

STATE OF INDIANA  
BEFORE THE INDIANA CIVIL RIGHTS COMMISSION

RACHEL SIMPSON, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 PREFERRED TOWING & )  
 RECOVERY, INC., )  
 )  
 Respondent. )

ICRC Docket No.: EMsh11040172

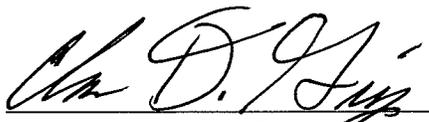
**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER**

On July 19, 2013, Noell F. Allen Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) entered her Proposed Findings Of Fact, Conclusions Of Law, And Order (“the proposed decision”).

No objections have been filed to the ICRC’s adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

**INDIANA CIVIL RIGHTS COMMISSION**

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

Dated this 23<sup>rd</sup> Day of August, 2013.

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STATE OF INDIANA  
BEFORE THE INDIANA CIVIL RIGHTS COMMISSION

FILE DATED  
JUL 19 2013

INDIANA STATE  
CIVIL RIGHTS COMMISSION

RACHEL SIMPSON, )  
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Complainant, )  
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vs. )  
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PREFERRED TOWING & )  
RECOVERY, INC., )  
)  
Respondent. )

ICRC Docket No.: EMsh11040172

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

A Hearing was held before Administrative Law Judge (“ALJ”) Robert D. Lange for the Indiana Civil Rights Commission (“ICRC”) on January 24, 2012.<sup>1</sup> Complainant, Rachel Simpson (“Simpson”), was represented by counsel, Paul A. Logan, Esq. of the Indianapolis firm of HASKIN & ASSOCIATES. Respondent, Preferred Towing & Recovery, Inc. (“PTR”), was represented by counsel, John D. Meyer, Esq. of the Indianapolis firm of GOODIN ORZESKE & BLACKWELL, P.C. Also present on behalf of PTR was James Fisher (“Fisher”) the owner.

Opening statements were made and Simpson called the following witnesses: herself and Rhonda Watkins. During the presentation of Simpson’s Case, Complainant’s Exhibit 1 (“CX\_”), CX2, and CX5 were admitted over Respondent’s partial objection, and CX3, CX4, CX6, CX7, CX8, CX10 and CX11 were admitted without objection. CX9 was admitted over Respondent’s objection.

After Simpson rested her case, PTR called Jim Fisher, John Shank, Penny Fisher, Thomas Burgess, John Emery, and Jeremy Pharis. During the presentation of PTR’s case

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<sup>1</sup> ALJ Robert D. Lange retired from his position with the ICRC on December 26, 2012. On July 2, 2013, the Commission appointed Noel F. Allen as ALJ for the ICRC.

Respondent's Exhibit A ("RX\_"), RXB, and RXD were admitted without objection. RXC was admitted over Simpson's objection.

Simpson called Jason Frederick and herself as rebuttal witnesses. PTR called James Fisher for surrebuttal testimony. The ALJ ordered the parties file proposed findings of fact, conclusions of law, and order on or before February 24, 2012; briefs were also permitted to be filed on the same date; and, the cause was taken under advisement. The filing deadline was later extended to March 9, 2012.

Having carefully considered all of the foregoing and being duly advised in the premises, the ALJ proposes that the ICRC enter the following findings of fact, conclusions of law, and order.<sup>2</sup>

#### **FINDINGS OF FACT**

1. The issues relating to liability are (A) whether PTR committed one or more violations of the Indiana Civil Rights Law, I.C. §22-9-1-1 et. seq., more specifically (1) whether Simpson was subjected to unlawful sexual harassment by PTR; and/or (2) whether Simpson was subjected to a hostile working environment by PTR; and/or (3) whether Simpson was constructively discharged by PTR. Further, if it is found that Simpson was subjected to unlawful sexual discrimination by PTR, the issue is what relief, if any, is Simpson entitled to receive. Second Pre-Hearing Order ¶ 1 (January 11, 2012).
2. PTR is a towing and salvage business that was started in 1998 by Jim Fisher ("Fisher") and John Shank ("Shank"). Fisher and Shank have been the co-owners of PTR since its creation. PTR has been located in Noblesville, Indiana during its entire existence and is currently located

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<sup>2</sup> ALJ Noell F. Allen read and extensively reviewed the transcript of the proceedings and all admitted exhibits made apart of the official record.

at 16100 River Avenue in Noblesville, Indiana. At all relevant times, PTR employed between six (6) and ten (10) employees.

3. Simpson is a female who was hired by PTR on September 24, 2007, as a dispatcher for its towing operations. (Stipulations of Fact for Hearing) As a dispatcher, she did her work for PTR in its office.

4. In May 2009, Simpson resigned her employment with PTR and moved to Kentucky with her husband to start a towing business of their own.

5. In January 2010, PTR re-hired Simpson as its dispatcher. Simpson and Fisher had telephone conversations before her return to Indiana, and he offered to re-hire her before she returned to Indiana.

6. Simpson resigned from PTR on February 16, 2011.

7. Fisher hired Simpson on both occasions and was her only supervisor during her employment at PTR. Fisher managed the business and worked at PTR's office on a daily basis with Simpson. During the day, the tow truck drivers would come in and out of the office in between their "runs."

8. Shank did not have a daily role in PTR's business operations. He had and continues to have a full-time job for Beaver Gravel Corporation ("Beaver"), which is located on River Avenue in Noblesville, Indiana. Shank has worked for Beaver since 1994. Shank primarily works for Beaver in a building that also served as PTR's office until approximately the end of January 2010, when PTR moved into an office trailer across the street from Beaver's building. While Beaver and PTR utilized the same building, Shank's work location was in the back of the building; the building was divided into three sections: the welding shop used by Beaver, a storage area, and the front of the building, which was set up as PTR's office.

9. Although Shank does not have any daily role at PTR, he occasionally performs maintenance work on cars that PTR intends to sell and will occasionally do welding related to the salvage business and help out in other ways if PTR is short-handed.

10. For a variety of reasons, Shank would occasionally go to PTR's office during a break in his work for Beaver. After PTR moved its office, the frequency of Shank's visits to PTR's office decreased.

11. The individuals involved in this matter all traveled in the same circles and worked and lived closely together. Simpson and her husband rented a house from Fisher and lived a couple of doors down from Jon Emery, a tow truck driver for PTR and a witness in this action. Simpson's husband, Jeffrey Frederick ("Frederick"), testified he had been on a fishing trip with Fisher. Simpson and Frederick fished behind Shank's house on several occasions. Simpson and Frederick had done things socially outside of work with Thomas Burgess and with Fisher and his wife. Frederick worked for PTR as an employee and occasionally hauled cars for PTR when he operated his own towing business. Frederick knew Rick Tischner from working at PTR. Larry Swinford, Mike Swinford's brother, worked for PTR during Simpson's first period of employment with PTR.

12. Simpson and Shank's interaction at PTR's office were friendly, not sexual in nature. There were no touching, comments, or innuendos made by or to either party.

13. Simpson was not subjected to sexual harassment by any PTR employee, including its owners, while she was at work.

14. Simpson alleges that she first felt sexually harassed at PTR in June 2010 when two individuals who sold junk cars to PTR, Rick Tischner ("Tischner") and Mike Swinford ("Swinford"), came into the office and on "several occasions" allegedly made "general sexual

nature comments” to her such as requesting that she shown them her breasts, and asking her whether she could “do anything for them”, or “go out back with them.” For reasons explained in following paragraphs, I do not find that Simpson felt sexually harassed by Tischner and/or Swinford, and I do not find that Simpson complained about their behavior to Fisher.

A. Rick Tischner and Mike Swinford frequented PTR to sell junk cars at least since 2008. Simpson would have been familiar with these individual and dealt with them on many occasions before June of 2010.

B. Jeremy Pharis (“Pharis”), who is currently employed by Refined Flooring and Kitchens and Bath, but who was employed by PTR between May of 2008 and March of 2011, witnessed Simpson interact with Rick Tischner and Mike Swinford on multiple occasions. On every occasion that he witnessed Simpson with Tischner and Swinford, she joked with them in a flirtatious manner. Simpson made comments such as “hey, sexy” and other similar comments when Tischer and Swinford came into the office. Mr. Pharis’s testimony on this matter went unrebutted by Simpson. I credit Pharis’s unrebutted testimony on this matter.

C. Mike Swinford and Rick Tischner were regular customers at least since 2008, and Simpson knew them well enough to joke and kid around with them. Simpson did not rebut any of this testimony, and I find Fisher’s testimony on this matter credible.

D. Simpson made notes in her calendar about specific events that occurred during the day. There is no evidence that Simpson made any notes in her calendar about these alleged events involving Tischner and Swinford, as she alleges she did in response to three text messages she received at non-working hours from Shank.

E. Simpson was the type of person who let you know when she was upset about something. Simpson had only one conversation with Fisher about Swinford and Tischner despite her allegation that their behavior occurred on seven or eight occasions. She worked with Fisher on a daily basis and would have had the opportunity to express her dissatisfaction with Tischner and/or Swinford to Fisher had she really felt sexually harassed by these men.

G. Additionally, Simpson's husband's testimony leads me to also discredit Simpson's characterization of her interactions in June 2010 with Tischner and Swinford. Simpson's husband Jeffrey Frederick ("Frederick") worked for PTR for approximately a year. He knew Mr. Tischner from working for PTR. Based on the evidence, Frederick appears to have worked for PTR sometime during his wife's first period of employment with PTR, from September 2007 to May 2009. He admitted that he had known Rick Tischner for approximately two years at the time of the hearing, which would have placed the beginning of their relationship in January 2010; however, if he knew Tischner from working at PTR, he would have known Tischner before January 2010. Simpson told Frederick that Swinford and Tischner made sexually harassing statements to her, yet Frederick never spoke to Tischner or Fisher about it. It seems more probable concerning the level of familiarity he had with Fisher (Frederick testified he had been on a fishing trip with Fisher) and Tischner that if the conduct attributed to Swinford and Tischner had actually occurred, Frederick would have said something about it to Fisher or Tischner.

15. The interactions between Simpson and Mike Swinford and Rick Tischner in June 2010 were of a mutually joking nature. Simpson was a willing participant in their mutual banter.

16. Fisher denied that Simpson ever complained to him about Mike Swinford or Rick Tischner, and I find Fisher's denial credible in light of all of the circumstances.

17. Simpson's allegations regarding Swinford and Tischner and PTR's alleged response do not serve as any support for Simpson's hostile work environment claim and do not constitute a discriminatory practice by PTR for several reasons in addition to the fact that Simpson's account is not credible and that she never complained about Swinford and/or Tischner to Fisher.

A. Tischner and Swinford were not employees of PTR.

B. Simpson admitted that the alleged conduct by Swinford and Tischner stopped because they stopped coming in.

C. The only incident of alleged harassment by Swinford and Tischner that Simpson could remember occurred in June 2010, four months before she claims she received the first text message from Shank (October 2010) and about eight months before she quit her employment with PTR.

D. Simpson admits that Fisher told Swinford and Tischner to stop during the alleged incident in June 2010.

18. Simpson received three phone texts from Shank while she was employed at PTR.

Simpson received the first text from Shank on October 6, 2010, at 8:26 p.m. (CX1) The second text she received from Shank was on January 1, 2011. (RXD, p. 6; Tr.p. 22; CX2) The third text she received from Shank was on January 6, 2011 at 9:04 p.m. (CX5)

19. The three texts were sent to her at non-working hours and were not sufficiently pervasive or severe enough considering the totality of the circumstances to create an objectively hostile work environment. In addition, Simpson was not subjectively offended by those texts nor did

she complain about them to anyone at PTR prior to her resignation on February 16, 2011.

Specifically:

A. Simpson did not receive any of the three texts during working hours or while she was at the office. The first text she received was at 8:26 p.m. on October 10, 2010. The second message she received on New Year's Day, which was a Saturday. In her calendar, she wrote that she received the message at "around 1 a.m. this morning."

Complainant's Exhibit 2, states the message was received at 12:52 p.m." It is more likely that the message was received around 1 a.m. as Simpson tacitly acknowledged at hearing. (Tr. p. 22) The January 6, 2011, message was also received after working hours at 9:04 p.m.

B. The October 2010 text contained a picture of pillow that was sewn to depict a penis protruding from the pillow. The message contained with the picture stated, "I knitted you a pillow. Since you sleep with your mouth open, thought this would help you! LOL Sleep tight." Shank did not write the message; he received the text from someone else on his phone and forwarded it to people he knew because he thought it was funny. Simpson admitted that she knew that Shank had just forwarded it on from someone else because she said he told her that.

C. The New Year's Day text contained an image of two people having sex. The message contained with this text stated, "Remember! No matter how much alcohol u consume at the new years party, This is not okay !!!" [sic]

D. The final text Simpson received during her employment with PTR was on January 6, 2011 at 9:04 p.m. The text contained a picture of a woman's breast and a baby in

front of the breast making a face, presumably of displeasure. The message contained with the text stated, "this is when your parents realized you were a fag."

E. Simpson failed to submit sufficient evidence to support that Shank ever said anything of a sexually tinged nature, let alone of a sexually harassing nature to Simpson at work or at any other time.

F. Simpson failed to submit sufficient evidence to support that Shank ever threatened Simpson in any way. There is no evidence that he ever made any sexual proposition to her.

G. Simpson failed to submit sufficient evidence to support that any employee of PTR ever made any sexually suggestive or harassing comment to Simpson.

H. Simpson failed to submit sufficient evidence to support that Shank ever mentioned the three text messages to Simpson after he had sent any of them, other than Simpson's testimony that she addressed him about the October 2010 text message. Simpson's own testimony about that conversation was that, "It was a nice conversation, I guess, from what I can remember, and he just said, "I thought it was funny, it was something that was sent to me and I just forwarded it on."

I. Simpson failed to submit sufficient evidence to support that these texts Simpson received outside of work altered or interfered with her working conditions in any significant manner, and I find that the text did not alter or interfere with her working conditions in any significant or tangible manner. Simpson did not receive the texts at work, and Shank never mentioned the texts to her.

J. On February 3, 2011, several days before she moved her grandparents into her home to care for them, she wrote in her calendar that, "I love my new office."

K. Simpson did not receive any texts from Shank after January 6, 2011, and before she resigned. There is no evidence that Simpson experienced any sexually harassing conduct from anyone after January 6, 2011, and before her resignation.

L. Pharis received CX2 from Shank via text, and Simpson asked him whether he received it from Shank. Simpson told Pharis she thought CX2 was funny. Simpson did not rebut this testimony even though she gave rebuttal testimony. I credit Pharis's unrebutted testimony that Simpson told him that she thought CX2 was funny.

M. Thomas Burgess ("Burgess") received pornographic text messages from Simpson. Burgess was a friend of Simpson's during her employment with PTR. He drove down to Kentucky to help her move back to Indiana. He drove her U-haul from Kentucky to Indiana and helped her unpack the U-haul. I credit Burgess's testimony, which is consistent with Pharis's unrebutted testimony.

N. Fisher and Shank both denied that Simpson ever complained to them about the text messages, and based on the totality of the evidence I credit Fisher and Shank's testimony on this point over Simpson's testimony.

Q. I do not accord much weight to the entries in Simpson's calendar that specifically refer to the text messages or Simpson's alleged conversations with Shank and Fisher because the calendar remained in her control until well after she had resolved to pursue sexual harassment claims against PTR, which she did as part of her unemployment claim. Her unemployment claim was brought before she initiated this litigation or hired her attorney for this litigation. Simpson testified that she had the calendar until she gave it to her attorney. There is nothing that persuades me that the entries about the texts were made near in time to the receipt of the texts or her alleged conversations with Fisher or

Shank. The entries about the texts and the alleged conversations were located on the top and bottom of pages in the calendar, and could have been entered after she had resolved to make sexual harassment allegations against PTR.

R. There was no evidence that Simpson ever told Fisher or anyone at PTR that she intended to quit if the text messages did not stop.

20. Based on all the evidence submitted, not the least being Pharis's unrebutted testimony, I find that Simpson was not subjectively offended by the text messages and did not complain about these text messages to Fisher or Shank during her employment at PTR.

21. The three text messages from Shank were sent over a period stretching from October 6, 2010, to January 6, 2011, and considering all of the circumstances are not numerous enough to create a hostile work environment.

22. Complainant's Exhibit 9 was a text message sent by Shank to Simpson on February 24, 2011, eight days after she resigned her employment with PTR. This text was received after she quit her employment at PTR, and thus does not provide any evidence that she was subjected to a hostile work environment *while* she was employed by PTR. If anything, the fact that Shank sent this text after Simpson quit, demonstrates that he had no knowledge that she objected to the prior texts. It is clear that after Shank found out Simpson was alleging that she quit over the texts, as part of her unemployment claim, he never again sent her a text.

23. Simpson resigned her employment to stay home and take care of her grandparents.

Specifically:

A. Simpson moved her grandparents into her home a day or two after February 7, 2011. Her grandfather was close to death, and her grandmother had been bedridden for years with MS. Simpson's grandfather had become sick in November, and at that time,

her grandparents were moved into a nursing home in Carmel, Indiana. Her calendar during the month of January 2011, details her extreme displeasure with both her mother and her uncle (Scott) who opposed moving Simpson's grandparents (their parents) into Simpson's home. Her calendar indicates that she hired an attorney to battle with her uncle over whether her grandparents would be moved into her home. (RXD, pp. 22, 25, 39) Simpson wrote in her calendar that she called her mother a "dirty bitch" because of her mother's opposition to her desire to move her grandparents into her home. (Id. p. 19) She also wrote that she did not trust her mom and that her mother was a "no good snake along with Scott." (Id. p. 20) Simpson refers to her uncle as a "nothing doer - asshole" in her calendar (Id. p. 11) She repeatedly claims that her uncle doesn't care about his own parents in the calendar. (Id, pp. 11, 17, 30) Simpson wrote in her calendar regarding her uncle, "he does notta, his phone calls don't mean shit to those people, he never has taken care of his parents and ain't gonna know (sic)" (Id. p. 30) Her calendar contains entries asserting that she was doing most of the work in caring for her grandparents. (RXD, pp. 17, 20)

B. At some point after her grandfather became sick, Simpson asked Fisher if she could come in to work later than normal, so she could attend to her grandparents. Her calendar shows that she repeatedly came to work late, left early or did not come in at all in to attend to matters related to her grandparents. (RXD, Jan.: 3, 13, 14, 17, 18, 20, 21, 24, 25, 27; Feb.: 2, 7) This was at a time when her grandparents were still in the nursing home and receiving around the clock care from the nursing home's staff.

C. On February 7, 2011, Simpson's calendar indicates that she called off work sick. That calendar entry also indicates that she was preparing to move her grandparents into her home on Tuesday or Wednesday of the same week.

D. Simpson did not quit until February 16, 2011, approximately six (6) weeks after the last text message she received from Shank. She did not receive any text messages from Shank after January 6, 2011, up until the time she quit. She did not testify to any other harassing conduct between January 7, 2011 and February 16, 2011.

E. If she did not feel it necessary to quit after the third text, and wrote in her calendar on February 3, 2011 that she "loved her new office," her claim that she quit on February 16, 2011, because of the texts from Shank does not make sense.

F. There was no evidence that Simpson ever threatened to quit over the text messages or any alleged sexual harassment.

G. Simpson called Fisher on February 16, 2011, and resigned because she said she could no longer work and take care of her grandparents.

H. I credit Fisher's testimony that Frederick made a threat that there would be trouble if PTR contested Simpson's unemployment claim for the following reasons: Fisher's testimony was more detailed and clear; Frederick admitted that he was upset about other former employees who had received unemployment; Emery and Burgess both testified that Frederick made a similar threat, and their testimony is more credible than Frederick's general denial.

24. Based on the totality of the circumstances, not the least being that her resignation coincided very close in time to the point her grandparents moved into her home, I find that

Simpson did not quit because of any alleged hostile work environment or alleged sexual harassment, but in order to take care of her grandparents.

25. I do not find that Simpson was constructively discharged primarily because she has not established an objectively hostile work environment. A similarly situated individual would not have quit her employment at PTR. First, it is clear that she did not quit because of the text messages. Second, there is no evidence that the text messages interfered in any degree with her working conditions. She did not receive them at work. Shank did not bring up the texts at work, and the credible evidence establishes that Simpson told Pharis that CX2 was funny and joked about that text.

26. Simpson was not subjected to a sexually hostile work environment at PTR.

27. Simpson was not subjected to sexual harassment at PTR.

28. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

### **CONCLUSIONS OF LAW**

1. The ICRC has jurisdiction over the subject matter and the parties.
2. Simpson and PRT are each a “person” as that term is defined in section 3(a) of the Indiana Civil Rights Law, IC §22-9-1-1 et. seq. (“the ICRL”). IC 22-9-1-3(a).
3. Section 6(k) of the ICRL authorizes the ICRC to award relief if it finds an unlawful discriminatory practice.
4. Section 3(l) of the ICRL provides, in material part, as follows:
  - (l) “Discriminatory practice” means:  
the exclusion of a person from equal opportunities because of . . . sex . . .

Every discriminatory practice relating to . . . employment . . . shall be considered unlawful unless it is specifically exempted by this chapter.

5. In construing Indiana Civil Rights Law, Indiana courts look to federal law for guidance and give great weight to cases decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et. seq. (“Title VII”). *Filter Specialists, Inc., v. Brooks*, 906 N.E. 2d 835, 839 (Ind. 2009); *Indiana Civil Rights Commission v. Culver Educational Foundation*, 535 N.E. 2d 112 (Ind. 1989).

6. Simpson asserted a claim of discrimination against PRT on the theory that she was subjected to a hostile work environment.

7. In order to establish a hostile work environment claim under Title VII, a plaintiff has to be able to show that: (1) she was subjected to unwelcome sexual conduct, advances, or requests; (2) because of her sex; (3) the acts were severe or pervasive enough to create a hostile work environment; and (4) there is a basis for employer liability. *Turner v. The Saloon, Ltd.*, 595 F. 3d 679, 684 (7<sup>th</sup> Cir. 2010). The Seventh Circuit has said:

“to prove “hostile work environment” the alleged harassment must be both subjectively and objectively so severe or pervasive as to alter the condition of her employment and create an abusive working environment. In determining whether the environment was objectively hostile, a court must consider all of the circumstances, including the frequency and severity of conduct, whether it is threatening and or humiliating or merely offensive, and whether the harassment unreasonably interferes with an employee’s work. Indeed, the threshold for plaintiffs is high, as “the workplace that is actionable is one that is hellish.” *Whittaker v. Northern Illinois Univ.*, 424 F.3d 640, 645 (7<sup>th</sup> Cir. 2005)(omitting internal citations)

It takes much more than sexual subject matter to create a hostile work environment; Title VII only prohibits conduct that is so objectively offensive as to alter the conditions of the victim’s employment. *Oracle v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 80 (1998); *Pryor v. Seyfarth, Shaw, Fairweather & Geraldson*, 212 F. 3d 976, 978 (7<sup>th</sup> Cir. 2000).

8. A plaintiff who makes a hostile work environment, constructive discharge claim must also establish that the working environment was so intolerable that her resignation was an

appropriate response. *Pennsylvania State Police v. Suders*, 542 U.S. 129, 147 (2004). The working conditions for constructive discharge must be even more egregious than the high standard for hostile work environment because an employee is expected to remain employed while seeking redress. *Id.*; *Robinson v. Sappington*, 351 F.3d 317, 336 (7<sup>th</sup> Cir. 2003).

9. Only conduct which occurred during her employment is a basis for her hostile work environment claim. *Overly v. KeyBank*, 662 F.3d 856, 864 (7<sup>th</sup> Cir. 2011). Thus, the text message sent after Simpson resigned is not a basis to establish that she was subjected to a hostile work environment while she was employed at PTR.

10. Simpson has not met her burden of proof to establish that the acts which she was subjected to were severe or pervasive enough to create a hostile work environment. Conduct far worse has been held inactionable by the courts of the Seventh Circuit. See, *Weiss v. Coca-Cola Bottling Co.*, 900 F.2d 333 (7<sup>th</sup> Cir. 1993); *Baskerville v. Culligan Int'l Co.*, 50 F.3d 428 (7<sup>th</sup> Cir. 1995)

11. Neither has Simpson established by a preponderance of the evidence that she was subjected to unwelcome sexual conduct.

12. Simpson was not subjected to a hostile work environment at PRT.

13. PRT did not commit an unlawful discriminatory practice against Simpson.

14. If the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint against that person. IC 22-9-1-3(m).

15. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

16. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

**ORDER**

1. Simpson's complaint is DISMISSED, WITH PREJUDICE.

Dated this 18<sup>th</sup> Day of July, 2013

  
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Noell F. Allen, Administrative Law Judge

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