

State of Wisconsin



Labor and Industry Review Commission

Kevin Sellars
Complainant

National Railroad Passenger Corp.
Respondent

ERD Case No. CR202202205

Public Accommodation Decision¹

Dated and Mailed:

December 22, 2023

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The decision of the administrative law judge is **affirmed**, subject to modification. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the pink enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website, <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the complainant's allegation that the respondent discriminated against him in violation of the Wisconsin Public Accommodation and Amusement Law (hereinafter "WPAAL"). An administrative law judge for the Equal Rights Division (hereinafter "ERD") of the Department of Workforce Development issued a decision dismissing the complaint on the basis of timeliness. The complainant has filed a timely petition for commission review of that decision.

The commission has considered the petition, and it has reviewed the information that was before the administrative law judge. Based on its review, the commission agrees with the decision of the administrative law judge, and it adopts the findings and conclusions in that decision as its own, except that it makes the following:

Modification

The fourth paragraph of the DISCUSSION section of the administrative law judge's decision is deleted and the following is substituted therefor:

"Because the complainant's complaint was filed outside of the 300-day statute of limitations, and not due to a reason that would justify tolling the running of the statute of limitations, dismissal of the complaint is warranted."

Memorandum Opinion

In his petition for commission review the complainant argues that he attempted to file his complaint with the Illinois Department of Human Rights, the Federal Rail Association, and the Amtrak Office of Inspector General within 300 days of the alleged discrimination, but was not aware of the ERD until August 22, 2022 or of the time constraints associated with filing a complaint in Wisconsin. While it is unfortunate that the complainant was unaware of the procedures for filing a discrimination complaint with the ERD, this is not a matter that would warrant accepting the untimely complaint. A statute of limitations may be suspended for a period of time in which a complainant is excusably ignorant of his statutory rights. However, excusable ignorance does not mean ignorance of the filing periods and technicalities contained in the law. Rather, the question to consider is whether the complainant was generally aware that he had a legal right to be free from discrimination. *See, Gruhle v. Random Lake School District*, ERD Case No. 199702881 (LIRC June 19, 1998), citing *Olson v. Lilly Research Laboratories*, ERD Case No. 9001499 (LIRC June 25, 1992). *See, also, Bohr v. Marathon Cheese Corp.*, ERD Case No. CR2202002678 (LIRC Dec. 10, 2021); *Rhyne v. Resource Marketing Corporation*, ERD Case No. CR202200662 (LIRC March 30, 2023); *Rowry v. Schneider Training Academy*, ERD Case No. CR200502585 (LIRC Jan. 13, 2006). Here, the complainant was aware of his right to be free from discrimination, as evidenced by his actions in filing complaints with the three agencies referenced above. It was incumbent upon the complainant to educate himself regarding the

procedures for filing his WPAAL complaint, and he had nearly a year (300 days) in which to do so. *See, Adams v. DNR*, Case No. 01-0088-PC-ER, (Personnel Comm., Dec. 20, 2002) (“even if complainant had been unsure for several months where to file his complaint, this would not be considered a viable reason for late filing.”) Because the complainant failed to file his complaint with the ERD in a timely manner, dismissal of the complaint was appropriate. The administrative law judge’s decision is, therefore, affirmed.

NOTE 1: The commission has modified the administrative law judge’s decision to delete the finding that the ERD lacks jurisdiction over this matter because the complaint was not timely filed. The 300-day time limit set forth in Wis. Stat. § 106.52(4)(a) is not a jurisdictional requirement, but is a statute of limitations that is subject to waiver, estoppel, and equitable tolling. *Young v. City of Eau Claire*, ERD Case No. CR201701796 (LIRC Jan. 4, 2018).

NOTE 2: In his petition the complainant states that if his complaint is dismissed he would like the commission to provide a “live phone call.” However, the commission does not contact parties by telephone in order to deliver its decisions. By statute the commission’s decision must be “served” on the parties, Wis. Stat. § 106.52(4)(c); the commission issues its decisions in writing and serves them on the parties by mail.

cc: Attorney Jeffrey Seidle