

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2012CR1408</b>
	)	EEOC NO.: <b>N/A</b>
<b>CORVELL BROWN,</b>	)	ALS NO.: <b>12-0453</b>
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito,<sup>1</sup> Michael Bigger, and Amy Kurson presiding, upon Corvell Brown’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>2</sup> of Charge No. 2012CR1408 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 September 16, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that CSX Transportation, Inc. (“Employer”) harassed him, subjected him to unequal terms and conditions of his employment, and disciplined him because of his race in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On May 25, 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).

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).

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

<sup>2</sup> 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.”

The Petitioner cannot establish that he was harassed due to his race. The Petitioner stated during the investigation that his supervisor harassed him when he requested FMLA time off by shaking his head, throwing up his hands, and saying “why not take the entire week off instead of just one day?” in front of other employees. The Petitioner also stated that his supervisor was abrasive and threatening whenever Petitioner requested time off. The Petitioner cannot establish either that these comments were made because of his race or that they created a hostile work environment. The comments did not address the Petitioner’s race, nor was Petitioner able to point to someone of a different race who was not harassed for taking time off. The comments also were not severe, pervasive, or abusive enough to rise to the level of actionable harassment.

To establish a *prima facie* case of employment 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).

The Respondent’s investigation revealed that the Petitioner was not subjected to different terms and conditions of his employment because of his race, and that he was disciplined not because of his race but because of repeated unexcused absences. The Petitioner had taken FMLA leave to attend to his sick wife, but that leave expired in June 2011. In July 2011 the Petitioner was marked down for eleven unexcused absences, and from the beginning of August through August 10, 2011 (the date of Petitioner’s suspension), he had seven unexcused absences. The Respondent has identified a similarly situated employee who is not a member of Petitioner’s protected class who was given the same discipline for his unexcused absences.

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 CSX Transportation, 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** )

**Entered this 1st day of November 2018.**

Commissioner Diane M. Viverito

Commissioner Michael Bigger

Commissioner Amy Kurson