

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

MARIAH GLADSTONE,
Charging Party,

HRB CASE NO. 0170101

-v-

REMAND ORDER

BNSF RAILWAY,
Respondent

Charging Party, Mariah Gladstone (Gladstone), filed a complaint with the Department of Labor and Industry (Department) alleging unlawful discrimination in employment on the basis of sex, race, and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Gladstone's allegations that Respondent, BNSF Railway, unlawfully discriminated against Gladstone. The Department issued a Notice of Dismissal. Gladstone filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 18, 2017. No oral argument was requested for this hearing.

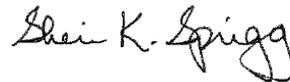
The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. Section 49-2-511(2), MCA. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion. The Commission determines here that the investigator overreached his discretion in determining a lack of cause. Further, in misconstruing or failing to consider factual allegations, the investigator failed to utilize conscientious judgment. These issues were discussed at hearing by the Commission, and appropriate for further factual inquiry before the Office of Administrative Hearings.

Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Office of Administrative Hearings pursuant to § 49-2-505, MCA.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had found cause. See § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Mariah Gladstone's objection is **sustained**. The Commission reopens and remands the case to the Office of Administrative Hearings for hearing.

DATED this 8th day of August, 2017.



Sheri Sprigg, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 8th day of August, 2017.

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