

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF2964
)	EEOC NO.: 21BA11470
MISTI TEMPLE,)	ALS NO.: 12-0203
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Patricia Bakalis Yadgir, and Terry Cosgrove¹ presiding, upon the Request for Review (“Request”) of Misti Temple (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011CF2964 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 Counts A and B of the Petitioner’s charge for **LACK OF JURISDICTION**, and Count C for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On March 31, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Progress Rail Services (“Employer”) discriminated against her because of her sex, by denying her opportunities to do complex work, failing to assign her a partner, and treating her disrespectfully (Count A); subjecting her to unfair written discipline (Count B); and firing her for a safety violation when her equally responsible male coworker was not disciplined (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).

On January 5, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

As to Counts A and B, the Commission concludes that the Respondent properly dismissed the Petitioner’s claims for lack of jurisdiction. Section 7A-102(A)(1) of the Act provides that in all cases (except housing discrimination cases), a petitioner must file a charge of discrimination with the Respondent within 180 days after the date of the alleged civil rights violation. This 180-day filing requirement is jurisdictional. Failure to file a charge within the prescribed time deprives the Respondent and the Commission of jurisdiction to proceed further. Trembczynski v. Human Rights Comm’n, 252 Ill. App. 3d 966, 625 N.E.2d, 215 (1st Dist. 1993). The alleged unfair treatment and

¹ This Order is in accordance with a vote cast by Commissioner Cosgrove prior to the expiration of his term.
² 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 Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

disrespect listed in Count A occurred on unspecified dates between December 2009 and May 2010, more than 180 days prior to the filing of the charge. The disciplinary writeup of Count B occurred on July 23, 2010, again outside the 180-day window. Therefore, the Respondent lacked jurisdiction regarding those Counts.

As to Count C, there is no substantial evidence that the Employer discriminated against the Petitioner. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) she is a member of a protected class; 2) she was performing her work satisfactorily; 3) she was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994). In this case, there is no substantial evidence that the Employer treated similarly situated employees more favorably than the Petitioner, because there were no comparable male employees, with a history of safety violations similar to petitioner's, who were not terminated due to that history. The Employer provided Respondent with a list of male employees who had been terminated during this time frame for violating company policies. In the specific incident that led to Petitioner's termination, she alleged that her male coworker should have been held equally responsible for failing to note a safety hazard; but the male coworker told the Employer, and the Employer determined, that this particular hazard was Petitioner's responsibility.

Accordingly, the Petitioner has not presented any evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge is hereby **SUSTAINED**.
2. 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 Progress Rail Services Corporation as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 10th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Duke Alden

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir