This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 06/16/06

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
JESSE E. ALDAPE,	)	
	)	
Complainant,	)	
	)	**Charge No.: 2002CF2905**
and	)	**EEOC No.: 21BA22378**
	)	**ALS No.: 12182**
CHICAGO TRANSIT AUTHORITY,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On September 17, 2003, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Jesse E. Aldape. That complaint alleged that Respondent, Chicago Transit Authority, discriminated against Complainant on the basis of his national origin when it suspended and discharged him.

This matter now comes on to be heard on Chicago Transit Authority's Motion for Summary Decision. Complainant has filed a written response to the motion, and Respondent has filed a written reply to that response. The matter is ready for decision.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. On or about December 23, 1994, Respondent, Chicago Transit Authority, hired Complainant, Jesse E. Aldape. Complainant's position was Bus Operator.

2. Complainant is of Mexican national origin.

3. On or about April 10, 2002, Complainant was operating one of Respondent's

buses westbound on Lawrence Avenue in Chicago. Complainant struck a bicycle that also was heading westbound on Lawrence. Complainant did not see the bicycle before the accident. Complainant did not notify the police or Respondent's communication center of the accident.

4. The rider of the bicycle was injured in the accident. Complainant gave the injured rider one hundred dollars and allowed him to get on the bus.

5. Complainant did not distribute Respondent's "courtesy cards" after the accident. Courtesy cards are post cards that allow witnesses to record information about accidents. Respondent uses the cards to aid in accident investigation and defense against lawsuits.

6. Complainant's bus was pulled over by Chicago police several blocks west of the accident site.

7. Complainant's actions violated several of Respondent's operating rules.

8. On or about April 10, 2002, Respondent suspended Complainant.

9. On or about April 26, 2002, Respondent discharged Complainant. The discharge decision was made by Fred Schein, the General Manager of the Forest Glen Garage.

10. Complainant had been involved in bus accidents prior to the accident of April 10, 2002.

11. On August 24, 2000, Willie Whitfield, an African-American employee of Respondent, was involved in an accident while driving a bus. Whitfield was suspended and not discharged as a result of that accident. Nobody was injured in Whitfield's accident.

12. On or about March 27, 2000, Peter Manhart, a white employee of Respondent, was involved in an accident while driving a bus. Manhart was subsequently discharged as a result of that accident.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(a) of the Act and

is subject to the provisions of the Act.

3. Complainant cannot establish a *prima facie* case of discrimination against him on the basis of his national origin.

4. Respondent can articulate a legitimate, non-discriminatory reason for discharging Complainant.

5. There is no genuine issue of material fact on the issue of pretext, and Respondent is entitled to a recommended order in its favor as a matter of law.

6. A summary decision in Respondent's favor is appropriate in this case.

DISCUSSION

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment in the Circuit Court. ***Cano v. Village of Dolton***, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). Such a motion should be granted when 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.***, 8 Ill. HRC Rep. 199 (1983). The movant's affidavits should be strictly construed, while those of the opponent should be liberally construed. ***Kolakowski v. Voris***, 76 Ill. App. 3d 453, 395 N.E.2d 6 (1st Dist. 1979). The movant's right to a summary decision must be clear and free from doubt. ***Bennett v. Raag***, 103 Ill. App. 3d 321, 431 N.E.2d 48 (2d Dist. 1982).

As a general rule, allegations of discrimination are analyzed using a three-part method. First, the complainant must establish a *prima facie* showing of discrimination. If he does so, the respondent must articulate a legitimate, non-discriminatory reason for its actions. For the complainant to prevail, he must then prove that the respondent's articulated reason is pretextual. ***Zaderaka v. Human Rights Commission***, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). *See also* ***Texas Dep't of Community Affairs v. Burdine***, 450 U.S. 251 (1981).

The parties agree that there are four elements to a *prima facie* case of national origin discrimination. To establish his *prima facie* case, Complainant must prove 1) that he is in a

protected class, 2) that he was meeting Respondent's legitimate performance expectations, 3) that Respondent took an adverse action against him, and 4) that similarly situated employees outside Complainant's protected class were treated more favorably. *See* ***Martinez and Abbott Laboratories***, ___ Ill. HRC Rep. ___, (1995CF2987, January 23, 2002).

The parties agree that Complainant can meet the first and third elements. He was of Mexican national origin, which puts him in a protected class, and he was discharged, which counts as an adverse action against him. The parties disagree, however, on whether Complainant can establish the remaining two elements.

It is difficult to see how Complainant can establish the second element. His performance on April 10, 2002, seriously undercuts his arguments. On that day, Complainant was operating one of Respondent's buses westbound on Lawrence Avenue in Chicago. Complainant struck a bicycle that also was heading westbound on Lawrence. Complainant did not see the bicycle before the accident. Contrary to Respondent's written policies, Complainant did not notify the police or Respondent's communication center of the accident. The rider of the bicycle was injured in the accident. Complainant gave the injured rider one hundred dollars and allowed him to get on the bus. Respondent interpreted the money as a bribe to the bicyclist. Moreover, again contrary to Respondent's written policies, Complainant did not distribute Respondent's "courtesy cards" after the accident. Courtesy cards are post cards that allow witnesses to record information about accidents. Respondent uses the cards to aid in accident investigation and defense against lawsuits. Complainant then left the scene of the accident, and his bus was pulled over by Chicago police several blocks west of the accident site.

There is no question that Complainant's actions violated several of Respondent's operating rules. Because of those multiple rule violations, it is difficult to argue that he was meeting Respondent's reasonable performance expectations at the time.

In addition, even if he could meet that second element, there is no evidence in the record to establish the fourth element. There is no evidence to indicate more lenient treatment

to someone outside Complainant's protected class.

Complainant argues that Willie Whitfield, an African-American employee, and Peter Manhart, a white employee, are valid comparatives. That argument, though, is without merit. Neither Whitfield nor Manhart was similarly situated to Complainant.

Like Complainant, Whitfield was involved in an accident while driving a bus. Whitfield was suspended and not discharged as a result of that accident. However, unlike Complainant, Whitfield did not injure anyone in his accident. Moreover, and more importantly, the decision to suspend Whitfield was not made by the same person who made the decision to discharge Complainant. Different decision makers can come to different conclusions without providing evidence of disparate treatment. *See* ***Mayhew and State of Illinois, Dep't of Public Aid***, ___ Ill. HRC Rep. ___, (1989CA0260, May 28, 1996). The differences in circumstances mean that Whitfield and Complainant are not similarly situated.

Complainant's other claimed comparative provides him no support whatsoever. Manhart was involved in an accident and was discharged as a result. To the extent his situation is considered, his treatment supports Respondent's arguments, not Complainant's.

In sum, Complainant has failed to demonstrate that he can establish a *prima facie* case. That, however, is not necessarily fatal to his claim. In its submissions, Respondent articulated a legitimate, non-discriminatory reason for its actions. Once such a reason is articulated, there is no need for a *prima facie* case. Instead, at that point, the decisive issue in the case becomes whether the articulated reason is pretextual. ***Clyde and Caterpillar, Inc.***, 52 Ill. HRC Rep. 8 (1989), *aff'd sub nom* ***Clyde v. Human Rights Commission***, 206 Ill. App. 3d 283, 564 N.E.2d 265 (4th Dist. 1990).

To justify denial of Respondent's motion, Complainant would have to raise a genuine issue of material fact on the issue of pretext. ***Pettis and McDonald's Corp.***, ___ Ill. HRC Rep. ___, 1991CF2143, October 10, 2001). He failed to meet that burden.

Respondent's articulation is that Complainant was discharged because of his violation of

several operating rules. As discussed above, there is no factual dispute about those violations. Complainant has failed to raise any factual issue which might suggest that Respondent's articulation is a pretext for discrimination.

Finally, it should be noted that Complainant has suggested that somehow a state or municipal entity is not held to the same standard as a private employer. That suggestion is completely without support. Both private and public employers are subject to the Act and both types of employers are subject to the same rules of conduct. Complainant has failed to cite any case law to demonstrate that Respondent is not entitled to a recommended order in its favor as a matter of law. Based on the existing record, Respondent's motion for summary decision should be granted.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:_____
MICHAEL J. EVANS
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 19, 2006