



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

**MHRC Case No. E16-0467**

May 18, 2017

**Naomi R. Cesare (Auburn)**

v.

**Hudson Bus Lines/Student Transportation of America (Lewiston)**

### **I. Summary of Case:**

Complainant Naomi R. Cesare was employed by Respondent Hudson Bus Lines/Student Transportation of America ("HBL"), a provider of student bus transportation services, as a bus aide from November 16, 2010 through August 24, 2016. Complainant alleged that HBL discriminated against her based on her age when it discharged her from her employment; Respondent did not respond to the complaint in this case.<sup>1</sup> The Investigator conducted a preliminary investigation, which included review of all the documents submitted by the Complainant. Based upon Complainant's information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that HBL unlawfully discriminated against Complainant based on her age.

### **II. Jurisdictional Data:**

- 1) Dates of alleged discrimination: August 8, 2016 to August 24, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): November 2, 2016.
- 3) HBL has approximately 60 employees and is subject to the Maine Human Rights Act ("MHRA"), the Age Discrimination in Employment Act ("ADEA"), and state and federal employment regulations.
- 4) Complainant is represented by Rebecca S. Webber, Esq. HBL is not represented by counsel.

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<sup>1</sup> The Commission notified HBL of the complaint in this case via U.S. Mail on November 14, 2016; the letter was not returned by U.S. Mail and is deemed received. On March 1, the Investigator sent notice that she was assigned to the case, and that the evidentiary record would be closed as of March 31, 2017, to the same address; that notice was returned to the Commission marked "Return to Sender" on March 13, 2017. The Investigator called HBL on March 15, 2017, confirmed it had moved its office, and re-sent the March 1 notice that day; the notice was not returned and is deemed received. Given HBL's notice of and opportunity to participate in this investigation, the Investigator presumes that HBL has chosen not to respond or provide a defense to the complaint.

### **III. Development of Facts:**

- 1) Complainant provided the following in support of her claims:

Complainant was 77 years old when she was hired by HBL in November 2010 as a bus aide. Complainant was laid off annually at the end of each school year and recalled in the fall of each year, until the summer of 2016. At that time, she was laid off as was the normal practice and her supervisor (“Supervisor”) gave her the impression that she would be recalled in the fall. On August 8, 2016, Supervisor informed Complainant (then 83 years old) that her services were no longer needed and that she was “out of control” with the kids, but that he would be glad to provide her with a reference. Complainant had never in her employment with HBL received verbal or written discipline and believed she performed her job duties satisfactorily. After her discharge, Complainant received a copy of her personnel file, which included a letter from Supervisor indicating that he spoke to Complainant several times about being “too gruff” and “short tempered” with the students; Complainant had never received the letter. Shortly after her discharge, Complainant heard that HBL hired new bus aides, and that she was replaced by a younger person.

- 2) Respondent provided no response to the complaint and did not participate in the investigation.

- 3) The Investigator made the following findings of fact based on the information submitted:

- a) On November 16, 2010, HBL hired Complainant as a bus aide. The interviewer described the Complainant as “a patient and affable lady who I feel will do well with children.”
- b) Complainant’s job duties included riding the school bus with pre-kindergarten children to ensure their safety, while maintaining control and providing an assuring and a calming presence to the children.
- c) From September to June of each year, HBL employed Complainant; she was routinely laid off each summer. Complainant was not required to reapply for her position each year.
- d) On June 6, 2016, Complainant was laid off for the summer; she had no reason to suspect her position for the following school year was in jeopardy.
- e) On August 8, 2016, Supervisor advised Complainant that HBL did not have a bus run for her, and her services were no longer needed. Supervisor told Complainant that she was “out of control” with the children, but that he would provide a favorable job reference if requested.
- f) HBL’s employee handbook described a progressive discipline policy beginning with a verbal warning, then two written warnings and finally, after a fourth violation, termination. The policy allowed for steps to be skipped, depending on the nature of the violation.
- g) On September 28, 2016, HBL provided Complainant a copy of her personnel file; in the file Complainant found a letter dated August 22, 2016 that she had never received. The HBL letter stated that Supervisor spoke to her “several times”, that the last two school departments said Complainant was “too gruff” and “short tempered” with the students, and that those school departments requested that Complainant not be on school runs any longer. Complainant stated that Supervisor never spoke to her about her demeanor with the children.

- h) Complainant recalled one incident when she told a child to take his feet off the back of the seat directly in front of him. Supervisor did not discuss that incident or discipline her as a result.
- i) Complainant's personnel file did not include any documentation reflecting that she received verbal or written discipline.
- j) Complainant believed that HBL hired several bus aides after her discharge and that she was replaced by a younger worker.

#### IV. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") §4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA provides that it is unlawful "to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment" because of age. *See* 5 M.R.S. § 4572(1)(A).
- 3) Because here there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 4) In order to establish a prima-facie case of age discrimination in violation of the MHRA, Complainant must show that: (1) she performed her job satisfactorily, (2) her employer took an adverse employment decision against her, (3) her employer continued to have her duties performed by a comparably qualified person or had a continuing need for the work to be performed, and (4) those who continued to perform Complainant's job duties were a substantially different age than Complainant. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1<sup>st</sup> Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1<sup>st</sup> Cir. 1990); *cf. City of Auburn*, 408 A.2d at 1261; *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312-13 (1996) (federal ADEA).
- 5) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16. In order to prevail, Complainant must show that she would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.

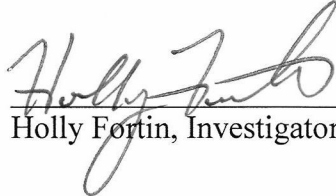
- 6) Complainant established her prima-facie case by showing that she performed her job satisfactorily (no disciplinary record), HBL took an adverse action against her (terminated her employment), HBL had continued need for the work to be performed, and her replacement was substantially younger than she was.
- 7) HBL has not provided a legitimate, non-discriminatory reason for Complainant's discharge. HBL chose not to respond or controvert any of the claims Complainant raised in her Commission complaint. Since HBL did not refute or in any way respond to the allegations contained in Complainant's Commission complaint, which was made under oath, all material facts she alleged in her complaint are presumed to be true, since it is reasonable to draw the presumption that HBL would have provided exculpatory or explanatory evidence if any was available.
- 8) Discrimination on the basis of age is found.

**V. Recommendation:**

For the reasons stated above, it is recommended that the Commission issue the following finding:

There are **Reasonable Grounds** to believe that Respondent Hudson Bus Lines/Student Transportation of America unlawfully discriminated against Complainant Naomi R. Cesare based on her age when it terminated her employment, and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Amy M. Sneirson, Executive Director

  
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Holly Fortin, Investigator