

**BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA**

FLOYD COMES AT NIGHT,
Charging Party,
-v-
GLACIER PARK, INC.,
Respondent.

Cause No. 0049011105

ORDER SUSTAINING
OBJECTION

On June 15, 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, Floyd Comes At Night (Comes At Night), filed objections with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 14, 2005.

In the Final Investigative Report (FIR), the Human Rights Bureau Investigator determined a preponderance of the evidence did not support Comes At Night's assertion that his employer, Respondent, Glacier Park Inc., had unlawfully discriminated based on age and race.

After careful and due consideration, the Commission concluded the Human Rights Bureau abused its discretion in the issuance of a Notice of Dismissal. *Admin. R. Mont. 24.9.1714(3)*. The Commission determined that contrary to the findings of the investigator, the Charging Party, Floyd Comes At Night, established a *prima facie* case. Once a *prima facie* case is established, the "shifting burden analysis" places the burden on the employer to show a legitimate non-discriminatory reason for the adverse action. *Admin. R. Mont. 24.9.611(3)*. However, instead of shifting this burden, the investigator fell back on comparative evidence that established that persons hired for the positions

were inside the same protected class status as Comes At Night. Since the record lacks sufficient information for the correct analysis, the Commission finds an abuse of discretion.

IT IS HEREBY ORDERED, that Charging Party's objection is sustained. When the Commission sustains the objections to the dismissal of a complaint, it will reopen the case by remanding it to the department. *Admin. R. Mont. 24.9.1714(4)(b)*.

DATED this ____ day of March 2005.

Chair Franke Wilmer
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 March ____ 2005.

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Montana Human Rights Bureau