

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2011CN2692</b>
	)	EEOC NO.: <b>N/A</b>
<b>ROBERT GAGE,</b>	)	ALS NO.: <b>12-0650</b>
	)	
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Charlene Foss-Eggemann,<sup>1</sup> and Patricia Bakalis Yadgir presiding, upon the Request for Review (“Request”) of Robert Gage (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>2</sup> of Charge No. 2011CN2692 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 Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

**DISCUSSION**

On October 15, 2010, the Petitioner filed a charge of discrimination with the Respondent alleging that Metra (“Employer”) subjected him to unequal pay because of his race, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).

On August 3, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner has not presented a *prima facie* case that Employer denied him equal pay because of his race. He must show: 1) he is a member of a protected class; 2) he was performing his work 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, 253-54 (2d Dist. 1994). Petitioner’s case fails at the fourth prong. He asserts that two employees of a different race, but similar job duties, were paid much more than he received. But Petitioner was a non-union, salaried employee ineligible to receive overtime, while his named comparable employees were both union, hourly employees who earned enough overtime that their total compensation was higher than Petitioner’s (though Petitioner’s base pay was higher than theirs). Thus, these two employees were not similarly situated to Petitioner.

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<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Foss-Eggemann 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.”

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 Metra, 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 16th day of November 2018.**  
**HUMAN RIGHTS COMMISSION** )

Commissioner Duke Alden

Commissioner Charlene Foss-Eggemann

Commissioner Patricia Bakalis Yadgir