs and it came out clean no drugs.

[ ]

JUN 2 1 1985

INTERNATIONAL BROTHERHOOD of
Painters and Allied Trades

PHONE 404 724-2161

OFFICE OF Chester L. Davidson
F. S. and S. A.
1251 Key
Augusta, Ga.-30902

June 19, 1985

Williams Contracting, Inc.
Mr. Tom McDowell, Labor Relations Rept.
2076 West Park Place
Stone Mountain, Ga.
30087

Dear Sir:

I am writing you this letter in reference to two grievances that was filed in February, 1985 in behalf of members, [ ] and [ ] These grievances were sent to Mr. Art Bell, Plant Manager at Vogtle Nuclear Plant located in Burke County.

It was said to me in front of my Steward, that he, Art Bell would answer my grievance for these men. Since all of this has taken place Mr. Art Bell is no longer at Plant Vogtle, and these grievances have not been answered on the said [ ] and [ ] I am asking Williams Contracting , Inc. that these two men, [ ] and [ ] be put back to work as early as 6-21-85 with back pay. I am looking for a quick reply on said grievances.

I feel these men were not treated properly because they asked to be given another test the very next day, and was turned down by the said [ ] They also asked Georgia Power Safety and the people that also gives the test.

I went to University Hospital with [ ] and [ ] the very next day to take the union test for drugs. The results came back and they were negative. A copy of these tests were sent to Georgia Power and also a copy went to Mr. Art Bell.

I would appreciate a reply as soon as possible.

Sincerely yours,

Chester L. Davidson

Chester L. Davidson
F. S. and B. A.

CLD:mb
opeiu #21
afl-cio.

cc: James Love, Painters' Int'l Rept.
Dale Cockrill, GPC Labor Rept.
Virgil Williams, Owner of Williams Contr. Inc.
Frank Turner, Attorney for Williams Contr. Inc.

NUCLEAR REGULATORY COMMISSION ASSESSMENT
VOGTLE FITNESS FOR DUTY PROGRAM
LEGAL ISSUES
SEPTEMBER 15, 1986

FITNESS FOR DUTY - ANSI STANDARDS

SIGNIFICANT LEGAL QUESTIONS

- [ ] ARBITRATION - 1982
- [ ] VS. WALSH CONSTRUCTION COMPANY - 1984
- ACLU SOLICITATIONS
- [ ] AND [ ] VS. GEORGIA POWER COMPANY - 1985
- [ ] VS. PULLMAN POWER PRODUCTS AND GEORGIA POWER COMPANY - 1985
- [ ] VS. PULLMAN POWER PRODUCTS AND GEORGIA POWER COMPANY - 1985
- [ ] VS. WILLIAMS CONTRACTING - 1985