

JAN 28 2014

INDIANA STATE  
CIVIL RIGHTS COMMISSION

STATE OF INDIANA  
INDIANA CIVIL RIGHTS COMMISSION

ULYSSES C. LONG, SR.,

Complainant,

vs.

CRICKET TRANSPORT, INC.,

Respondent.

) Docket No.: EMra10080370

) EEOC No.: 24FA-10-00367


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

On December 31, 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 24<sup>th</sup> day of January, 2014

To be served by Certified Mail to the following parties:

Ulysses C. Long, Sr.  
7233 Beech Avenue  
Hammond, IN 46324-2425

Cricket Transport, Inc.  
c/o Christopher T. Scott  
1911 Douglas Drive  
Portage, IN 46368-1301

Jeffrey A. Harkin, Esq.  
Attorney for Respondent Cricket Transport, Inc.  
61 Roselawn Street  
Hammond, IN 46324-1838

and to be personally served on the following supervising attorney:  
Michael C. Healy, Esq.; Staff Counsel  
Indiana Civil Rights Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, IN 46204-2255

DEC 31 2013

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

The undersigned Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) conducted the hearing in Crown Point, IN on Wednesday, October 23, 2013. The Complainant, Ulysses Long, Sr., appeared, *pro se*. Mr. Long testified on his own behalf. Mr. Long did not call a witness to testify. Jeffrey Harkin, Esq. represented the Respondent, Cricket Transport, Inc. Mr. Harkin called Christopher Scott, Owner, to testify on behalf of Cricket Transport, Inc.

Mr. Long waived the opportunity to make an opening argument. Mr. Harkin made a brief opening argument. During the presentation of Respondent’s case, Cricket Transport offered Respondent’s Exhibits (“RX\_”) RX1, RX3, RX5B, RX5C, RX5D, and RX11. The Respondent’s Exhibits were admitted over objections. Respondent referenced RX9, but the document was not offered or admitted into the record.

At the conclusion of the hearing, the ALJ instructed the parties to file what they suggested the ALJ enter as proposed findings of fact, conclusions of law, and order on or before November 20, 2013 and that briefs could be filed by the same date. Mr. Long submitted a handwritten letter to the ALJ. Cricket Transport did not submit a suggested decision or brief to the ALJ.

Having carefully considered the evidence and the arguments of the parties, and being duly advised in the premises, the ALJ proposes that ICRC enter the following findings of fact, conclusions of law, and order.

## FINDINGS OF FACT

1. Christopher Scott, a white male, is the owner of Cricket Transport, Inc. ("CTI"). CTI was established in 1990 in the State of Indiana as a trucking company that provides over-the-road trucking services to various companies.
2. Ulysses S. Long is an adult African-American male who has, at all material times, resided in the state of Indiana.
3. At all material times, CTI employed six or more employees.
4. CTI hired Long on November 3, 2005 as a company driver of a semi tractor-trailer. Mr. Long earned \$0.45 per mile and \$15.00 per hour while not driving but performing duties for the company. Mr. Scott served as Long's direct supervisor.
5. During the time of Mr. Long's employment, Cricket Transport provided services to Hoosier Specialized Transport ("HST") and Bulk Express, Inc.
6. On December 12, 2007, CTI removed Mr. Long from delivering for Bulk Express, Inc. when Mr. Long contaminated a load in which he carried. As a result of this mishap, CTI lost its contract with Bulk Express, Inc. CTI did not terminate Mr. Long's employment. Instead, Mr. Long continued to perform delivery services for HST.
7. HST has a call-in policy for drivers. The policy specifically instructs drivers to call-in between 8:00 A.M. and 10:00 A.M. each morning and between 3:30 P.M. and 5:00 P.M. each afternoon. Mr. Long was aware of this policy.
8. Mr. Long was scheduled to deliver a load for HST on Monday, April 12, 2010; however, Mr. Long did not report to work to carry such load. Mr. Long had "personal things" going on and could not report for his shift. Mr. Long alleged that he called HST's dispatcher, Marie, at 6:30 A.M. that same morning to inform her of his absence. However, Marie was not available. Mr. Long called Marie again at 7:15 A.M. and spoke to her.
9. No one but Mr. Long could run the load for HST. CTI lost revenue due to Mr. Long's failure to run the load.
10. Mr. Scott spoke to Mr. Long later in the afternoon and informed Mr. Long of his termination. Mr. Scott terminated Mr. Long for failing to arrive for his shift and for failing to abide by the call-in policy.
11. Mr. Long believes he was a victim of racial discrimination as a result of his termination from CTI.

12. 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. CTI and Mr. Long 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: “Discriminatory practice” means: the exclusion of a person from equal opportunities because of race ... Every discriminatory practice relating to ... employment ... shall be considered unlawful unless it is specifically exempted by this chapter. IC 22-9-1-3(l).
5. Generally, cases decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et. seq.* (“Title VII”) are entitled to great weight in the interpretation of the ICRL. *Indiana Civil Rights Commission v. Culver Educational Foundation*, 535 N.E.2d 112 (Ind. 1989).
6. The most obvious method of establishing intentional discriminatory intent in the employment setting is to introduce evidence that can be interpreted as an acknowledgment of discriminatory intent on the part of the employer or its agents. *Indiana Civil Rights Commission v. Southern Indiana Gas & Electricity Company*, 648 N.E.2d 676 (Ind. Ct. App. 1995).
7. Mr. Long presented no such evidence to show CTI intentionally discriminated against Mr. Long when CTI terminated Mr. Long’s employment for failing to abide by the call-in policy.
8. The prima facie case requirement applicable in Title VII (see 42 U.S.C.S. § 2000e-2) actions, as set forth in *Moore v. City of Charlotte*, 754 F.2d 1100, (4th Cir. 1985), cert. denied, should apply to cases under the Indiana Civil Rights Law. Specifically, an employee claiming racially disparate treatment by an employer must establish a prima facie case by showing: (1) the employee is a member of a protected class; (2) the employee suffered an adverse employment action; (3) the employee met the Respondent’s legitimate job expectations; and (4) similarly-situated employees of a different race were treated more favorably. After the employee establishes a prima facie case, the employer may advance a rationale for treating the compared employees differently.

9. Mr. Long is a member of a protected class by virtue of his race – African-American. In addition, Mr. Long suffered an adverse employment action when CTI terminated Mr. Long’s employment.
10. However, Mr. Long failed to present sufficient evidence to show he met CTI’s legitimate job expectations. Prior to his termination, Mr. Long contaminated a load with Bulk Express, Inc. CTI lost its contract with Bulk Express, Inc. as a result. Also, on April 12, 2010, Mr. Long called-in for his shift outside of the prescribed time period according to the call-in policy. Mr. Long’s absence resulted in lost revenue for CTI.
11. Further, Mr. Long failed to establish there were similarly-situated employees of a different race who were treated more favorably than Mr. Long.
12. Mr. Long has not proven by a preponderance of the evidence that CTI’s decision to terminate him was a result of discriminatory intent. Mr. Long provided insufficient evidence to establish a prima facie case.
13. CTI did not terminate Mr. Long because of race.
14. CTI did not commit an unlawful discriminatory practice against Mr. Long.
15. If the ICRC finds that a person has not committed an unlawful discriminatory practice, it must dismiss the complaint as against that person. IC 22-9-1-3(m).
16. 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).
17. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

**ORDER**

1. Mr. Long’s complaint is DISMISSED, with prejudice.

Dated this 31<sup>st</sup> day of December, 2013



Hon. Noell F. Allen  
Administrative Law Judge  
Indiana Civil Rights Commission

To be served by Certified Mail to the following parties:

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Jeffrey A. Harkin, Esq.  
Attorney for Respondent Cricket Transport, Inc.  
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and to be personally served on the following supervising attorney:

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