

City of Chicago
COMMISSION ON HUMAN RELATIONS
510 North Peshtigo Court, Suite 607
Chicago, Illinois 60611
(312) 744-4100 [voice]/(312) 744-1088 [TTY]

IN THE MATTER OF:

Cecilia Briscoe)
COMPLAINANT)
) Case No. 96-E-295
AND)
) Date of Order: May 26, 1999
Malaysia Airlines)
RESPONDENTS)

To: Cecilia Briscoe David Senior, Esq. Richard Steinken, Esq.
1700 E. 56th St., #1703 McBreen & Senior Jenner & Block
Chicago, IL 60637 1925 Century Park East One IBM Plaza
Suite 2200 Chicago, IL 60611
Los Angeles, CA 90067

ORDER

Complainant Cecilia Briscoe ("Complainant" or "Briscoe") filed a complaint with the Chicago Commission on Human Relations ("Commission" or "CCHR") which alleged that Respondent Malaysia Airlines ("Respondent" or "the Airline") discriminated against her on the basis of her race. On April 20, 1999, Respondent filed a motion asking the Commission to dismiss Briscoe's complaint as *res judicata* because of a federal court decision in a related case. Respondent enclosed Briscoe's federal complaint and the order which disposed of her federal case.

The allegations of Briscoe's Commission complaint and federal complaint as well as the disposition of the case in federal court are, of course, central to resolving this matter and are discussed in detail below. For the reasons specified below, the Commission GRANTS the request to dismiss Briscoe's Commission complaint.

I. BRISCOE'S COMPLAINTS

A. The Commission Complaint

Briscoe filed her complaint at the Commission on December 20, 1996. In it, she claims that she is black and was subjected to harassment from a white co-worker, Uta Staley, from the beginning of her employment with Respondent. CCHR Complaint, ¶¶ 1 & 2. Briscoe claims that Staley tried to set her up by sabotaging her work with her boss. CCHR Complaint, ¶2. She states that Staley told Complainant that Staley's daughter "had black friends with nappy hair." Id. Briscoe states that she complained to her boss and to management personnel in Los Angeles about the harassment but nothing was done. CCHR Complaint, ¶3.

Briscoe states that, on November 13, 1996, Staley "initiated a physical altercation with me by pushing me. We were both told by [her supervisor] to take two days off. . . ." CCHR Complaint, ¶4. The next day, her supervisor told her to come to work that evening and to avoid Staley. That made Complainant "believe [Staley] did not take the two days off as we were requested to do." CCHR Complaint, ¶5.

Several days later, she attended an interview with her supervisor, Staley, and a management representative from Los Angeles. She and Staley were both told to take off two more days. CCHR Complaint, ¶6. Two days later, Briscoe called her supervisor at home to find out the status of the investigation. He instructed Briscoe not to return until the investigation was complete. CCHR Complaint, ¶7.

On November 22, 1996, her supervisor asked her to return to work on November 25. She did so and she worked the whole day. CCHR Complaint, ¶8. She then came to work on November 27, 1996, at which time she was fired. Id. Complainant contends that Staley was not discharged. CCHR Complaint, ¶9.

B. The Federal Complaint

On May 6, 1997, Briscoe filed a complaint in federal court captioned Briscoe v. Malaysia Airlines, No. 97 CV 3375, alleging that the Airline violated Title VII of the federal Civil Rights Act, 42 U.S.C. §2000e *et seq.* In this complaint, Briscoe states she is black and that Staley is white. Federal Complaint, ¶¶3 & 4. She states that she reported incidents of harassment by Staley from 1991 to 1996. Federal Complaint, ¶5. Specifically, she states that she made "verbal and written reports to the Airline, between 1991 and 1996, that Uta Staley was harassing her with racial taunts regarding African Americans." Federal Complaint, ¶6. She states that the Airline "never responded in writing" that it would handle the harassment and it did not discipline Staley for the harassment. Federal Complaint, ¶¶7 & 8.

She states, "During the employment of [Briscoe] with the Airline, Uta Staley had hit [Briscoe] while each was in the Chicago-based office of the Airline." Federal Complaint, ¶9. Briscoe reported that incident but the Airline suspended her and not Staley. Federal Complaint, ¶¶10-12. The Airline then terminated Briscoe on or about November 27, 1996. Federal Complaint, ¶13. She states that her termination was not due to her job performance or misconduct, Federal Complaint, ¶14, and states that the termination letter did not provide a reason for her discharge. Federal Complaint, ¶15. She states that the Airline terminated her "because she is black." Federal Complaint, ¶16.

Briscoe also states that the Airline did not terminate Staley, who is white, and did not do so because Staley is white. Federal Complaint, ¶¶17 & 20. Briscoe states that she was never cited for misconduct while she worked for Respondent and had received good employee evaluations. Federal Complaint, ¶¶18-19. In sum, she claims that the Airline's conduct was race discrimination.

II. DISPOSITION OF FEDERAL CASE

United States District Court Judge David H. Coar issued a seven-page memorandum order and opinion which granted summary judgment in favor of Respondent. Briscoe v. Malaysia Airlines, Inc., No. 97-CV-3375 (August 19, 1998). Judge Coar held that Briscoe failed to make her *prima facie* case and that, even if she had, she did not show that Respondent's explanation for her firing was pretextual. Id., at pp. 5-7. In short, Judge Coar held that the Airline had fired Staley the same day it fired Briscoe. Id., at p. 5. Further, he found Briscoe did not contest the Airline's account of her fight with Staley, did not show that the Airline fired her for a reason other than for violating its policy, and did not claim that her violation of that policy was not a sufficient reason for discharge. Id., at pp. 6-7.

III. APPLICATION OF RES JUDICATA

A. Res Judicata Standard

The Commission will apply the doctrine of *res judicata*, which is designed to prevent the relitigation of claims already decided by another tribunal, when it is appropriate to do so. E.g., Fernandez v. Michael Reese Hospital, CCHR No. 95-E-105 (October 24, 1997) (applying the doctrine of *res judicata* to bar the relitigation of an age discrimination case where a federal court had granted the respondent's motion for summary judgment). The "doctrine of *res judicata* requires a dismissal with prejudice if: (a) the parties in both actions are identical or their privies; (b) there is an identity of the cause of action; and (c) there is a final judgment on the merits." Fernandez., at pp. 2-3; see, e.g., Lee v. City of Peoria, 685 F.2d 196, 199 (7th Cir. 1982); Lilly v. Cosmopolitan Bank

& Trust, CCHR No. 96-E-76 (July 27, 1998), at p. 6; and Alcegueire v. Cook County MIS, CCHR No. 91-E-137 (March 21, 1996), at pp. 6-9, and cases cited therein.¹

B. Application to Instant Case

In this case, Respondent has established each element of the *res judicata* defense. The same parties and claims are involved in both the Commission case and the federal case. The parties litigated Complainant's race discrimination claim to final judgment in the federal case.² Moreover, Complainant had a full and fair opportunity to litigate her race discrimination claim in the federal case.

Further, the cause of action in the two cases is the same. Under federal law, a "cause of action consists of a single core of operative facts which give the plaintiff a right to seek redress for the wrong concerned." Lee, 685 F.2d at 200; see Brzostowski v. Laidlaw Waste Systems, Inc., 49 F.3d 337, 339 (7th Cir. 1995) (same; also stating, "Two claims are one for the purposes of *res judicata* if they are based on the same, or nearly the same, factual pleadings"); Perry v. Tarry, 1997 WL 361453 (N.D.Ill. 1997), *2 ("a claim is deemed to have 'identity' with a previously litigated matter if it is based on the same, or nearly the same, factual allegations arising from the same transaction or occurrence") (citations omitted). There can be no question that Briscoe's claims in the two cases concern the same core of operative facts. In both cases, Briscoe claims: that Staley

¹ As the Commission held in Lilly, when the first suit is adjudicated in federal court, federal, not state, *res judicata* rules govern. Lilly, *supra*, at p. 5, citing Barnett v. Stern, 909 F.2d 973, 977-78 (7th Cir. 1990); In re Matter of Energy Coop., Inc., 814 F.2d 1226, 1230 (7th Cir.), cert. denied, 484 U.S. 928 (1987); and Perry v. Tarry, 1997 WL 361453 (N.D.Ill. 1997), *1.

² There is no indication that Briscoe has appealed the adverse decision in her federal case.

racially harassed her; that Briscoe's complaints to management were not heeded; and that the Airline first suspended and then fired only her, and not Staley, due to race. Simply put, Briscoe's federal case involved the same factual allegations as her Commission case.³

IV. CONCLUSION

The Commission finds that the doctrine of *res judicata* is appropriately applied to bar Briscoe's Commission case against Malaysia Airlines. Therefore, the Commission grants Respondent's motion to dismiss and hereby dismisses Briscoe's Complaint.

TO SEEK REVIEW OF THIS ORDER, COMPLAINANT MUST FILE WITH THE COMMISSION AND SERVE ON THE RESPONDENTS A "REQUEST FOR REVIEW" WITHIN 30 DAYS OF THE MAILING OF THIS ORDER, PURSUANT TO REG. 250.110. REQUEST FOR REVIEW FORMS ARE AVAILABLE AT THE COMMISSION'S OFFICE OR COMPLAINANT MAY FILE ONE WITHOUT USING A FORM SO LONG AS HIS OR HER FILING CLEARLY SEEKS A REQUEST FOR REVIEW. REQUESTS FOR REVIEW MAY NOT EXCEED 10 PAGES WITHOUT LEAVE FROM THE COMMISSION.

³ Further, if state law were to apply, it seems clear that Briscoe's complaints would be found to involve the same cause of action under Illinois law as well. See Lilly, supra, at n. 1, citing Welch v. Johnson, 907 F.2d 714, 720 (7th Cir. 1990), among others.