STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009SF0672
	)	EEOC NO.: 21BA83062
PEDRO PARIS,	)	ALS NO.: 09-0503
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr. and Rozanne Ronen, presiding, upon the Petitioner's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 2009SF0672, Pedro Paris ("Petitioner"); and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

(1) The Respondent's dismissal of Count A, Count B, Count C, and Count E of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**; and,

(2) The Respondent's dismissal of Count D of the Petitioner's charge is **VACATED,** and Count D shall be **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION.**

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 2, 2008, the Petitioner filed a charge of discrimination with the Respondent in which he alleged his former employer, Wal-Mart Stores, Inc. ("Employer"), paid him an unequal wage (Count A), failed to promote and/or hire him into a supervisory position (Count B), subjected him to unequal terms and conditions of employment (Count C), subjected him to different terms and conditions of employment (Count D), and discharged him (Count E) because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act. On September 11, 2009, the Respondent dismissed the Complainant's charge for Lack of Substantial Evidence. On September 21, 2009, the Petitioner filed this timely Request.

2. The undisputed evidence in the investigation file shows that in 2008, the Employer was hiring for various positions because it was opening a new store, which opened on July 16, 2008. The

[1] 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."

Petitioner was hired on May 20, 2008, as an "In-Stock Associate." As an "In Stock Associate," he was classified by the Employer at Pay Grade 3. All employees in the same Pay Grade received the same starting compensation. At the time the Petitioner was hired, Pay Grade 3 employees started at $ 8.05 per hour, which was the Petitioner's starting salary. On July 1, 2008, when the minimum wage was increased, the starting salary for Pay Grade 3 employees was increased to $ 8.15. The Petitioner's salary was thereafter increased to $ 8.15 per hour.

3. Between April 28, 2008 and May 19, 2008, the Employer hired four other In-Sock Associates, at the starting salary of $ 8.05. On July 11, 2008, the Employer hired a non-Black as an In-Stock Associate at the starting salary rate of $ 8.15 per hour.

4. The Employer's Supervisors had a starting salary rate at Pay Grade 7. Dave G. and Brent P. (both non-Black) were hired as In-Stock Supervisors. Their starting salaries were $ 11.35 per hour and $ 10.55 per hour, respectively.

5. When the Petitioner applied for employment with the Employer, he listed no supervisory or managerial experience on his application.

6. When Dave G. and Brent P. applied for employment with the Employer, they each listed extensive supervisory or managerial experience on their applications.

7. The Petitioner's position required that he know how to operate a forklift. The evidence shows the Employer provided the Petitioner with computer-based forklift training. The evidence shows the Employer also provided at least one other Black employee with forklift training on July 1, 2008.

8. The Petitioner contends that on August 10, 2008, he requested a transfer to a different department or shift, but that his supervisor declined his request. The Petitioner contends non-Black In-Stock Associates were granted transfer requests.

9. On or about August 16, 2008, the Petitioner became involved in a loud and profanity-laced argument with a co-worker. Both employees were separately summoned into a manager's office to discuss the matter. After speaking to the Petitioner, the Petitioner was told to return to work while the Employer determined the appropriate discipline. However, the Petitioner left work instead of waiting to learn of his discipline. The Employer states he would not have terminated the Petitioner for misconduct. Instead the Petitioner would have received the same discipline as the co-worker with whom he engaged in the argument, a Decision-Making Day. In any event, the Employer deemed the Petitioner to have "self-terminated" due to his walking off the job prior to receiving his discipline.

10. In his charge, the Petitioner alleges that non-Black employees were hired at a higher starting wage than he was (Count A); that the Employer failed to hire him into a supervisory position,

though it hired similarly situated non-Black applicants into supervisory positions (Count B); that the Employer subjected him to unequal terms and conditions of employment by denying him forklift training, while providing the same training to non-Black employees (Count C); that he was also subjected to different terms and conditions of employment when his request for a transfer was denied, while the requests of non-Black employees were granted (Count D), and finally that he was discharged because of his race (Count E). In his Request, the Petitioner admits he was using profanity at work, and that based on statements by his manager, he knew he was going to be fired. He felt he was a "hostage" at Wal-Mart, but offers no additional evidence pertinent to his allegations.

11. The Respondent asks the Commission to sustain its dismissal of Counts A-C and E of the charge for Lack of Substantial Evidence. However, it asks the Commission to vacate its dismissal of Count D and remand Count D for further investigation.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed Counts A-C and E of 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). The Commission finds there is no evidence in the file to substantiate the Petitioner's claims as to those Counts.

As to Count A, there is no substantial evidence the Petitioner was hired at a lower starting salary. The evidence shows all employees hired to his Pay Grade received the same starting salary. Further, the Petitioner's salary, as was the salary of all employees in his Pay Grade, was increased in accordance with the increase in the minimum wage on July 1, 2008.

As to Count B, there is no substantial evidence that the Petitioner was denied hire or promotion to a managerial or supervisory position. The evidence shows the individuals who were hired as supervisors had managerial experience, while the Petitioner had none. Therefore, he has not demonstrated that he was qualified for the position sought, or that he was similarly situated to the non-Black individuals who were hired as supervisors.

The Petitioner's claim in Count C that he did not receive forklift training fails because there is evidence in the file the Petitioner was provided with computer-based forklift training, and that at least one other Black employee also received similar forklift training. There is no substantial evidence of race discrimination in the provision of training.

Finally, as to Count E, there is no substantial evidence the Petitioner was discharged by the Employer. He does not dispute he voluntarily walked off the job on or about August 16, 2008, prior to

receiving any official discipline from the Employer. The evidence demonstrates the Petitioner chose not to return to work, and thus voluntarily abandoned his employment.

In its Response to the Petitioner's Request, the Respondent does not oppose the Petitioner's Request as to Count D. The Respondent asks that the Commission vacate its dismissal of Count D and remand Count D for further investigation. Therefore, the Commission herein vacates the Respondent's dismissal of Count D.

THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Respondent's dismissal of Count A, Count B, Count C, and Count E of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**; and,

(2) The Respondent's dismissal of Count D of the Petitioner's charge is **VACATED,** and Count D shall be **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION.**

This Order is Not Yet Final and Appealable.

STATE OF ILLINOIS)
) **Entered this 24th day of March 2010.**
HUMAN RIGHTS COMMISSION)

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen