

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF1566
)	EEOC NO.: 21BA10469
PHILIP ROSE,)	ALS NO.: 12-0388
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito,¹ Lauren Beth Gash,² and Michael Bigger presiding, upon Philip Rose's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")³ of Charge No. 2011CF1566 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 for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On December 2, 2010, the Petitioner filed a charge of discrimination with the Respondent alleging that All Access Transportation ("Employer") subjected him to unequal pay and harassed him in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On April 5, 2012, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

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. 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. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

To establish a *prima facie* case of discrimination, the Petitioner must show: 1) he is a member of a protected class; 2) he was performing his job satisfactorily; 3) he was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside his protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

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

² This Order is in accordance with a vote cast by Commissioner Gash 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 Illinois Department of Human Rights's action shall be referred to as the "Petitioner."

In order to prove discriminatory harassment, a complainant must establish that he was harassed on the basis of his race and that the harassment was so severe or pervasive that it altered the conditions of his employment and created an abusive environment. In re Luisa Tapia, et al. and Genlyte Thomas Group, IHRC, Charge No. 2000CF0871, 2002 WL 32828305 (December 16, 2002). The harassment must occur frequently enough to constitute a term or condition of employment; infrequent or isolated comments are insufficient to prove a violation of the Act. In re Jerry Lever and Wal-Mart Stores, Inc., IHRC, Charge No. 1998SF0551, 2001 WL 474082, *5 (January 2, 2001).

There is no substantial evidence that Petitioner was paid less than his coworkers by being given fewer hours because of his race. The Petitioner cannot prove the fourth element of his *prima facie* case, as he has not pointed to any similarly situated employees who were treated more favorably under the same circumstances. The employee the Petitioner uses to make his comparisons was not similarly situated, as he had achieved more seniority than the Petitioner, and was therefore given more hours. The investigation also revealed one non-black employee who had more seniority than the Petitioner but made less money over the same period of time. The Employer also indicated that it made scheduling decisions based on customer requests, and the customers were not requesting the Petitioner as much.

Regarding the Petitioner's harassment allegations, the Petitioner alleged in his charge that his coworkers harassed him by giving him fewer hours than other workers, forcing him to drive in violation of federal regulations, falsely accusing him of not following orders, talking to him in a loud and disrespectful manner, and threatening him with the loss of his job and reminding him that he was not out of his probationary period. Nothing in the Petitioner's charge or the Respondent's investigation indicates that this behavior was so severe or frequent as to alter the conditions of the Petitioner's employment and create an abusive environment.

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 All Access Transportation 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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Entered this 29th day of October 2018.

Commissioner Diane M. Viverito

Commissioner Lauren Beth Gash

Commissioner Michael Bigger