

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2010CF0680
)	EEOC NO.:	21BA93265
PAULINE BETTS,)	ALS NO.:	11-0487
)		
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Rozanne Ronen¹, Nabi Fakroddin, and Merri Dee², presiding, upon Pauline Betts's ("Petitioner") Request for Review ("Request")³ of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2010CF0680; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On August 26, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Robert Half International, Inc. ("Employer") discharged her because of her race, Black in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On June 30, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 3, 2011, the Petitioner filed a Request for Review.
2. The Petitioner was employed as a Customer Service by the Employer.
3. In her charge, the Petitioner alleged that she was discharged on March 10, 2009, because of her race. The Petitioner alleged that her work performance met the

¹ This Order is in accordance with a vote cast by Commissioner Ronan prior to the expiration of her term.

² This Order is in accordance with a vote cast by Commissioner Dee prior to the expiration of her term.

³ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

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Employer's expectations. The Petitioner also alleged that the reason cited by the Employer for her discharged was because she made a threat to a co-worker. The Petitioner believes that she was falsely accused by a white co-worker and that the Employer favored him over her. The Petitioner lastly alleged that a similarly situated employee who sabotaged work of co-workers was not discharged, whereas she was discharged for doing nothing wrong.

4. The Employer denied that it discharged the Petitioner because of her race. Rather, the Employer stated that it discharged the Petitioner because she threatened a co-worker.
5. The Respondent's evidence revealed that the Employer is a temporary staffing service. On or about January 15, 2007, the Employer hired the Petitioner and began placing her at temporary job assignments. In October 2008, the Employer placed the Petitioner at Nestle Clinical Nutrition a customer service call center staff employee.
6. The call center work area of Nestle, the Petitioner sat in the front row and James Morande ("Morande"), another worker placed by Nestle by the Employer, sat behind her in the second row. The Petitioner and Morande were two of several individuals who were responsible for reviewing and printing the customer orders that arrived via fax. On March 9, 2009, the Nestle supervisor, Mary Raider "(Raider)", was concerned that the faxed orders were not being handled in a consistent manner. She asked Morande who handled the fax orders and he listed the individuals (including the Petitioner) and she responded that she wanted to meet with all of them the next day to discuss the processing of fax orders.
7. on March 10, 2009, soon after Morande arrived and sat down at his work station; The Petitioner turned around and threatened him. Morande reported that Petitioner said, "Listen you motherfucker, I've got your plates. You think you'll get away with this you white bitch. I'll cut your ass." Morande also heard the Petitioner say "No white bitch is going to get my ass fired." Morande was scared by decided not to respond or say anything at that point and started working. Later that morning the Petitioner repeated her threat when she turned to Morande and said, "Wait until you-leave work. I'll cut your ass you motherfucker."
8. That after the Petitioner threatened Morande the second time he reported it to the supervisor, Raider, at Nestle and Raider immediately contacted the Employer.
9. Raider contacted the Employer and informed the Employer of Morande's complaint. Lyndsay Traff ("Traff"), the Employer's Division Director, then contacted Morande and instructed Morande to go home for the evening. Traff and Kim Slamowitz ("Slamowitz"), the Employer's Branch Manager, then drove to Nestle and informed the Petitioner that she was being removed from the assignment at Nestle. Slamowitz stated that the Petitioner became upset and verbally assaulted Traff and Slamowitz. Slamowitz stated that the Petitioner stated that she did not need a knife to "whoop" them, and that she

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would "take them out." The Respondent's investigation further revealed that a security guard ultimately ushered the Petitioner out of Nestle's facility.

10. On March 11, 2009, Slamowitz informed the Petitioner that due to Petitioner's conduct, the Employer would no longer represent the Petitioner. Slamowitz stated that during this conversation, the Petitioner called her a "white fucking whore."
11. In her Request for Review, the Petitioner argues the Respondent made a credibility determination in violation of Cooper v. Salazar. The Petitioner denies making any threats to a co-worker. The Petitioner further argues that the Respondent never interviewed the employee who received the alleged threat and that the Respondent relied on hearsay testimony.
12. In its response, the Respondent argues that the Employer articulated a non-discriminatory reason for discharging the Petitioner and that there was no evidence that the articulated business reason was pretext for unlawful discrimination.

Conclusion

The Commission concludes that the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission finds there is a Lack of Substantial Evidence in the Petitioner's case. Specifically, the evidence was insufficient to establish a *prima facie* case of discrimination. Generally, to establish a prima facie case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

In the Petitioner's case the second element was not established because of the threats she made to her co-workers. Additionally there was no evidence that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances.

The Commission further finds that the Employer articulated a non-discriminatory reason for discharging the Petitioner and that there was no evidence that the articulated business reason was pretext for unlawful discrimination. The Employer discharged the Petitioner because she threatened a co-worker. Three of the Employer's employees observed the Petitioner direct threatening and offensive language at another employee. Based on the Petitioner's behavior, the Employer made a business decision to discharge the Petitioner. In the absence of any

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evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Robert Half International, Inc., as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 4th day of December 2018.

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin

Commissioner Merri Dee