STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
JOHN GACEK,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2007CA0334
	)	EEOC NO(S):	N/A
and	)	ALS NO(S):	07-934
	)		
AMERICAN AIRLINES,	)		
	)		
	)		
Respondent.	)		

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion for Summary Decision filed May 23, 2008. Respondent filed a written motion along with a memorandum and exhibits. Complainant did not file a response to the motion, although allowed time to do so.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record. The record indicates the motion has been properly served upon all parties and the Illinois Department of Human Rights.

CONTENTIONS OF THE PARTIES

Respondent contends that summary decision must be granted because the undisputed facts support that the Illinois Human Rights Commission lacks jurisdiction over this matter. Complainant's position is not known as Complainant failed to file a response to the motion.

FINDINGS OF FACT

The following findings are made from undisputed facts in the record:

1. Complainant worked for Respondent in the position of Fleet Service Clerk at the relevant time period. Complainant's job duties included, *inter alia*, loading and

unloading baggage and cargo, transporting materials to and from aircraft, and cleaning and servicing aircraft interiors.

2. Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on July 21, 2006, alleging that Respondent, American Airlines, subjected him to practices of age discrimination in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq*. On December 18, 2007, the Department, on behalf of Complainant, filed a Complaint based on the underlying charges with the Illinois Human Rights Commission (Commission).

3. Respondent filed a verified answer and defenses to the Complaint on February 1, 2008. Respondent filed a motion for summary decision on May 23, 2008 A briefing schedule was set on June 25, 2008, ordering Complainant to file a response to the motion no later than July 25, 2008, and Respondent to file a reply no later than August 15, 2008. Hearing on the motion was set for September 2, 2008.

4. Respondent filed a reply on August 15, 2008. The record showed that Complainant had not filed a response to the motion.

CONCLUSION OF LAW

The Commission lacks jurisdiction over the Parties and subject matter of this action because the claims are preempted by the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978.

DETERMINATION

Respondent is entitled to summary decision as a matter of law because the undisputed facts support that the Commission lacks jurisdiction over the subject matter of this action.

DISCUSSION

The following discussion includes facts that were derived from uncontested pleadings and other documentation in the record in accordance with standards applicable to motions for summary decision, which require that all factual conflicts in the record be viewed in the light most favorable to the non-moving party. *Purdy Company of Illinois v Transportation Insurance Company, Inc.*, 209 Ill App 3d 519, 568 NE2d 318 (1st Dist 1991).

Complainant filed a Charge of Discrimination with the Illinois Department of Human Rights (Department) on July 21, 2006, alleging that Respondent, American Airlines, subjected him to practices of age discrimination in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* On December 18, 2007, the Department, on behalf of Complainant, filed a Complaint based on the underlying charges with the Commission.

Respondent filed a verified answer and defenses to the Complaint on February 1, 2008. Respondent filed a motion for summary decision on May 23, 2008. A briefing schedule was set on June 25, 2008, ordering Complainant to file a response to the motion no later than July 25, 2008, and Respondent to file a reply no later than August 15, 2008. Hearing on the motion was set for September 2, 2008. Respondent filed a reply on August 15, 2008. The record showed that Complainant had not filed a response to the motion.

Respondent, American Airlines, is obviously an airline carrier. The Complaint alleges that Complainant, 53 years old at the time, was employed as a Fleet Service Clerk by Respondent and was performing his job duties satisfactorily when Respondent discharged him and refused to reinstate him to his job position. Complainant complains that he was subject to the employment actions based on his age, in violation of the Act.

Respondent argues that, because it is an airline carrier, the Commission lacks jurisdiction over this Complaint as the claims alleged are preempted by the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978 (FAA).

Respondent points to the relevant provision of the Federal Aviation Act of 1958 at 49 USC § 41713(b)(1), which states: "a State [or] political subdivision of a State... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart."

As Respondent correctly states, the United States Supreme Court in *Morales v Trans World Airlines, Inc.*, 504 US 374, 383-86, 112 S Ct 2031 (1992), interpreted this provision to be broad in scope and to operate to bar state laws and enforcement actions regardless of whether those laws or actions are aimed specifically at the airline industry or are of general applicability.

Respondent argues that Complainant's job duties as Fleet Service Clerk are the kind of duties that fall within the scope of the FAA's preemption provision as relating to the transportation services of an air carrier. Respondent submits as its Exhibit A, *American Airlines Job Description and Essential Job Functions* for the position of Fleet Service Clerk. The job description and duties are numerous and extremely detailed, but generally include, loading and unloading baggage and cargo, transporting materials to and from aircraft, and cleaning and servicing aircraft interiors.

In support of its position that Complainant's job duties fall within the scope of the cited FAA provision, Respondent relies on Commission and Illinois Court of Appeals case law decisions. Respondent points to *Lara-Girjikian and Mexicana Airlines*, IHRC 9134, May 29, 1998, affd, 307 Ill App 3d 510, 718 NE2d 584 (1st Dst 1999), where, in following the reasoning in *Hastalis v Human Rights Commission*, 205 Ill App 3d 50, 52, 562 NE2d 1272 (1990), appeal denied, 1236 Ill2d 544, 567 NE2d 1272 (1991), the

Illinois Appellate Court upheld the Commission's conclusion that the FAA's preemption extended to discrimination claims by airline employees who perform ground service activities, such as ramp agent, ticket counter service, control agent, passenger service, operations agent and cashier.

In its analysis, the *Lara-Girjikian* appellate court found instructive the Commission decision in *Klocek v Delta Airlines,* IHRC, 5815, Feb. 28, 1997, which found that the duties of a customer service support agent were integrally related to the transportation services of an air carrier, and thus, the agent's discrimination claims were preempted by the FAA. The *Lara-Girjikian* appellate court also found instructive the previous Commission decision in *Schorsch v Simmons Airlines*, IHRC 8136, Nov. 20, 1996, where the Commission ruled that the duties of a ramp agent were integrally related to the transportation service of the air carrier and concluded that the FAA preempted the ramp agent's discrimination claims from being brought before the Commission.

Complainant submits nothing to dispute the validity or authenticity of Respondent's Exhibit A. In the absence of competent evidence from Complainant, Respondent's evidence stands unrebutted and must be accepted. *Koukoulomatis v Disco Wheels*, 127 Ill App 3d 95, at 101, 468 NE2d 477 (1st Dist 1984).

In following the appellate court analysis in *Lara-Girjikian*, it is clear that Complainant's job duties as Fleet Service Clerk are duties that are integrally related to the air transportation services of Respondent and, as such, the claims of discrimination pursuant to the Act are preempted under the FAA.

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment. *Cano v. Village of Dolton*, 250 Ill App 3d 130, 620 NE2d 1200 (1st Dist 1993) A motion for summary decision should be granted where there is no genuine issue of material fact and the

moving party is entitled to a recommended order in its favor as a matter of law. *Strunin and Marshall Field & Co.*, IHRC 536(L), March 3, 1983. The movant's right to summary decision must be clear and free from doubt. *Bennett v. Raag*, 103 Ill App 3d 321, 431 NE2d 48 (2nd Dist. 1982).

The undisputed facts in the record support that the claims of age discrimination brought by Complainant, an airline employee, against Respondent, an air carrier, are preempted by the FAA; therefore, the Commission lacks jurisdiction over this Complaint.

RECOMMENDATION

Based on the foregoing, I recommend that this matter be dismissed, with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: October 8, 2008

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section