



Maine Human Rights Commission

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INVESTIGATOR'S REPORT PA12-0575

August 23, 2013

██████████ (██████████)

v.

██████████ ███████████)

I. Complainant's Complaint:

Complainant ██████████ alleged that she was unlawfully discriminated against by ██████████ ("██████████" because the company failed to provide her with reasonable modifications, including assistance with boarding and exiting from the bus, priority seating on the bus and transfers for her luggage.

II. Respondent's Answer:

Respondent ██████████ stated Complainant did not request assistance for boarding and de-boarding buses or request assistance with her carry-on bags.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: June 12, 2012 and June 13, 2012.
- 2) Date complaint filed with the Maine Human Rights Commission: November 15, 2012.
- 3) ██████████ is an establishment that offers services to the general public and is a "public accommodation" under the Maine Human Rights Act ("MHRA").
- 4) Complainant is represented by ██████████, Esq. Respondent is represented by ██████████, Esq.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and an Issues and Resolution Conference. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds."

IV. Development of Facts:

- 1) The parties and issues in this case are as follows:
 - a) Ms. ██████████ took a trip from New Bern, North Carolina to Waterville, Maine with ██████████ on June 12-13, 2012.
 - b) ██████████ provides intercity bus transportation.

- c) Complainant alleged that she was unlawfully discriminated against by [REDACTED] because the company failed to provide her with reasonable modifications, including assistance with boarding and exiting from the bus, priority seating on the bus and transfers for her luggage.
- d) Respondent denied discriminating against Ms. [REDACTED] and stated that Complainant did not request assistance for boarding and de-boarding buses or request assistance with her carry-on bags.

2) Complainant provides the following in support of her position:

- a) Ms. [REDACTED] has physical impairments including degenerative joint disease, a back injury, and morbid obesity. As a result of her physical impairments, she is substantially limited in major life activities including walking, lifting, sitting, balance, climbing stairs, among other life activities. Ms. [REDACTED] is in constant pain.
- b) As a result of her physical impairments Ms. [REDACTED] is substantially limited in major bodily functions including neurological, skeletal and orthopedic major bodily functions.
- c) Due to the limitations caused by her physical disabilities Ms. [REDACTED] requires reasonable modifications including assistance with lifting and carrying her bags and climbing stairs to get on and off the bus. In addition it is very difficult and painful for Ms. [REDACTED] to sit behind seats that recline and that do not provide leg room or room to shift. Therefore Ms. [REDACTED] requires seating behind the driver's seat.
- d) On or about June 11, 2012 Ms. [REDACTED] called [REDACTED] to request reasonable modifications for her trip. The telephone agent asked Ms. [REDACTED] what her limitations were as far as was she blind or in a wheelchair. Ms. [REDACTED] told the telephone agent that she had mobility problems and needed help with boarding and exiting the bus and with lifting and carrying her luggage. Ms. [REDACTED] also requested seating behind the driver's seat because it is very difficult and painful for her to sit behind reclining seats. [REDACTED] gave her a control number and told her to present it to any [REDACTED] staff and ask for the assistance she needed.
- e) During the Issues and Resolution Conference Ms. [REDACTED] stated that during the phone call she was told that priority seating and special handling cost \$5.00 each. Ms. [REDACTED] stated that she declined both due to the extra expense.
- f) On June 12, 2012 Ms. [REDACTED] told the driver in New Bern, North Carolina that she was disabled and needed assistance including help getting on the bus, carrying her bags and that she needed seating behind the driver's seat because it provided more space. Ms. [REDACTED] asked the driver to kneel the bus for easier entry. The driver told Ms. [REDACTED] that he did not know how to kneel the bus. Ms. [REDACTED] tried to explain the way she had seen it done before. The driver told Ms. [REDACTED] not to tell him how to do his job and to "get on the bus or stay."
- g) Ms. [REDACTED] tried to present the driver with her control number, but he did not respond. Ms. [REDACTED] asked the driver to provide a stepping block since he would not kneel the bus. The driver told Ms. [REDACTED] that he did not have time and they were already running late. The driver told Ms. [REDACTED] that she was tying him up.
- h) Ms. [REDACTED] began boarding the bus without assistance. While she was trying to get up the first step, the driver put both of his hands on her butt and pushed her up onto the first steps. He said "[L]et me

help your fat *ss." Once she was on the bus Ms. [REDACTED] had to take an aisle seat. The cramped seating exacerbated her disability causing pain and swelling in her legs and feet.

- i) At the next stop in Raleigh, North Carolina Ms. [REDACTED] had to transfer to another bus. She asked a [REDACTED] employee how she could file a complaint against the driver on the first leg of her trip. The employee told her that she would have to go into the station and that she would likely miss her bus. Ms. [REDACTED] then asked the employee for assistance boarding the bus, and the employee told her to speak to the driver of the bus.
- j) Ms. [REDACTED] presented the driver with her control number and told him that she had a disability and needed assistance with her carry-on bag, boarding, and that she needed seating behind the driver's seat. The driver told Ms. [REDACTED] that "I ain't no slave just because I'm black." A young woman standing behind Ms. [REDACTED] offered to carry her bag onboard the bus. Ms. [REDACTED] had to sit in an aisle seat which further increased her pain and swelling.
- k) At the next stop in Richmond, Virginia Ms. [REDACTED] had to transfer to another bus. She told a [REDACTED] employee that she was disabled and needed assistance. She also presented her control number. The employee that she spoke with told her to talk to the driver. Ms. [REDACTED] located the driver and explained that she needed assistance with boarding, seating behind the driver's seat and help with her carry-on bag. The driver told Ms. [REDACTED] that he would deal with her last, so she went to the back of the line. When Ms. [REDACTED] approached the bus to board the driver told her that she could not sit behind him because he had his luggage and paperwork there. Ms. [REDACTED] had to take an aisle seat which made her pain and swelling continue.
- l) On June 13, 2012 Ms. [REDACTED] arrived in New York City and had to transfer to another bus. Ms. [REDACTED] told a [REDACTED] employee that she needed help carrying her luggage to her next gate and that she had a control number. The employee told Ms. [REDACTED] to call "Red Cap" assistance on the courtesy phone. The person on the phone told Ms. [REDACTED] that assistance with luggage would only be given to people exiting the station to a train or cab. Ms. [REDACTED] told the person on the phone that she has a disability and needed help. The person on the phone told her to ask [REDACTED] staff for assistance.
- m) Ms. [REDACTED] located a [REDACTED] employee and told the employee that she had a control number and needed help. Ms. [REDACTED] was in pain and her legs were shaking. A couple of police officers in the area overheard Ms. [REDACTED] and got her a wheelchair and took her to her next gate.
- n) At the gate in New York City Ms. [REDACTED] told the driver that she has a disability and needed assistance with boarding, seating and her carrying her bags. The driver told Ms. [REDACTED] to stay seated in the wheelchair and her luggage would be loaded on the bus and that he would come back to help her. About 15 minutes later the bus started backing out of its parking spot without her. Ms. [REDACTED] had to yell to get the bus to stop. Ms. [REDACTED] boarded the bus with a stepping block but was forced to take an aisle seat once she was on the bus.
- o) By the time that Ms. [REDACTED] arrived in Waterville, Maine she was in excruciating pain and bruised and her feet were very swollen.

3) Respondent provides the following in response to Complainant's allegations:

- a) It is important to [REDACTED] that all its employees and agencies that sell its bus tickets and/or interact with customers, be familiar with [REDACTED] policies against discrimination for any reason.

- b) [REDACTED] records show that on June 11, 2012 Ms. [REDACTED] contacted [REDACTED] to request assistance on a trip beginning June 12, 2012 from New Bern, North Carolina to Waterville, Maine. Ms. [REDACTED] spoke with an agent and was provided a control number. The control number identifies her as the passenger and is used to send notices ahead to the terminals about the needs for which she requests assistance.
- c) The only assistance that Ms. [REDACTED] requested was priority seating and special handling of checked bags. Based on the records¹ of the phone call with the [REDACTED] telephone agent Ms. [REDACTED] denied the need for assistance with boarding and de-boarding, carry-on bags, lifting, and transferring between buses.
- d) Priority seating is a request to sit in the front row of passengers, either directly behind the driver or behind the stairwell. [REDACTED] telephone agents are trained to use language from a script when they talk with customers and to always give a disclaimer about priority seating because it is not something [REDACTED] can guarantee. The telephone agent will send ahead the request for Priority Seating, and drivers try to hold the front seats available for disabled passengers. However [REDACTED] has no way to know what other passengers will travel on that schedule and their needs. If a bus does not originate at a certain stop, there may already be passengers in those seats. A driver cannot force another passenger to change seats.
- e) Special handling is for checked bags. Tags are placed on the bags and the bags are left at the side of the bus. As the bus finishes loading, employees will take the bags marked for special handling and make sure they are put under the bus or will transfer them to connecting buses. With special handling tags employees could have transferred Ms. [REDACTED] bags in Raleigh, Richmond, and New York when she changed buses. It appears that Ms. [REDACTED] is talking about carry-on bags in her complaint. If the bags were tagged for special handling they should have been left for employees to handle.
- f) [REDACTED] does not charge for priority seating or special handling of bags. [REDACTED] does charge for priority boarding which is \$5.00 and offers this program to all customers.
- g) [REDACTED] records indicate that when the bus departed New Bern, North Carolina² there were seven passengers on board. The bus came out of Wilmington, North Carolina, and it is not possible to know if the front row had passengers. There should have been many seats available on the bus, some that would not have held a passenger in front who could recline.
- h) Ms. [REDACTED] complained about having to sit in an aisle seat. Most people prefer an aisle seat as it provides more flexibility than a window seat.
- i) Ms. [REDACTED] also complained that the driver refused to kneel the bus. This alternative can be accomplished on some buses but not on all. Kneeling the bus may also cause other problems and most drivers and management avoid doing it.

¹ Respondent submitted a form completed by the telephone agent who spoke with Ms. [REDACTED] which showed that she had been approved for priority seating and special handling of bags.

² [REDACTED] response identifies the first leg of Ms. [REDACTED] trip as departing from New Bern, Connecticut. [REDACTED] representative stated that they looked at Ms. [REDACTED] schedule when doing the investigation and so the reference to Connecticut was in error, but it had looked at her specific trip itinerary.

- j) In Raleigh, North Carolina there were two sections (each bus is referred to as a section) that left on Ms. [REDACTED] schedule. Records show 37 passengers on one and 41 passengers on the other.
- k) In Richmond, Virginia records show that a second section was cancelled and the bus departed with 49 passengers meaning the bus was pretty full.
- l) Records for the New York City leg show that section 1 left with 41 passengers and section 2 left with 48 passengers.
- m) Ms. [REDACTED] called [REDACTED] three to four times upon her return and spoke with customer service agents. Records show that when the telephone agents learned Ms. [REDACTED] was disabled and had a control number, they referred her to the ADA Compliance Line. If Ms. [REDACTED] would have called the ADA Compliance Line, the ADA Compliance Coordinator would have spoken with her, investigated timely and tried to resolve her claim to her satisfaction. There is also a record of Ms. [REDACTED] in the [REDACTED] ADA Department from a trip she made in 2008 which she requested assistance.
- n) By the time [REDACTED] received Ms. [REDACTED] complaint of discrimination employees involved in her transportation would have no memory of her travel.
- o) The drivers involved in Ms. [REDACTED] trip received training on ADA Best Practices or in serving customers with disabilities.

4) Complainant provides the following in response to Respondent's reply:

- a) Ms. [REDACTED] requested to be seated in the front row of passengers. She was not aware, nor was she made aware, that this was considered priority seating. Ms. [REDACTED] noticed in the past that on other buses (but not the buses she rode on this trip) that sometimes the seats behind the driver and behind the stairwell have a label on the storage compartments indicating that those seats are to be reserved for disabled people.
- b) Ms. [REDACTED] had one checked bag, for which she was not given any special handling tags.
- c) When Ms. [REDACTED] boarded the bus in New Bern, North Carolina it was almost full. Respondent's claim that there were only seven passengers on board is false.
- d) After her trip Ms. [REDACTED] called the ADA Compliance Line and was referred back to customer service. Ms. [REDACTED] was bounced from department to department.

V. Analysis:

- 1) The Maine Human Rights Act 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.
- 2) The Maine Human Rights Act, 5 M.R.S. §4592(1), prohibits discrimination on the basis of disability by any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation. Unlawful discrimination includes a "failure to make reasonable modifications in policies, practices or procedures, when

modifications are necessary to afford the goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless, in the case of a private entity, the private entity can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.” 5 M.R.S. § 4592(1)(B).

3) To establish that a public accommodation denied a reasonable modification, Complainant must show that:

- (1) She comes within the protections of the MHRA as a person with a disability;
- (2) Respondent operates a public accommodation under the MHRA;
- (3) Respondent has in effect a policy, practice, or procedure that, directly or indirectly because of Complainant's disability, results in Complainant's inability to access Respondent's goods, services, facilities, privileges, advantages or accommodations;
- (4) Complainant requested a reasonable modification in that policy, practice, or procedure which, if granted, would have afforded her access to the desired goods, services, facilities, privileges, advantages or accommodations;
- (5) The requested modification—or a modification like it—was necessary to afford that access; and
- (6) The Respondent nonetheless refused to modify the policy, practice, or procedure.

See 5 M.R.S. § 4592(1) & (1)(B); *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 307 (1st Cir. 2003)

- 4) In proving that a modification is “reasonable,” Complainant must show that, at least on the face of things, it is feasible for the public accommodation under the circumstances. See *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (employment case).
- 5) Upon such a showing, Respondent must make the modification unless it proves either that doing so would alter the fundamental nature of its goods, services, facilities, privileges, advantages or accommodations or that the requested modification poses a direct threat to the health or safety of others. See 5 M.R.S. § 4592(1) & (1)(B); *Dudley v. Hannaford Bros. Co.*, 333 F.3d at 308.
- 6) Generally, Respondent is only required to provide a reasonable accommodation if Complainant requests one. See *Reed v. Lepage Bakeries, Inc.*, 244 F.3d at 261.
- 7) Complainant has shown that she was denied a reasonable accommodation by Respondent, with reasoning as follows:
 - a. Complainant has shown that she has a physical impairment that substantially limits one or more of her major life activities and/or significantly impairs her physical health, which meets the MHRA definition of disability, 5 M.R.S. § 4553-A(1)(A)(1) and (2).
 - b. Respondent is a public accommodation under the MHRA. Respondent has practices that resulted in Complainant's inability to equally access Respondent's services, that is, unless modifications are provided by Respondent or additional fees are paid, customers must be physically able to climb stairs and to lift and carry their own bags. While Respondent has in place policies providing for an individual with a disability request reasonable modifications during his or her travel, Respondent's policies were not implemented with regard to Complainant's trip.
 - c. Complainant credibly stated that prior to her trip she requested assistance with boarding and de-boarding the bus, priority seating, and assistance with lifting and carrying her bags because her disability required a modification of Respondent's normal practices. Additionally, Complainant received a control number to give to Respondent's employees who would be able to assist her. Furthermore, during her trip

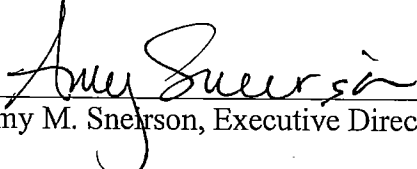
Complainant again requested assistance due to her disabilities. Complainant has shown that the modifications that she requested were necessary in order for her to minimize the pain she would experience during her trip due to her disabilities.

- d. Respondent's records show that Complainant requested assistance due to her disabilities prior to her trip, although the records show that she was only approved for priority seating and special handling of bags. Complainant never received the special handling tags to place on her checked bag for transfer between buses during her trip. Additionally, based on the facts presented it does not appear that any of the bus drivers on the legs of Complainant's trip were aware that she had requested priority seating due to her disability. Respondent stated that when an individual makes a request for priority seating that request is communicated to the drivers so that they may attempt to hold seats for disabled individuals. There are no facts in the case that Respondent did that in regard to Complainant's trip. Complainant stated that she arrived at the bus for each leg of her trip, Complainant requested assistance and provided her control number only to be rebuffed by Respondent's employees and no assistance other than a stepping block at one bus was provided. Respondent had policies in place to assist disabled travelers including the providing the assistance that Complainant requested. As such Complainant has shown that the requests for assistance that she made would have been feasible for Respondent to provide.³
- 8) Respondent did not make the modifications requested by the Complainant and has presented no facts to show that doing so would have altered the fundamental nature of its services or that the requested modification posed a direct threat to the health or safety of others.
- 9) Respondent disputed that Complainant requested assistance with boarding and de-boarding the bus as well as assistance with her carry-on bags prior to her trip. However, Complainant credibly stated that when she spoke to the telephone agent she did request these things as well as priority seating and made these requests again to the drivers on each leg of her trip. It does not appear that Respondent spoke with any of the drivers on Complainant's trip since Respondent does not report that the employees denied her allegations. As such, Respondent failed to provide modifications that would have been reasonable to provide to Complainant during her trip based on her disability.
- 10) Discrimination based on disability in public accommodation is found.

VI. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Respondent [REDACTED] discriminated against Complainant [REDACTED] due to her disability; and
2. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneerson, Executive Director



Victoria Ternig, Investigator

³ In fact Respondent stated that at a minimum it approved Complainant for priority seating and also special handling of bags but did not provide either.