

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JASON ORTIVEZ,
Charging Party,

HRB CASE NO. 0200632

-v-

REMAND ORDER

TOWN PUMP,
Respondent

Charging Party, Jason Ortivez (Ortivez), filed a complaint with the Department of Labor and Industry (Department) alleging unlawful discrimination in employment on the basis of national origin, age, and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Ortivez's allegations that Respondent, Town Pump, unlawfully discriminated against Ortivez. The Department issued a Notice of Dismissal. Ortivez filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 19, 2021. 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. Mont. Code Ann. § 49-2-511(2), MCA. After careful consideration, the Commission concluded that the Department's determination to dismiss Charging Party's complaint constituted an abuse of discretion for two reasons: (1) because the Human Rights Bureau Investigator did not interview any of Charging Party's witnesses, and (2) because the Investigator did not properly evaluate evidence showing that Charging Party's co-workers were not disciplined for the same or similar behavior as Charging Party allegedly engaged in and was disciplined for.

Therefore, the Commission sustains the objection and the case is hereby sent for a hearing at the Office of Administrative Hearings pursuant to Mont. Code Ann. § 49-2-505.

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. Mont. Code Ann. § 49-2-504(2)(b).

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

DATED this 2nd day of April, 2021.



Peter M. Damrow, 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 2nd day of April, 2021.

Jason Ortivez
33 Halford Road
Clancy, MT 59634

Town Pump
Atten: David M. Gutierrez
Legal Department
P.O. Box 6000
Butte, MT 59702



Annah Howard, Legal Secretary
Montana Human Rights Bureau