



# Maine Human Rights Commission

# 51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

Amy M. Sneirson  
EXECUTIVE DIRECTOR

Barbara Archer Hirsch  
COMMISSION COUNSEL

## INVESTIGATOR'S REPORT MHRC Case Number: E18-0313 August 13, 2019

Dawn Carey (Bangor)

v.

Avis Budget Group (Bangor)<sup>1</sup>

### I. Summary of Case:

On August 20, 2018, Complainant filed her Complaint with the Maine Human Rights Commission ("Commission") alleging that Respondent discriminated against her based on her age and her religion.<sup>2</sup> Respondent denied discrimination, stating that it did not hire Complainant for a full-time position, because she was not the most qualified candidate.

### II. Summary of Investigation:

The Investigator reviewed the following documents as part of the investigation: (i) Complaint filed by Complainant on August 20, 2018; (ii) Respondent's response received on November 5, 2018; (iii) Complainant's rebuttal received on December 12, 2018; and (iv) responses to requests for additional information.

### III. Analysis:

The Maine Human Rights Act ("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 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.

In March 2018, Complainant applied for a full-time position as a sales associate for Respondent. Complainant was over 60 years old at the time she applied. Respondent interviewed Complainant and allegedly asked her if she was interested in a part-time position with the possibility of getting more hours when it entered its busy season.

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<sup>1</sup> Respondent provided Complainant was employed by AB Car Rental Services, Inc., a subsidiary of Avis Budget Car Rental, LLC. Complainant did not amend her complaint so the name she used has been retained.

<sup>2</sup> Respondent told Complainant not to say "God Bless You" to customers that she was assisting. The issue never came up again and Complainant suffered no adverse action beyond the suggestion not to use the religious phrase. This claim fails and will not be analyzed in the report.

Complainant reported that the offer included a guarantee that her position would become full-time and that she was very clear she was looking for a full-time position.<sup>3</sup> On March 26, 2018, Complainant began working part-time. Around the same time another employee (“Employee”) started as a full-time sales associate. Employee was approximately 20 years old at the time he was hired.<sup>4</sup> Complainant believes that she was passed over for the full-time position because of her age. On April 10, 2018, Complainant resigned her position because she was not getting full-time hours and therefore not getting full-time benefits.

First, Complainant establishes a prima-facie case of unlawful age discrimination by showing that (1) she applied for and (2) met the minimum objective qualifications for the job sought, (3) she was rejected, and (4) the person hired was of a substantially different age than her. *City of Auburn*, 408 A.2d at 1263; *Maine Human Rights Com. v. Kennebec Water Power Co.*, 468 A.2d 307, 309 (Me. 1983). See *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312-13 (1996) (federal ADEA).

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.

Complainant established her prima face case. She applied for the full-time position, she met the minimum qualifications, she was not given the full-time position, and the successful candidate was 40 years younger than she was. Respondent provided the legitimate nondiscriminatory reason that Complainant lacked direct sales experience and was not enthusiastic about the job during the interview. In the final stage of analysis Complainant has shown that there is at least an even chance this reason is untrue and she would have been given a full-time position but for her age.

Complainant denies that she was unenthusiastic about the job and instead reported that she was excited about the opportunity and very clear that she wanted full-time work. In addition, both Complainant and Employee’s resumes were provided in the record. While it may be true that Complainant did not have any direct sales experience (though she had spent the past five years as the owner-operator of a food truck, which likely

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<sup>3</sup> Complainant argued that Respondent did not follow through on its promise for full-time hours and benefits. Respondent disputed that it ever promised Complainant full-time hours. The record is inconclusive on what was said in the interview and regardless, Complainant did not work for Respondent long enough to see if she would have been given an increase in hours. The lack of increase in Complainant’s part-time hours will not be analyzed as a separate adverse action and will instead be incorporated into Respondent’s failure to hire Complainant for a full-time position at the outset.

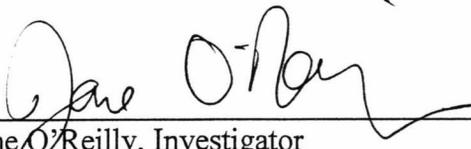
<sup>4</sup> Employee’s age was initially disputed. Respondent reported in its early submissions that Employee was 40 years old. Complaint provided evidence to support her assertion that Employee was 20 years old and Respondent discovered that Employee’s age was recorded incorrectly in its records. Employee’s birth year was confirmed to be 1997. Complainant was born in 1957.

included some direct sales experience) Complainant had decades of professional experience in customer service. The job posting did not require direct sales experience but rather a minimum of one year "customer service experience." Employee did have direct sales experience, but it was for less than a year and he had very little professional experience beyond that. Even though the content of the interview conversation is disputed, the evidence contained in the resumes contradicts Respondent's assertion that Employee was chosen over Complainant because he had more relevant experience. Complainant has established it is at least as likely as not that she was denied a full-time position because of her age.

**IV. Recommendation:**

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

- 1) There are **No Reasonable Grounds** to believe that Avis Budget Group discriminated against Dawn Carey in employment on the basis of religion and that claim should be dismissed in accordance with 5 M.R.S. § 4612(2).
- 2) There are **Reasonable Grounds** to believe that Avis Budget Group discriminated against Dawn Carey in employment on the basis of age and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
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Jane O'Reilly, Investigator