

BEFORE THE HUMAN RIGHTS COMMISSION OF THE STATE OF MONTANA

DIANA GABBERT,

Petitioner,

-v-

ST. PETER'S HOSPITAL,

Respondent

Case No.: 0041010870

**ORDER AFFIRMING NOTICE OF
DISMISSAL**

On or about July 29, 2004, the Human Rights Bureau issued a Final Investigative Report and corresponding Notice of Dismissal and Notice of Right to Sue in the above-captioned matter. Charging Party, Diana Gabbert (Gabbert), filed objections with the Montana Human Rights Commission (Commission). Oral argument was requested. Gabbert appeared and presented argument. Lucy France appeared on behalf of St. Peter's Hospital. The Commission considered the matter on November 19, 2004.

At the hearing before the Commission, Diana Gabbert argued that the HRB investigation failed to consider issues regarding seniority and increased wage rate. Gabbert acknowledged that the hospital employs older workers, but not in her capacity. Further, Gabbert argued she did not "intentionally" miss a shift. Gabbert alleged she made an agreement with another nurse to work an assigned shift. Gabbert then took off the next day, since she regularly had this day as a scheduled day off. Gabbert stated she was unaware that her employer had placed her on call.

In response, St. Peter's argued Gabbert was terminated for failing to show up for a scheduled shift in violation of a known policy. St. Peter's asserted there is nothing in the record to indicate that the decision to terminate was based on age considerations. The comparative evidence provided to the investigator indicates that St. Peter's hires, employs, and retains older workers. St. Peter's noted that the Commission was limited to the record presented for review and new matters are properly excluded from consideration.

After careful and due consideration, the Commission concludes the findings of the Human Rights Bureau are supported by the record and, therefore, there was no abuse of discretion in the issuance of a Notice of Dismissal. See Admin. R. Mont. 24.9.1714(3).

Charging Party will have 90 days after the receipt of this order to petition a district court in the district where the alleged violation occurred for the appropriate relief. Mont. Code Ann. § 49-2-509(5); Admin. R. Mont. 24.9.1714(5). If Charging Party fails to commence a civil action within 90 days, the claim is time barred. *Id.*

IT IS HEREBY ORDERED, that Charging Party's objection is overruled. The Commission adopts the findings of the Human Rights Bureau and the "Notice of Dismissal" is affirmed.

DATED this ____ day of November 2004.

Chair Gary Hindoien
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on November ____ 2004.

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