

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: <b>2011CA1568</b>
MONICA WATSON, )	EEOC NO.: <b>21BA10471</b>
)	ALS NO.: <b>13-0239</b>
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Robert A Cantone, Hamilton Chang, and Steve Kim presiding, upon Monica Watson’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2011CA1568 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 Notice of Dismissal 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 August 26, 2010, the Petitioner filed an unperfected charge of discrimination with the Respondent, which was perfected on November 18, 2010. The Petitioner alleged that NES Rentals (“Employer”), paid her unequal wages because of her age, 47 (Count A), her race, black (Count B), her sex, female (Count C), and in retaliation for her opposition to unlawful discrimination (Count D), in violation of Section 2-102 (A) of the Illinois Human Rights Act (“Act”).
2. In Counts A, B, and C, the Petitioner alleged that on May 23, 2010, the Employer paid her unequal wages because of her age, her race, and her sex. The Petitioner further alleges that Respondent paid similarly situated younger, non-black, male employees higher wages under similar circumstances.
3. In Count D, the Petitioner alleged that October 26, 2008, she opposed unlawful

<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge who is requesting review of the Department’s action shall be referred to as the “Petitioner.”

*In the Matter of the Request for Review by: Monica Watson*

discrimination when she complained to the Employer's VP of Human Resources, Bill Doucette ("Doucette"), of discrimination. The Petitioner further alleged that she opposed unlawful discrimination in April 2010, when she filed a charge with the Illinois Department of Labor Department. Further, the Petitioner alleged that in March 2010, the Employer paid her unequal wages in retaliation for her opposition to unlawful discrimination and for filing a charge with the Illinois Department of Labor.

3. On December 15, 2011, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction. On March 19, 2012, the Petitioner filed a timely Request with the Commission. On April 2, 2012, pursuant to the Respondent's response to the Request, the Commission entered an order vacating, reinstating, and remanding the Petitioner's charge to the Respondent for further investigation.
4. On February 26, 2013, the Respondent again dismissed the Petitioner's charge for Lack of Substantial Evidence.
5. On June 13, 2013, the Petitioner filed her second Request. On July 16, 2013, the Respondent filed its Response.

## **B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. The Petitioner was hired by the Employer and started work on December 1, 2003, as a Collections Specialist.
2. The Petitioner was promoted to Collection Lead effective April 1, 2004.
3. The Petitioner was promoted to the position of Unit Manager of Collections on March 1, 2009.
4. Prior to her promotion, the Employer employed two Unit Managers of Collections: Jeffrey Doubek (non-black, male, DOB: 09-03-68) and Michele Corpolongo (non-black, female, DOB: 05-20-66).
5. The Petitioner was one of three Unit Managers of Collections promoted at the same time. The other Unit Managers of Collections promoted were: Paula Austin (black, female, DOB: 01-07-74) and Marcia Gattuso (non-black, female, DOB: 08-22-47).
6. Doubek left the Employer's employment in December 2008.
7. Corpolongo was promoted to Department Manager in March 2009. The Petitioner and the other two Unit Managers of Collections report to Corpolongo.

8. At the time of the promotions, the Petitioner was compensated at an annual base salary of \$47,239.58 while Gattuso and Austin were compensated at an annual salary of \$45,228.53, and \$43,193.78, respectively. The Petitioner was the highest paid Unit Collection Manager of the three.
9. The Petitioner alleged that the Employer paid former Unit Manager of Collections, Doubek, a higher salary than her for performing the same or similar duties.
10. At the time of the alleged civil rights violation, Doubek performed the duties of Unit Manager of Collections, he also supervised eleven (11) Collection Specialists, had the ability to hire, discipline, or discharge employees, and managed accounts receivable rates of \$28 to \$39 million.
11. At the time of the alleged civil rights violation, the Petitioner supervised five (5) Collections Specialists, did not have the ability to hire, discipline or discharge employees, and managed accounts receivable rates of \$12 to \$17 million.
12. The Petitioner opposed unlawful discrimination on October 26, 2008. Further, the Petitioner alleged that beginning on March 31, 2010, the Employer paid her unequal wages in retaliation for her opposition to unlawful discrimination. The Petitioner's opposition occurred approximately seventeen months (17) prior to her March 31, 2010, when she was allegedly paid unequal wages.
13. In April 2010, the Petitioner filed a charge with the Illinois Department of Labor.
14. The alleged unequal pay was ongoing prior to the Petitioner filing her charge with the Illinois Department of Labor.
15. In her Request, the Petitioner argued that the Respondent's investigator seemed incompetent and jaded and took several months in responding to her calls and emails. The Petitioner further argued that the Employer restructure its organization to pay her less than Doubek. Additionally, the Petitioner argued that the Employer did not give her sole authority of or power to oversee the Employer' North receivables because the Employer thought it was best suited for a man.
16. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues the evidence was insufficient to establish a *prima facie* case of discrimination and retaliation. The Respondent further argued that the Employer articulated a non-discriminatory reason for its actions and its investigation uncovered no evidence of pretext.

### **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).

In Counts A, B, and C, The Commission finds there is no substantial evidence to establish a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that the Petitioner is a member of a protected class; (2) that the Petitioner was performing her work satisfactorily; (3) that the Petitioner 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 matter, the fourth element was not established. There was no evidence that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances, Rather, the evidence showed that the Employer promoted her and paid her a higher salary than similarly situated employee outside her protected class.

In Count D, The Commission finds there is no substantial evidence to establish a *prima facie* case of retaliation. Generally to establish a *prima facie* case of retaliation the Petitioner must show: (1) she engaged in a protected activity; (2) the Employer committed an adverse action against her; and (3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3<sup>rd</sup> dist. 2000). There are three ways in which the Petitioner may establish the necessary "causal nexus" required to prove a *prima facie* case of retaliation under the Act. Those methods are: 1) showing direct evidence of retaliation; or 2) showing evidence of unequal treatment of similarly situated persons who did not engage in the protected activity; or 3) establishing that the time period between the protected activity and the adverse action is short enough to create an inference of "connectedness." See In the Matter of: Giuseppe Scalera and Village of Oak Park, IHRC, Charge No. 1997CF1270, 2002 WL 32828292, \*5 (September 23, 2002). Additionally, The Petitioner must also establish that the protected activity occurred before the adverse action. Pace and State of Illinois, Department of Transportation, \_\_\_ Ill. HRC Rep. \_\_\_, (1989SF0588, February 27, 1995) (Slip op. at p. 13); Bregenhorn and C.C. Services, Inc., ALS No. S10596, 2004WL3312882 at 6 (Ill. HRC. April 2, 2004).

In the Petitioner's matter, the Petitioner's first protected activity occurred on October 26, 2008 and the adverse action occurred seventeen months later on March 31, 2010. As such, the time period between the protected activity and the adverse action is too long to create an inference of connectedness. In the second protected activity, the alleged adverse action was of unequal pay was

ongoing prior to the Petitioner filing her charge with the Illinois Department of Labor. Therefore, there was no nexus of a retaliatory motive.

Additionally, the Employer articulated a non-discriminatory reason for its actions and there was no evidence of pretext. The Employer stated that the Petitioner was not paid unequal wages because of her age, her race, or her sex. Rather, the Employer stated that in March 2009, it promoted the Petitioner, Paula Austin (36, black, female), and Marci Gattuso (63, white, female), and of the three employees the Petitioner was the highest paid. The Petitioner offered no evidence of pretext in her Request. In the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it is improper for the Commission to substitute its 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).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**WHEREFORE, 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, NES Rentals 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**

)

**Entered this 2<sup>nd</sup> day of October 2018**

)

Commissioner Robert A Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim