

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KATHERINE SKUNK CAP,

Case # 0089013120

Charging Party,

ORDER

-v-

BROWNING SCHOOLS,

Respondent.

Katherine Skunk Cap (Skunk Cap) filed a complaint with the Department of Labor and Industry (Department) alleging that Browning Schools discriminated against her on the basis of her race, color, and national origin and retaliated against her. Skunk Cap asserted that Browning Schools declined to give her the opportunity to teach for the summer school, that she was given a verbal warning when another teacher wasn't under similar circumstances, that she was not allowed to sell snacks when other teachers were, and that her classroom was disrupted by the administration differently than other teachers. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Skunk Cap's allegations of unlawful discrimination. The Department issued a Notice of Dismissal. Skunk Cap filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 17, 2009.

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. Specifically, the investigator did not consider the protected classes of race, color, and national origin separately. Rather, she treated the three classes as one class without distinguishing between them. Because the findings clearly indicate the charging party asserted she

was treated differently based on color and tribal membership, the Commission holds the investigator should have analyzed these classes separately and should have conducted a disparate impact analysis. Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Hearings Bureau 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 originally found cause. See § 49-2-504(2)(b), MCA. Further, nothing in this order prevents the parties from joining this case with the case *Tatsey v. Browning Schools*, Case # 0089013130.

IT IS HEREBY ORDERED, that Katherine Skunk Cap's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this ____ day of March 2009.

Chair Ryan C. Rusche
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 _____ day of March 2009.

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