

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2010CN3818 |
| |) | EEOC NO.: N/A |
| CYNTHIA YORK, |) | ALS NO.: 12-0104 |
| |) | |
| Petitioners. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic¹, Terry Cosgrove², and Patricia Bakalis Yadgir presiding, upon Cynthia York's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")³ of Charge No. 2010CN3818; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; 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:

A. PROCEDURAL HISTORY

1. On June 8, 2010, the Complainant filed a charge of discrimination with the Respondent . The Petitioner alleged United Airlines ("United") issued her a level 2 disciplinary notice due to her race, Black , and sex, female, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On November 8, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On February 10, 2012, the Petitioner filed a timely Request. On March 28, 2012, the Respondent filed its Response to the Petitioner's Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner is employed as a customer service agent by United.
2. On July 22, 1989, United hired the Petitioner as a customer service agent. In October 1997, the Petitioner transferred to the position of customer service representative. In July 2000, the Petitioner moved into the position of service director. As service director, the Petitioner's job

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

² This Order is in accordance with a vote cast by Commissioner Cosgrove 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 requesting review of the Department's action shall be referred to as the "Petitioner."

responsibilities are to assign other agents to their work area, deal with irate customers and provide support to agents when needed.

3. United maintains a progressive disciplinary policy ("disciplinary policy"). The steps of the disciplinary policy are verbal warning, written warning, suspension, and termination. Respondent maintains Rules of Conduct ("Rules") which may result in disciplinary measures up to and including termination. The Rules further state that discipline will commence at the level specified, except that the circumstances of the particular situation or the employee's disciplinary record may warrant a higher level. Failure to obey a direct order is a violation of Respondent's Rule #29. Respondent's rules state that failure to follow a direct order starts with level 2 discipline.
4. On January 29, 2010, the Petitioner and Roderick Ratchford ("Ratchford") (black, male) Service Director were working a flight. While processing the line of passengers, Bassem Saad ("Saad") (non-black, male), an irate customer, called Petitioner an "idiot and a fucking sorry bitch." Saad went to Ratchford and told him that Petitioner would not give him a seat. Ratchford told Saad he had heard the entire conversation and asked Saad to apologize to the Petitioner. The Petitioner stated that Saad looked at her and then told Ratchford to get a supervisor. Ratchford then called Nicholas Story ("Story"), Supervisor (non-black, male) to come to the gate because a customer had requested to speak to a supervisor.
5. Story talked to Complainant and Saad when he arrived. Saad told Story that Petitioner answered him over United's public address system which got him upset. Saad admitted to swearing, however denied that it was not directed at the Petitioner. Story stated that when he talked to Ratchford, Ratchford acknowledged that he heard Saad swearing at the Petitioner and that Ratchford asked Saad to apologize so that he could be placed on the flight. The customer did apologize to the Petitioner. When Story arrived at the gate, he asked the Petitioner to "unload" Saad onto the flight after he told Saad to apologize. "Unload" means to assign a seat. Petitioner responded no. Story asked Petitioner again, and Petitioner again refused. The Petitioner told Story she could not "unload" Saad because she had deleted him off the DM list, which is a list of stand by customers. Passengers on the DM list are not assigned a seat and can be confirmed or placed on standby. At this time, Story told Complainant he was giving her a direct order. Story contends that Complainant responded "you can fire me," signed out of the system and walked away. Complainant contends that it was at that time that she signed out and went to the washroom and then came back.
6. On February 24, 2010, William Skjoldager ("Skjoldager"), Supervisor, conducted an investigation into this incident. As part of the investigation, Skjoldager obtained the statement of Saad, Petitioner, Story, Ratchford, and John Medicus, Supervisor. Based upon United's investigation into January 29, 2010, incident, United issued to the Petitioner a level 2 disciplinary notice for violation of United's rule #29. On March 19, 2010, the Petitioner, through the collective bargaining process, filed a grievance with the union which was denied on April 4, 2010. On

May 12, 2010, the Petitioner filed a second step grievance aggrieving the level 2 disciplinary notice.

7. United has issued level 2 disciplinary action to other similarly situated employees. Between March 2009, and March 2010, United has issued level 2 disciplinary action to eighteen employees. Of those eighteen, thirteen (72.2%) are non-Black and three (16.6%) are male. Of those eighteen employees, United also issued a level 2 disciplinary notice to Christine Smith (non-black, female), Customer Service Representative, for violating Rule 29, failure to comply with a direct order.
8. In her request, the Petitioner denies that she refused a direct order from her supervisor and describes the events that led to her disciplinary notice. The Petitioner contends that she had an excellent work record with the United and that United discriminated against her because of her race.
9. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues that the evidence was insufficient to establish a *prima facie* case of discrimination.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed 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 the evidence insufficient to establish even a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that she is a member of a protected class; (2) that she was performing his work satisfactorily; (3) that she 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, there was no evidence that an employee outside of the Petitioner's protected class was treated more favorably under similar circumstances.

The Commission further concludes that United articulated a non-discriminatory business reason for its actions and there was no evidence of pretext. United disciplined the Petitioner because she engaged in an incident with a passenger. United conducted an investigation into the incident and based on the investigation, the Petitioner was issued a level 2 disciplinary action. In her Request the Petitioner offered no evidence of pretext. In the absence of any evidence that the business

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consideration relied upon by United 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).

D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' 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 United Airlines as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 10th day of December 2018.

Commissioner Marti Baricevic

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir