



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMra13051151

[REDACTED],
Complainant,

v.

INDIANAPOLIS PUBLIC TRANSPORTATION CORPORATION d/b/a INDYGO,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On May 7, 2013, [REDACTED] (“Complainant”) filed a Complaint with the Commission against Indianapolis Public Transportation Corp. d/b/a IndyGo (“Respondent”) alleging discrimination on the basis of race and sex in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter. An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to disparate discipline on the basis of race and/or gender. In order to prevail, Complainant must show that: she engaged in prohibited conduct similar to that of a similarly-situated male and/or Caucasian employee and 2) the disciplinary measures enforced against her were more severe than those levied against a male and/or Caucasian employee. In this instance, it is evident that Complainant met both requirements.

By way of background, Respondent hired Complainant in June 2006 as a coach operator. At all times relevant to the Complaint, Respondent’s policies and procedures prohibited the use of cell phones or other electronic devices during the operation of a corporation vehicle; however, the policy further provided that such usage is permitted at the end of the line and on recovery, when the driver is off the bus, or when the bus is parked.



On or about February 8, 2013, Complainant (African-American) was terminated for using a cell phone or other electronic device while operating a corporate vehicle on or about January 26, 2013. Complainant alleges that on the day in question, she merely bent down and shut off her cell phone after she was not moving and at the end of her line. Respondent refutes this assertion although witness testimony supports Complainant rendition of events. However, evidence shows that Respondent terminated a Caucasian male driver on or about February 14, 2013 for using a cell phone while operating a corporate vehicle but rehired him on or about March 25, 2013 citing that his usage occurred under “extreme and unusual” circumstances. Specifically, evidence shows that the Caucasian male comparator “pulled out his cell phone to call dispatch while the coach straddled the crosswalk of the intersection” despite Respondent’s policy indicating that an operator must “pull over the coach, set the parking brake and leave the driver’s seat prior to utilizing a cell phone.” Further, evidence shows that the Caucasian male comparator used his phone on at least two occasions while operating his bus in direct contravention of Respondent’s policies and procedures.

Despite Respondent’s assertions that the Caucasian male employee was not similarly-situated to Complainant, evidence refutes these claims. Rather, evidence shows that the Caucasian male comparator used his cell phone at least twice to call dispatch about his malfunctioning bus radio and after a vehicle struck his bus. While Respondent asserts these events constitute an emergency situation, evidence contradicts this statement as a malfunctioning bus radio does not constitute an “emergency” situation. Moreover, while the Caucasian male comparator alleged that dispatch informed him to use his cell phone if needed until a supervisor could meet with him, Respondent’s own staff disputes these claims. Simply stated, there is sufficient evidence to show that Complainant was subjected to disparate discipline when a similarly-situated Caucasian male co-worker was terminated and rehired for committing the same infraction as Complainant who was simply terminated without reinstatement. As such, there is sufficient evidence to believe that Respondent’s rationale with respect to Complainant is unworthy of credence and may amount to unlawful discrimination on the basis of race and sex. Therefore, based upon the aforementioned, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission’s Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

October 1, 2014
Date

Akia A. Haynes
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Deputy Director
Indiana Civil Rights Commission