



**City of Chicago**  
**COMMISSION ON HUMAN RELATIONS**  
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**IN THE MATTER OF:**

Linda Newby  
**Complainants,**  
v.

Chicago Transit Authority, Etta Ross,  
Securitas Services, U.S.A., Inc., and Jeffrey  
Billups  
**Respondents.**

**Case No.:** 09-P-10

**Date Mailed:** March 26, 2014

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**FINAL ORDER**

YOU ARE HEREBY NOTIFIED that, on February 19, 2014, the Chicago Commission on Human Relations issued a ruling in favor of Respondent in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek a review of this Order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS

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## FINAL RULING ON LIABILITY

### I. PROCEDURAL HISTORY

On March 6, 2009, Complainant Linda Newby filed a complaint with the Commission alleging that Respondents Chicago Transit Authority (“CTA”) and certain unnamed CTA Howard Redline Station employees discriminated against her based on her gender identity in violation of the Chicago Human Rights Ordinance by depriving her of the full use of a public accommodation on September 7, 2008, at the Howard CTA Station. C.<sup>1</sup> On June 3, 2009, Complainant filed an amended complaint, clarifying the allegations made in the original complaint, and naming Etta Ross (“Ross”), a CTA employee, as one of the CTA employee respondents. AC.<sup>2</sup> In addition, the amended complaint named Securitas Services USA, Inc. (“Securitas”), and its unnamed employee Doe as respondents. The unnamed Securitas employee was subsequently identified as Jeffrey Billups (“Billups”).

On July 8, 2009, the CTA and Ross filed their response to the amended complaint denying that they discriminated against Complainant because of her gender identity. In addition, the CTA and Ross filed a Motion to Dismiss the Complaint arguing that the CTA operated as a regional concern outside of the City of Chicago and thus the Commission did not have authority over the CTA. This motion was in effect dismissed when the Commission filed an Order Finding Substantial Evidence on March 22, 2012.

On September 4, 2009, Securitas and Billups filed their response to the complaint denying that Securitas or Billups had discriminated against Complainant based on gender identity or otherwise.

On March 22, 2012, after an investigation, the Commission issued an Order Finding Substantial Evidence. On April 13, 2012, the Commission issued an Order Appointing a Hearing Officer and Commencing the Hearing Process.

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<sup>1</sup> “C” refers to Complainant’s initial complaint, filed on March 6, 2009. The initial complaint’s paragraphs are not numbered; rather, there is a description of events attached to the CCHR form. All citations to the initial complaint will refer to C without further identification.

<sup>2</sup> “AC” refers to Complainant’s amended complaint, filed on June 3, 2009. Roe, the third CTA respondent, was ultimately dropped as a respondent by Order of the Commission on April 12, 2012, because that party could not be identified.

On March 1, 2013, the CTA and Ross filed an additional Motion to Dismiss the Complaint with the Commission. In the second Motion to Dismiss, the CTA and Ross alleged that the CTA and its employees were governed by Section 27 of the Metropolitan Transit Authority Act, which states:

Neither the [Chicago Transit] Authority, the members of its Board nor its officers or employees shall be held liable for failure to provide security or police force or, if a security or police force is provided, for failure to provide adequate police protection or security, failure to prevent the commission of crimes by fellow passengers or third persons or for the failure to apprehend criminals.

70 ILCS 3605/27.

The CTA and Ross argued that because of this regulatory limitation on its liability for criminal activities, the CTA and Ross were not subject to Commission jurisdiction for Complainant's complaint. On March 15, 2013, Complainant filed a response to the Motion to Dismiss, arguing that her complaint was based on discriminatory actions taken in the face of criminal activity and thus the CTA and Ross could not escape liability for their actions.

On March 20, 2013, the Commission denied the second Motion to Dismiss by the CTA and Ross.<sup>3</sup> The Commission noted that the statute cited by the CTA and Ross granted immunity based on tort claims, and complaints under the Human Rights and Fair Housing Ordinances are not tort claims, but rather administrative proceedings under local ordinances. The Commission had previously found it had jurisdiction over the CTA in *Berman, Torres, et al. v. Chicago Transit Authority et al.*, CCHR No. 92-PA-45 (Jan. 17, 2002). The Commission had rejected similar claims of immunity from the Chicago Park District in *Winter v. Chicago Park District*, CCHR No. 97-PA-55 (Oct. 18, 2000).

Following extensions granted in the hope of resolving this matter and to allow for discovery to be completed, an administrative hearing was held on April 23 and 24; at the end of the second day, additional days of hearing were scheduled for June 25 and 26, 2013.

At the close of the first two days of hearing on April 24, 2013, the hearing officer asked for briefs on three evidentiary issues: 1) whether the testimony of Juanita Rembert, a friend of Complainant's, about Complainant's statements to Rembert on the day of the event, was admissible as an excited utterance exception to the hearsay rule, 2) whether a witness offered by Complainant qualified as an expert witness, and 3) whether the Commission's investigative summary in full was admissible as evidence. Parts of Rembert's testimony were admitted as an excited utterance exception to the hearsay rule. The witness offered by Complainant as an expert was deemed an expert for certain specific purposes. Complainant's counsel was allowed to use the investigative summary for possible impeachment purposes only in accordance with CCHR Reg. 240.363.

On May 24, 2013, Complainant filed a motion seeking leave to subpoena the former CCHR investigator for the continued hearing and stated the reason for the request was to impeach Ross. CCHR investigators are only allowed to be subpoenaed for a hearing to testify about their interviews for impeachment purposes if the information sought could not be obtained through other methods. *See, e.g., Blakemore v. Starbucks Coffee Co.*, CCHR No. 97 PA 60

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<sup>3</sup> CCHR Reg. 210.330 requires the Commission, rather than the hearing officer, to determine whether a motion to dismiss will be granted.

(Aug. 7, 1998). Complainant's motion was granted and the investigator was required to appear for the limited purpose of impeaching Ross's testimony.

After additional extensions requested by counsel for all parties, the final day of hearing was held on August 28, 2013. After extensions were granted at the request of the parties, all post-hearing briefs were filed by November 7, 2013.

On November 6, 2013, the CTA and Ross filed a motion to strike portions of the Complainant's post-hearing brief, arguing that Complainant had improperly used in her brief statements from the expert witness that were not allowed into evidence by the hearing officer and that the Complainant had used statements from the investigator's summary that were not impeaching as required by the order of the hearing officer. On November 19, 2013, Complainant responded that motions such as this were not contemplated by the Commission's rules and that Respondents were incorrect in their analysis of the hearing officer's rulings. The Commission's regulations do not contemplate, and the hearing officer did not allow, responses to the post-hearing briefs. Merely describing the action as a motion does not overcome that obstacle for Respondents. No separate decision on Respondents' motion was issued.

On December 10, 2013, the hearing officer issued her Recommended Ruling on Liability notifying the parties of the deadline to file and serve any objections. No objections were received.

## II. FINDINGS OF FACT

1. Complainant, Linda Newby, is 53 years old. Tr. 20.<sup>4</sup> She is employed as a home caregiver, working with elderly people. Tr. 20, C. She is certified as a home caregiver. Tr. 21.
2. The Chicago Transit Authority ("CTA") is a municipal corporation created to provide public transportation pursuant to the Metropolitan Transit Authority Act, 70 ILCS 3605 et seq. CTA Second Motion to Dismiss, March 1, 2013. The CTA provides public transit in Chicago.
3. Etta Ross is an employee of the CTA and was an employee of the CTA on September 7, 2008. CTA Response to C, par. 2.
4. Securitas Services, USA, Inc. ("Securitas") is a separate security company retained by CTA to provide security services for the CTA. CTA Resp. to AC, par. 4. The Securitas employee testified that he was providing both security and customer assistance services. Tr. 611-631.
5. Jeffrey Billups ("Billups") was employed by Securitas as a security guard for the CTA Howard station on September 7, 2008. He had been assigned to the CTA Howard station in 2006. Securitas Position Paper, September 4, 2009.
6. Complainant was born with male genitalia, but identifies herself as a woman. Tr. 21. She is transgender. AC, par. 7. Complainant has identified as a woman ever since she could remember. Tr. 21.

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<sup>4</sup> "T. " refers to the transcript of the hearing in this case; it is followed by the page number.

7. Complainant works hard at passing as a woman with appropriate makeup and clothing. Tr. 22. She is careful about the way she moves her hands, the way she talks and the way she walks so as not to reveal her transgender status. Tr. 22. It is important for her to be careful because she believes she might be subject to violence if a person finds out she is not a woman. Tr. 22.
8. On September 7, 2008, Complainant was living near the Howard station with her fiancé. Tr. 26. She walked to the Howard train station to take the elevated train to her employment, leaving her house at about 6:30 a.m. Tr. 27, C, AC par. 7. She was wearing a nursing uniform or “scrubs”; the scrubs were multi-colored. Tr. 27, 643. She was wearing makeup and jewelry. Tr. 27.
9. Five or six minutes into her walk to the CTA Howard station on September 7, 2008, a man approached Complainant, and threatened her with a knife. Tr. 27, 60, 62; C, AC par. 8. The man did not touch her because she ran away from him toward the station. Tr. 62.
10. In her testimony, Complainant said the man called her a “black, faggot bitch” when he threatened her while on the street; the use of this derogatory name by the man on the street was not included in either of Complainant’s initial complaint or amended complaint. Tr. 62.
11. Complainant ran toward the train station and the man followed her, cursing at her. Tr. 28, 62. Complainant entered the Paulina entrance. Tr. 28, C, AC par. 9. Complainant testified that she went up two flights of stairs to the mezzanine level before asking someone to assist her. Tr. 29.<sup>5</sup> Complainant’s complaint and amended complaint with the Commission said she arrived at the station and asked an unidentified CTA employee in a uniform to call police. C, AC par. 10.
12. When she reached the mezzanine level, Complainant saw the security person, Billups, in the security booth.<sup>6</sup> Tr. 29, 107, 109. Complainant testified that she probably asked Billups for assistance by about 6:42 a.m. Tr. 64. The man who had threatened her was behind her; he took the escalator to get to the mezzanine level. Tr. 107. When Complainant saw Billups, he was wearing a gray uniform jacket and sitting in the security booth. Tr. 29.
13. Etta Ross (“Ross”) has been a CTA employee for 10 years. Tr. 233. She is a combined rail operator. Tr. 233. She can operate a train, hold a train as a flagman, operate as a switchman, and perform the functions of a customer assistant. Tr. 233.
14. On September 7, 2008, Ross began her morning shift at 7:30 a.m. Tr. 234. She had arrived at the Howard station at midnight, after finishing another shift earlier in the day for the CTA. Tr. 234. Instead of driving to her home in the south suburbs, she went to the Howard station and parked her car in the parking garage adjacent to the terminal. Tr. 235. Ross then went across the tracks to the “switching shanty” to talk or sleep. Tr. 236. At about 7:10 a.m. on September 7, 2008, she walked across the tracks to get to the Howard station platform. Tr. 236-237. She was wearing blue jeans, a T-shirt, and a CTA

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<sup>5</sup> The parties identified the floor with the security booth as the second floor, the third floor and the mezzanine level. For the purposes of this opinion, it will be called the mezzanine level.

<sup>6</sup> The parties identified the booth as both the customer assistance booth and the security booth.

vest; she could not go across the tracks without a vest. Tr. 237. She then went up from the platform to the mezzanine level of the station which was by the customer assistance booth and the pay turnstile. Tr. 237. She then went down the stairs, walked out of the terminal to the ground floor and parking garage to go to her truck to get her workbag and uniform. Tr. 238. She would then change into her uniform so she could report at 7:30 a.m. Tr. 238.

15. In contrast to Complainant's testimony (see pars. 10 and 36), Ross testified that she first encountered Complainant outside of the CTA Howard station standing in front of the elevator to the parking lot on her way into the parking lot. Tr. 239, 242, 300. Ross had her CTA vest draped around her neck at the time. Tr. 312. To Ross's knowledge, the parking lot was not CTA property. Tr. 298-299. Complainant was walking toward the station. Tr. 255. Ross said Complainant told her that someone had pulled a knife on her at the Dunkin Donuts which was located down the street and asked Ross where the phones were. Tr. 239, 249, 255. Ross told Complainant there were phones on the first floor of the station and upstairs where the security guard was. Tr. 239. At the hearing, Ross said Complainant did not ask her to call the police. Tr. 239. However, earlier when talking with a CCHR investigator, Ross did report that Complainant asked her to call the police. Tr. 682. The hearing officer found that Complainant's testimony that she asked Ross to call the police is credible.
16. Ross testified that she did not see any man chasing Complainant with a knife or anyone else on the street. Tr. 243, 255. Complainant did not testify about meeting Ross on the street level. Tr. 64, 104, 108. Complainant's initial complaint states that she asked another unidentified CTA employee for assistance after arriving at the station and after receiving no help from the first CTA employee. C. Her amended complaint said Ross was the second person she asked for assistance after the first unidentified person in uniform refused to assist her. AC par. 13. For the purposes of this opinion, it does not matter where Complainant and Ross first met. However, the hearing officer noted that Ross's defense to a CTA disciplinary measure (see par. 82 below) was that she was not on duty at the time, likely in Ross's mind a more successful defense if she were not on CTA property when she first encountered Complainant.
17. Billups is currently employed by Allied Barton Security. Tr. 609. Billups was employed by Securitas on September 7, 2008, at the CTA Howard train station. Tr. 609-610. On September 6-7, 2008, he was working the midnight shift, from 11:30 p.m. to 7:30 a.m. Tr. 614.
18. Billups' duties were to patrol the station and "assure the revenue," that is, watch the automatic transit card machines. Tr. 611. He would patrol the platforms and lower level of the station every thirty minutes. Tr. 611. He would assure that people were not hanging around who were not attempting to board the bus or trains. Tr. 611. He would give assistance to customers. Tr. 611. When Billups was not patrolling, he was to stay in the security booth. Tr. 615. When he was on duty, there was never a CTA customer assistant on duty at the same time. Tr. 631. Billups was to be in place of a CTA customer assistant. Tr. 631.
19. Billups' "post orders" were the limits of his authority as required by Securitas based on CTA requirements. Tr. 612, Complainant's Exh. 1. Billups was required to assist passengers if great bodily harm would be anticipated. Tr. 612. If great bodily harm was not anticipated, Billups' post orders were to gather as much information as possible and

contact CTA control and Securitas' office. Tr. 612-613. CTA control would then determine what action to take. Tr. 613, 635. At the hearing, Billups said his post orders required him to call CTA control; CTA control would then call the police, if control thought that step was warranted. Tr. 634. On looking at his post orders at the administrative hearing, he agreed that the post orders do not specify that he was required to call CTA control first before calling police. Tr. 635, Complainant's Exh. 1. Billups agreed he had the authority to ask for identification and if identification was not provided, he could ask an individual to leave CTA premises. Tr. 637, Complainant's Exh. 1. Billups agreed that the post orders issued by Securitas would have allowed him to touch, search or arrest an individual if necessary to protect the safety of others, but said that his authority was the same as any private individual. Tr. 659, Complainant's Exh.1.

20. On the morning of September 7, 2008, at 7:17 a.m., Billups heard "loud yelling" in the station. Tr. 614-615, 645. At the time he was sitting in the security booth. Tr. 614. Billups then saw two individuals coming up the escalator to the mezzanine level. Tr. 615. Billups first saw a white male getting off the escalator and then walking toward the turnstiles. Tr. 616. Billups then saw Newby who was behind the white male. Tr. 616. Both came up to the mezzanine level. Tr. 616. When they reached the mezzanine level, Billups came out of the booth to see what was going on. Tr. 616.
21. According to Billups, Complainant was doing most of the yelling. Tr. 616. The white male was saying "leave me alone." Tr. 616. Complainant was saying, "I want to press charges." Tr. 617. Complainant never told Billups why she wanted to press charges. Tr. 617.
22. When Complainant reached Billups, she told Billups the white male had threatened her with a knife. Tr. 29, 65, 617, C, AC 10. Complainant testified the man then stated, "You're damn right I have a knife. I'll cut this black faggot bitch where she stand at." Tr. 29-30, 68, AC 11. Billups did not hear any statement to that effect and did not hear the white male calling Complainant a "faggot." Tr. 620-621.
23. Complainant said Billups then said "You're a man, he's a man, you can handle it yourself." Tr. 32, C, AC par.12. Billups denied making such a statement to Complainant. Tr. 622. The hearing officer found that Complainant's testimony that Billups made this statement is not sufficiently credible due to her contemporaneous reports and other testimony. Complainant testified that Billups told the man to go downstairs and he would handle it upstairs, which contradicts Complainant's statement that Billups told Complainant and her assailant to handle it between themselves. (See par. 26 below.) In addition, in reports to two CTA supervisors made the day of and the day after the event, Complainant did not say that Billups said this. (See pars. 54 and 72 below.)
24. At the hearing, Complainant said she believed Billups was "smirking a little bit" and appeared uncaring and angry; upon being asked again about the statement by her counsel, Complainant stated she clarified that smirking meant laughing. Tr. 30, 32. Her initial and amended complaints stated Billups laughed. C, AC par. 12. Billups denied smirking. Tr. 622. Neither of the contemporaneous complaints with CTA supervisors filed by Complainant mention that the security guard laughed at her. See pars. 54 and 72 below. The hearing officer found that Billups may have had an expression on his face Complainant could interpret as a smirk, but did not find that Billups laughed at Complainant.

25. Complainant testified that the man pulled out a knife in front of Billups and Billups still refused to assist her. Tr. 105, 110. Neither Complainant's Complaint nor her Amended Complaint asserted that the white male had pulled out a knife in front of Billups. C, AC. Billups testified that he never saw the white male carrying a knife. Tr. 617. The hearing officer found Complainant's testimony that Billups saw a knife was not credible. Had this happened, Complainant would have put this event in both her initial complaint and her amended complaint to the Commission, which she did not. C and AC. In addition, it defies reason that Billups would have seen a weapon and not responded both for Complainant's and his own safety as well as the safety of other passengers. The hearing officer noted that a CTA supervisor's report (par. 54 below) states that Complainant arrived at the Howard station mezzanine and then the unnamed male pulled a knife on her, but that factual scenario is contradicted by Complainant's filed and signed complaints with the Commission.
26. The white male who Complainant said had threatened her went downstairs to the boarding platform while Billups was talking to Complainant. Tr. 618, 638-639. Complainant testified Billups told Complainant to stand by him at the security desk while the man went downstairs. Tr. 73, 75, 113. In order to gather information, Billups called the white male back. Tr. 618, 639. Billups then went to the security booth to call control. Tr. 618.
27. Billups testified that the white male came back upstairs to the mezzanine level and made a cell phone call. Tr. 618, 640. The white male was carrying a lunch-size cooler. Tr. 617. Complainant was 5-10 feet away from the white male while Billups was in the security booth. Tr. 619-620, 639. The white male remained on the opposite side of the turnstile in the paid area; Complainant was in the unpaid area. Tr. 619. Billups never felt that Complainant was at risk of great bodily harm or needed protecting. Tr. 619, 661.
28. Billups went to the security booth to call CTA control which was what he believed his post orders required. Tr. 618-619. While Billups was on the phone with control, the white male went downstairs again. Tr. 641. No documentary evidence was presented by the CTA or Securitas that confirmed that Billups made the call to CTA control. Billups did not have an opportunity to get identification from Complainant or the white male. Tr. 641. Complainant testified that Billups told the man to go downstairs to the train platform and that he would handle it upstairs. Tr. 33, 70.
29. Billups said that he thought both Complainant and the white male were males. Tr. 621. He thought Complainant was a male because her voice was much lower than her voice at the hearing and he believed she was more aggressive. Tr. 621. In addition Complainant had a shadow of a beard. Tr. 622. Billups said Complainant was wearing multi-colored nursing scrubs on September 7, 2008, but he could not recall if she was wearing makeup or earrings. Tr. 643, 649.
30. When the white male went downstairs the second time, Billups said Complainant said "You're letting him get away" and went through the turnstile and downstairs to the platform after the white male. Tr. 620. Billups was still on his call with CTA control when Complainant went downstairs. Tr. 623. Billups could not remember if he asked control to call police or not. Tr. 644. The phone in the security booth has no outside lines, so he could only call CTA control. Tr. 665. Billups believed he may have asked CTA control to call police, but it was up to CTA control to make that decision. Tr. 643.



31. When Billups finished his call, he followed Complainant to the platform. Tr. 623-624. Billups saw Complainant holding the door to the train and he saw Sharon Christmas ("Christmas"), a CTA employee, standing nearby. Tr. 624. Billups thought he did not have the authority to stop the train. Tr. 642. He then returned upstairs. Tr. 624. He had no further conversation with Complainant. Tr. 624. Billups saw the police arrive. Tr. 625. Billups did not have any conversation with Sharon Christmas or any other CTA employee when he arrived at the platform. Tr. 644. Billups left the station after his shift ended at 7:30 a.m. Tr. 625.
32. Billups was required by Securitas and the CTA to write an incident report. Tr. 626. Securitas Exh. A. The report states that the time he called control was 7:25 a.m. Tr. 627, 645. The report further states that Billups notified Securitas of the incident at 7:35 a.m. Tr. 627. The report states that Complainant stayed in the unpaid area when Billups went to get the white male passenger. Tr. 639. The report said that Complainant told Billups that the man had pulled a knife on her. Tr. 640. The report did not state that Complainant stepped off the train when she was trying to hold the doors. Tr. 645. The report refers to Complainant as a black male. Tr. 651. The report states that Billups saw Complainant speaking to the rail supervisor, Christmas. Tr. 666.
33. Billups' report was dated as signed at 2100 hours (9 p.m.) on September 7, 2008, but Billups said he wrote the report when his shift ended at 7:30 a.m., on September 7, 2008. Tr. 648. When Billups returned for his next shift, he realized he had not signed and submitted the report, so he signed it then. Tr. 648.
34. Billups could have been disciplined if he failed to act in a dangerous situation. Tr. 647. Billups agreed that using abusive language violated CTA's and Securitas's policies. Tr. 647.
35. Billups received training on racial, sexual orientation and gender discrimination and harassment before the event in 2008. Tr. 653.
36. One year after the incident, Billups signed another report that identified Complainant as a female. Tr. 655. Billups said he did not write that report; the report was written by someone in the corporate office for him to sign. Tr. 655. When the second report was drafted, Billups knew he was being sued by Complainant for gender identity discrimination. Tr. 655.
37. As noted above in paragraph 15, Complainant said she first talked to Ross who was standing near the security booth when Billups, the security guard, would not call the police; per Complainant's testimony, this was the first time she talked with Ross. Tr. 41, 69, 71. Complainant testified the man who had threatened her was already on his way downstairs when she spoke to Ross. Tr. 74. Complainant explained she was being threatened by a man with a knife and asked Ross to call the police. Tr. 73. Complainant testified Ross said she would not call the police and that Complainant would have to call the police by herself. Tr. 41-42, 72, 75, 87. Complainant said Ross was wearing her CTA uniform at this time. Tr. 41-42.
38. Complainant did not know Ross before the date of the incident; she had never spoken to her before. Tr. 75. Complainant thought Ross must have heard the man yelling at her and calling her a faggot, but she and Ross never discussed this. Tr. 76. The hearing

officer found that there was no evidence that Ross heard anything that the man said and noted that Newby said the man who had threatened her was already on his way downstairs when she asked Ross for assistance (see par. 36).

39. Complainant did not call the police on her cell phone because things were happening so fast and she could not find her cell phone in her bags. Tr. 72.
40. Complainant then followed the person who had threatened her downstairs to the Howard train platform to get some assistance. Tr. 42, 115. Complainant saw the train doors were closing and stepped into the car to stop the train; the doors were slamming on her. Tr. 42, 80, C, AC 15. Her back was inside the train; she was facing outside the door. Tr. 116. Complainant did not know if the man still had the knife or not, or where he was. Tr. 82, 116. She asked another CTA employee to call the police. Tr. 42, 80, 83. One CTA employee in blue overalls looked into her eyes. Tr. 42-43. Complainant pleaded with the CTA employee to call the police. Tr. 81. Complainant said the man who had threatened her kicked her out of the CTA train door; she fell to the platform. Tr. 43, 84, C, AC par. 16. The man in the CTA blue overalls then told the train to leave the station. Tr. 43, C, AC par. 17.
41. Sharon Christmas (“Christmas”) has been a CTA employee for 17 years. Tr. 401. She has been a Rail Service Supervisor for the past 10 years. Tr. 401. As a supervisor, Christmas assures that trains come and leave on time and helps the operators with anything they need. Tr. 402. She currently works at the Howard Street CTA station. Tr. 402. On September 7, 2008, she worked at the Howard Street CTA station. Tr. 401.
42. The first time Christmas saw Complainant on September 7, 2008, was on the southbound platform of the Howard train station. Tr. 402-403. Christmas was on the south end of the southbound platform. Tr. 403. Christmas heard a commotion on the platform and came out of the supervisor’s booth, where she sat to monitor the trains. Tr. 403-404. Christmas saw that Complainant was in a confrontation with a man on the train. Tr. 404. Christmas could not overhear the argument between Complainant and the man. Tr. 403. Christmas saw Complainant swing her purse at the train and the man on the train kicked at Complainant. Tr. 404. The train then pulled out of the station. Tr. 405. Christmas did not see the man who had threatened Complainant at any time during this confrontation. Tr. 419. Christmas could not recall the man’s race, what he was wearing, or if he had facial hair. Tr. 462.
43. Right after Complainant swung her purse and the train pulled out, Christmas asked Complainant what happened. Tr. 406. Complainant told her that the man had pulled a knife on her by the Dunkin Donuts, so Christmas used her personal CTA radio that she carried with her to call the CTA Control Center and ask them to call the police. Tr. 406. Christmas could call Control Center to dispatch any services needed, such as the police or the fire department. Tr. 407. Christmas did not remember if Complainant asked her to call the police. Tr. 406.
44. Christmas said a flagman named Ashley Marshall (“Marshall”) was standing on the platform near Complainant as well. Tr. 409. Christmas said Marshall did not get involved in the altercation or discussion Complainant was having with the male passenger. Tr. 409. Marshall did not signal the train to leave; he did not have that authority. Tr. 409-410.

45. Complainant then saw the police come to the platform. Tr. 44, C, AC par. 18. Complainant did not know who called the police. Tr. 121. She told the police a man had threatened her with a knife and called her names. Tr. 45. The police said the CTA had stopped the train at the Loyola CTA station (three stops away) and offered to take her there to attempt to identify the man who had threatened her. Tr. 45, C, AC par. 18. When Complainant reached the Loyola station, the police told Complainant there was no white male fitting her description on the train. Tr. 45, 90, C, AC par. 19. The police took her description of the man, but never notified her that they had caught the man. Tr. 90. The police gave her a copy of a document to take back to the Howard station. Tr. 90. No police report/complaint on this incident was offered into evidence.
46. During Complainant's ride in the police car to the Loyola CTA station, Complainant called her friend and employer Juanita Rembert to tell her what had happened. Tr. 49-50. Rembert said Complainant was talking very fast and appeared to be very upset; Complainant was "panicking and just hollering." Tr. 129. Complainant told Rembert she had been walking to the CTA station when a man approached her with "words" and then pulled a knife on her. Tr. 146-147. Complainant told Rembert she tried to get help from a security guard (Tr. 147) and tried to let the security guard know the man following her was not her "beau." Tr. 148. Rembert said Complainant told her the security guard called Complainant a "faggot." Tr. 148. Rembert said Complainant also told her she tried to get the woman in the booth to assist her. Tr. 148. Complainant did not tell Rembert any CTA employees used offensive language. Tr. 149-150. Complainant and no other witnesses or reports stated that the security guard (Billups) had called Complainant a "faggot"; The hearing officer found that Rembert's testimony that the security guard called Complainant a "faggot" not credible, contrary to Complainant's testimony, and most likely mistaken. The hearing officer also found that Rembert's testimony is credible to the extent that she testified Complainant had been threatened, was very upset, and did not think the police had been called.
47. Ross had reported for duty a few minutes after 7:30 a.m. and talked with Billups about what had happened overnight. Tr. 241. Ross asked Billups what had happened with the "situation," whether anything was broken in the terminal and "things like that." Tr. 241. Ross testified that Billups informed Ross that there was a commotion and that a lady was holding the train downstairs on the platform. Tr. 242. Then Billups left. Tr. 241. Ross and Billups were friendly acquaintances; they saw each other about once a week when one of their shifts ended and the other began a shift. Tr. 303-304. Billups did not testify about any discussion with Ross on the morning of the incident.
48. After leaving the Loyola CTA station, Complainant returned to the Howard station on the train travelling north from the Loyola station. Tr. 90. Complainant went upstairs from the northbound platform to the security booth and talked with Ross, who was by that time in the security booth. Tr. 257. Complainant told Ross that she had not helped her that morning. Tr. 257. Ross replied that she had told her where the telephones were. Tr. 257. Complainant asked for Ross's name; Ross refused to give it to her saying it was CTA policy only to give out badge numbers. Tr. 258. Complainant said "You did not help me" and "I'm somebody's sister, auntie, cousin." Tr. 258. Then Complainant said the reason Ross failed to help her was because Complainant was transgender. Tr. 258. Ross did not know Complainant was transgender until Complainant told Ross she was transgender. Tr. 259.

49. Complainant then went downstairs (Tr. 259); she wanted to find a supervisor to file a complaint against the people who had failed to assist her. Tr. 47, 92. She met with Christmas, the CTA terminal supervisor for the morning (Tr. 262), in a CTA office on the main floor and filed a complaint. Tr. 47, Tr. 92. In contrast to Christmas's testimony, Complainant testified that she did not see Christmas until after she returned to the station after leaving with the police. Tr. 88. Billups testified that Christmas talked with Complainant on the platform. Tr. 624. The CTA report (see par. 48 below) indicated that Christmas called the police about the incident at 7:25 a.m. The hearing officer found that Christmas first spoke with Complainant on the Howard platform at 7:25 a.m. and that Christmas called CTA control and requested that control call the police.
50. Christmas estimated that Complainant returned to see her at the supervisor's booth on the platform 30 minutes after she left with the police. Tr. 412. Christmas said Complainant approached her and asked for the names of the security guard and customer assistant who were on duty. Tr. 413. Complainant said that Christmas was upset about what had happened and then Christmas asked Complainant to come upstairs with her. Tr. 48, 93.
51. When Complainant and Christmas reached the security booth of the station, they found Ross; Billups had left for the day. Tr. 48, 93, 241, 247-248, 261. Ross was still on duty in the security booth. Tr. 246. Complainant said this was 5-10 minutes after Complainant had asked Ross for her name. Tr. 260, par. 47 above.
52. Christmas asked whether Ross had failed to assist Complainant. Tr. 48. Complainant testified that Ross replied "That ain't no lady and I was not on duty." Tr. 48, 94. Complainant testified that Christmas said, "That's besides the point." Tr. 48. Christmas testified that Ross did not say anything regarding Complainant's gender identity. Tr. 430. Christmas testified that Newby told her after the discussion with Ross that Ross did not help her because Newby was transgender. Tr. 415. Newby did not explain to Christmas why she felt she was mistreated due to her gender identity and Newby did not claim to Christmas that anyone said anything to her about her gender identity. Tr. 418. Newby did not tell Christmas that Ross had called her names or had referred to her as a man. Tr. 466. Neither Complainant's complaint nor amended complaint with the Commission had the allegation that Ross said, "That ain't no lady" on the day of the event; there was an allegation in the complaints that an unidentified CTA employee had made that statement the day after the event. C, AC par. 21. The hearing officer found that it is not credible that Ross said, "That ain't no lady," but all parties have testified that Ross said she was not on duty.
53. Christmas asked Ross why she did not give any information to Complainant and Ross said she would only give her badge number. Tr. 261. Christmas asked for Ross's badge number. Tr. 48, 94, 261, 415. Ross said Complainant then again said, "You did not help me" and "I'm somebody's sister, auntie, cousin." Tr. 262.
54. Ross said that she did tell Complainant where the telephones were and said that neither Complainant nor she were in danger because no one was on the street. Tr. 262. Ross also explained to Christmas that she was not on duty at the time and was waiting at the parking garage. Tr. 311, 415. Ross told Christmas she was not in uniform. Tr. 312.
55. After speaking with Complainant for the second time, Christmas filled out the Rail Supervisor's Report. (Exh. CTA K). Tr. 421-422. She filled out this type of document on a daily basis whenever there is an unusual occurrence. Tr. 421. The report documents

what Christmas saw on the southbound platform and the mezzanine level. Tr. 450. The report did not include reporting that Complainant swung at the male passenger with her purse or that Complainant said she was not given assistance due to her transgender status. Tr. 438-439, 450, 452. The document states: "Between 7:15 and 7:30 a young lady came to the supervisor booth and stated that a man followed her from street level and when she arrived at Howard mezzanine level he pulled a knife on her. I notified control and requested the Chicago Police. When they arrived the young lady was taken to Loyola because she stated that the passenger was aboard Run 092 2/2844. No arrest was made. The man left the scene. The passenger returned to Howard requesting the names and badge numbers of the employees because she stated they didn't assist her. Those employee[s] were a midnight security guard and the a.m. customer assistant. When I spoke to the ca she stated she wasn't on duty and was just walking up. Notified K564C and stated she would call and talk to the customer assistant. When I returned to the kiosk to obtain information from the midnight guard he was gone."

56. On the morning of September 7, 2008, Christmas also filled out a CTA customer assistant operations check because Complainant had complained of the service received from Ross. (CTA Exh L) Tr. 423-428. This document is used for observation of CTA employees. Tr. 423. Christmas did not fill out all parts of the document; she did not complete the area called "action taken." Tr. 424. Based solely on what Complainant had told her, Christmas did state in the document that Ross had violated rules in the CTA General Rule Book which governs all employees. Tr. 440, 444, 454, 460-461. Rules violated based on Complainant's complaint to Christmas were Rule 7(a)(b)(c) (Obedience to all rules, orders and instructions) and Rule 14W (abuse of company time, poor work performance). CTA Exh. C.
57. Christmas did not recall ever stating to Linda Batts-Edwards ("Batts-Edwards") that she asked Ross why she did not call the police. Tr. 462.
58. Christmas is not allowed to discuss customer assistant operations checks with CTA employees. Tr. 428, 436. Christmas did not investigate Complainant's complaint; she did not have that authority. Tr. 436, 457-461. Christmas did not have the authority to discipline CTA employees; that was done by the manager. Tr. 443. Christmas did not recall why she wrote that Ross refused to call the police. Tr. 430. Christmas only wrote what Complainant and Ross said to her. Tr. 436-437, 461. Christmas did not include in the report that Complainant said she felt she was treated differently due to her gender identity. Tr. 438-439.
59. Christmas was not aware of CTA training or policies regarding sexual orientation or transgender discrimination in 2008. Tr. 465-466.
60. Immediately after speaking with Ross with supervisor Christmas, Complainant went home. Tr. 48. She cried a "little bit" and then became angry about how she was treated. Tr. 50.
61. After Ross talked with Christmas on September 7, 2008, Ross received a call from an unnamed CTA manager. Tr. 315. The manager told Ross to write an occurrence report because the police had been called. Tr. 315. Ross told the manager she did not know anything about the police, and the manager told Ross to just write her report of what happened. Tr. 315. At the time Ross wrote the report, Ross believed Complainant was upset with Ross and had complained about Ross's conduct because she had come to talk

with Ross with Christmas. Tr. 319, 320. Ross's report stated as follows: "Around 7:15 a.m., before my tour of duty at 7:30 a.m., I was entering the parking garage elevator. A woman said a man pulled a knife on her down by Dunkin Donut's [sic]. I told her to go upstairs and she would find [sic] the guard and pay phones." Tr. 322, Exh. M. Ross did not put in the report that she did not believe Complainant was in any danger and that Ross did not see the man Complainant said had threatened her. Tr. 322.

62. Ross never told Billups that Complainant was transgender because Complainant did not tell Ross she was transgender until after Ross relieved Billups. Tr. 385-386. Ross and Billups talked about the incident about a week later during which Ross told Billups what went on by the elevator near the parking garage and that she had sent Complainant up to Billups. Tr. 384.
63. Linda Batts-Edwards ("Batts-Edwards") has been with the CTA for 29 years. Tr. 482. Batts-Edwards is a transportation manager on the rail customer service side of the CTA. Tr. 482. From 2001-2011, she was the manager over customer assistants at the Howard Street CTA station. Tr. 483. As transportation manager, she oversaw all of the duties and responsibilities of the customer assistants and customer assistant supervisor. Tr. 483-484. Batts-Edwards was not Ross's direct supervisor. Tr. 514. Batts-Edwards never talked with Complainant's supervisor about the incident on September 7, 2008. Tr. 523.
64. Complainant testified that she had an earlier incident with CTA employees making fun of her transgender status in 2006 or 2007 at the Howard train station. Tr. 23-26. She complained to Batts-Edwards. Tr. 25-26. After she spoke to Batts-Edwards, Complainant believed Batts-Edwards took care of the situation. Tr. 26.
65. Batts-Edwards also recalled she had first met Complainant in 2007, when Complainant came to complain to her sometime in the morning. Tr. 486. Batts-Edwards could not recall the month. Tr. 486. Complainant complained that some CTA employees were harassing her by calling her names and poking fun at her. Tr. 487. Complainant did not tell Batts-Edwards what the employees' names were. Tr. 487. Batts-Edwards asked her to point out the employees and file a complaint, but Complainant said she could not because she had to go to work. Tr. 487. Batts-Edwards said she could complete a complaint quickly, but Complainant said she could not wait, but did give Batts-Edwards her name. Tr. 487. Complainant never came back to the station to file a complaint or to point the people out to Batts-Edwards. Tr. 488. Batts-Edwards talked to a supervisor on the platform and asked if she knew about CTA employees taking such actions, the supervisor denied knowing anything about it. Tr. 489. Batts-Edwards talked to two male employees and asked them if they knew anything about it, but they also denied knowing about any name-calling. Tr. 490. Batts-Edwards cautioned them if she heard of any other complaints that she would be back because the CTA took such complaints seriously. Tr. 490.
66. Batts-Edwards also saw Complainant in 2007 before the incident in 2008. Tr. 493. Once Newby was riding on the same CTA train as Batts-Edwards. Tr. 493. Complainant told Batts-Edwards she had no further problems from that day on. Tr. 493. Batts-Edwards saw Complainant on the train more than once before September 8, 2008; during one of those meetings, Complainant told Batts-Edwards she was transgender. Tr. 497-498.

67. Batts-Edwards was not at work on September 7, 2008; she was at work on September 8, 2008. Tr. 484.
68. On September 8, 2008, Complainant returned to the Howard CTA station to find a CTA supervisor, specifically Batts-Edwards. Tr. 51, 96. Complainant was with a friend named Vita; Vita did not appear or testify at the hearing. Tr. 97, 491. Complainant's friend Vita remained with Complainant throughout the interview with Batts-Edwards. Tr. 491.
69. Complainant wanted to speak to Batts-Edwards because Batts-Edwards had been good to Complainant in the past and seemed like a caring person. Tr. 51, 94. Complainant trusted her. Tr. 96. When Complainant asked for Batts-Edwards at the CTA Howard station, Complainant was directed to an office on the second floor of the station. Tr. 51, 96-97. Complainant arrived at Batts-Edwards' office mid-morning or later on September 8, 2008. Tr. 486.
70. Complainant testified Batts-Edwards said that CTA employees had been talking about the previous day's incident all morning; Complainant testified Batts-Edwards told Complainant that she did not know it had been Complainant. Tr. 51. In contrast, Batts-Edwards said that she first heard about the incident when Complainant came and told her about it. Tr. 485. CTA had no log or information that would have described the previous day's incident to Batts-Edwards because she was not on duty that day. Tr. 522-523. Complainant spent about 15-20 minutes talking about the event and explaining what had happened with Batts-Edwards. Tr. 97, 499. Whether Batts-Edwards heard about the incident before or after Complainant arrived is not essential to determining liability in this case.
71. Complainant said Batts-Edwards filled out a complaint and asked a few CTA people what had happened. Tr. 51, 98. Complainant could not remember what CTA people Batts-Edwards talked with; Complainant did not recognize them. Tr. 98. The CTA people Complainant knew from the day before were not there. Tr. 98.
72. Batts-Edwards said that Complainant told her after the guard failed to assist her, Complainant encountered Ross on the mezzanine level at 7:30 a.m. Complainant told her Ross refused to call the police, and that Complainant was pleading with a CTA employee to help her. Tr. 525. Complainant told Batts-Edwards that a CTA employee on the platform told the train to go on. Tr. 525, 528. Complainant told Batts-Edwards that she had her purse and she was trying to stop the train. Tr. 526. Complainant told Batts-Edwards that Christmas came out of her booth (kiosk) and asked her what was going on. Tr. 526. Batts-Edwards reread her notes of this interview with Complainant back to Complainant and asked her if the notes were correct. Tr. 542. Complainant did not receive a copy of Batts-Edwards' report to review because that was CTA property. Tr. 542, Exh. N. Batts-Edwards never asked Complainant why Complainant thought Securitas and CTA employees did not help her. Tr. 543. Sometime later, Complainant came to ask for a copy of her report and Batts-Edwards said she could not give Complainant a copy and Complainant should contact CTA attorneys about this request. Tr. 556. Other than that one day, Batts-Edwards has not seen or talked with Complainant since September 8, 2008. Tr. 543. Batts-Edwards took no further action after writing her report and submitting it. Tr. 554. Yolanda Brewer, another CTA administrative supervisor, handled the investigation after that. Tr. 554 (see pars. 79-83 below).

73. Batts-Edwards testified that at no time during the interview on September 8, 2008, did Complainant make any allegations that CTA employees made inappropriate comments to Complainant on September 7, 2008. Tr. 495. Batts-Edwards testified that at no time during the interview on September 8, 2008, did Complainant state that a CTA employee called her a “man” or that a CTA employee stated that Complainant “was not a lady.” Tr. 496. Batts-Edwards testified that at no time during the interview on September 8, 2008, did Complainant state she was discriminated against. Tr. 497, 513. Rather, Complainant told Batts-Edwards she did not get any assistance from the CTA personnel and she could have been seriously injured. Tr. 497. Complainant gave Batts-Edwards a copy of the police report she had filed. Tr. 499-500. Batts-Edwards took notes of this conversation to use in drafting her report, but did not keep the notes after the report was drafted. Tr. 494-495. Batts-Edwards submitted a copy of the police report with her report to the CTA; the copy of the report submitted as an exhibit did not have a police report attached to it. CTA Exh. N, Tr. 499-500.
74. In her complaint, amended complaint and testimony, Complainant said that one of the CTA people Batts-Edwards talked with on the day after the event also said Complainant was not helped because she was “not a lady.” Tr. 99-100. Complainant testified that she did not know who the employee was who said that to Batts-Edwards, but in her amended complaint Complainant said that the person saying this was “Respondent Roe,” who was identified as a third CTA employee on the platform and was neither Ross nor Billups. Tr. 99-100, AC. pars. 17, 21.<sup>7</sup>
75. After the meeting was over, Batts-Edwards and Complainant went upstairs into the station to see if Ross was there, but she was not on duty. Tr. 501. Batts-Edwards did not speak to any other CTA employees because they were not on duty on the date the incident happened. Tr. 501. No employees said Complainant was not helped because she was not a lady. Tr. 502. Then Complainant left the station. Tr. 501.
76. After Complainant left, Batts-Edwards then pulled documentation to see what CTA employees were supposed to have been on duty the previous day. Tr. 501. After she retrieved the information, she went downstairs to write her report. Tr. 503. Prior to writing the report, she contacted Christmas because Complainant had told her she had spoken to Christmas. Tr. 503, 532. Batts-Edwards received a copy of Christmas’s supervisor report (CTA Exh. K), but did not receive a copy of the violation report (CTA Exh. L); that report went directly to CTA administration. Tr. 538. Batts-Edwards did not speak to Ross on September 8, 2008, because Ross was out on sick leave. Tr. 508. Batts-Edwards never spoke to Ross about this incident. Tr. 511. Batts-Edwards sent her report to Edward Cook, who was general manager of the CTA red, purple and yellow train lines in 2008. Tr. 507.
77. Winston Pulliam (“Pulliam”) has been a rail controller for the CTA for 15 years. Tr. 559. He was on duty in September 2008. Tr. 560. He monitored and took reports on what CTA called the quick track, a computer screen that showed whatever incidents occurred. Tr. 560. He took between 15-30 reports per day. Tr. 561. Incident reports included reports of sick passengers, derailments, requests for police assistance, dirty platforms, and dirty trains. Tr. 561. He also received reports by phone and by radio transmission; in that case, he made a rail record card. Tr. 561. A rail record card documents the call

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<sup>7</sup> As noted in footnote 2, Respondent Roe was dismissed before this case came to hearing.



made and the resolution; the record card was made immediately as the call came in, either in writing or directly into the computer. Tr. 561-562. He recorded who made the call, where the call was coming from and what the caller needed. Tr. 562.

78. Pulliam identified CTA Exhibit I as a rail record report prepared on September 7, 2008, at 7:35 a.m. prepared by another CTA employee. Tr. 564-565, 567. The other employee was a customer assistance controller. Tr. 568. The document stated that at 7:25 a.m. on September 7, 2008, Christmas called for police. Tr. 568-569, Exh. I.
79. Yolanda Dunbar (nee Brewer) ("Dunbar") has been a CTA employee for 16 years; she is an administrative manager. Tr. 576-577. In September 2008, she was the rail administrative manager for the CTA Howard train station. Tr. 577. In her role as rail administrative manager, she conducted interviews for disciplinary actions. Tr. 578.
80. On Monday, September 8, 2008, when Dunbar arrived at work she became aware of the incident involving Ross. Tr. 578. Dunbar received a "ticket" that was written by Christmas. Tr. 579l, CTA Exh. L. A "ticket" is also known as a "violation" or the "customer assistance operation check report." Tr. 606. Dunbar then posted a list that included Ross's badge number in the room where employees have lunch. Tr. 580. Employees have four weeks to see the manager about the posting. Tr. 580.
81. On September 30, 2008, Dunbar interviewed Ross about the incident in her office. Tr. 580. Prior to the interview, she reviewed Exhibit L, the customer assistance operation check. Tr. 581. The handwriting on the top of page 2 of Exhibit L was the CTA supervisor's (Christmas); the handwriting on the bottom of page 2 was added by Dunbar at the interview. Tr. 582. The document showed that Ross was "cautioned and instructed." Tr. 582.
82. "Cautioned and instructed" is the first step when an employee is charged with a procedural violation. Tr. 582. This discipline was given to Ross after the interview. Tr. 276, 583. According to Ross, the basis of her discipline was the failure to assist a passenger on September 7, 2008, while on duty. Tr. 277, 283.
83. The interview was in Dunbar's office and Ross, a union representative, and Dunbar were present. Tr. 584. A record of the interview was admitted as CTA Exhibit O. Tr. 583. The interview was conducted on the charge that Ross refused to call the police for a passenger. Tr. 585. Ross received discipline because CTA employees are not to say they are off duty when addressing a passenger. Tr. 587. If Ross had restricted her comments to telling the customer where the phones were and where the security personnel were, Dunbar said Ross would not have been disciplined. Tr. 589. If Dunbar had found that Ross had refused to give service due to discrimination, this would have been a more serious behavioral violation. Tr. 588. Dunbar found Ross guilty of violating Corrective Action Guidelines 7(a)(b)(c) (obeying all rules and regulations) and 14(w) (poor work performance). Tr. 590-591, CTA Exhs. E and O. Ross only received the first step because she had no other procedural violations for the previous 12 months. Tr. 591.
84. Dunbar did not know Complainant and was not aware of any allegations of transgender discrimination. Tr. 595. Dunbar did not talk with Complainant, Christmas, Batts-Edwards or Billups prior to the interview. Tr. 598, 600. Dunbar did review the documents prepared by Christmas prior to the interview. Tr. 598. Dunbar claimed that the writing on Exhibit O which described what Ross said in the interview was Dunbar's.

- Tr. 601. Ross told Dunbar in the interview that she told the passenger she was not on duty and that the security personnel and phones were upstairs. Tr. 601-602. Dunbar did not ask Ross if she refused to call the police. Tr. 602. She did not ask Ross if any derogatory names were used again Complainant during the incident. Tr. 603. The issue of transgender did not come up during the interview. Tr. 603.
85. At the CTA disciplinary hearing, Ross objected to the discipline, stating she was not on duty at the time of the incident, was not in full CTA uniform, and was not on CTA property at the time of the incident. Tr. 277. At the hearing, Ross stated she could not have contacted CTA control because she did not have her work bag which had her radio. Tr. 344. Ross believed she did assist Complainant by telling her where the phones were. Tr. 277. Ross insisted that she responded to Complainant's request. Tr. 277. Ross insisted that no one was in danger because there was no one on the street except Ross and Complainant and noted that she would not have put herself in danger. Tr. 277-278. At the time of the CTA disciplinary hearing, Ross was not aware she was being sued by Complainant. Tr. 398.
86. In the section for employee comments on Exhibit O, Ross said she had her union representative write the following comments because she was too upset to write: "The incident did not occur during my work hours. The passenger came to me and asked 'Where are the phones?'. I did not feel that the passenger was in any immediately [sic] danger. The passenger stated that a man pulled a knife out on her. I was not on duty." Tr. 338-339, Exh. O. Ross did not include in the employee's comments in Exhibit O that she informed Complainant where the guard was or that Ross was in street clothes. Tr. 347-348.
87. At the hearing, Complainant testified that being called a "faggot" by the man who threatened her was degrading to her as a transgender woman and frightening. Tr. 54.
88. Complainant testified that being called a "man" by Billups was terrible particularly because of the way she was dressed. Tr. 55. She could not believe he called her a "man." Tr. 55. Complainant testified that she had earned her title as a woman and deserved to be referred to as a woman. Tr. 55.
89. For five years after the incident, Complainant has used the CTA Howard station infrequently. Tr. 52-53. Complainant has flashbacks when she walks through the station. Tr. 53. Complainant did not seek counseling after the incident for any emotional distress. Tr. 103.
90. Lisa Gilmore, Director of Victim Advocacy and Education, of the Center on Halsted, testified as an expert witness for Complainant. Tr. 161, 164. The Center on Halsted is a community center and social service agency for lesbian, gay, bisexual, transgender and queer people in Chicago. Tr. 161. Gilmore provides individual counseling to individuals who claim they were the victims of violence. Tr. 165. She also provides counseling to individuals who have anxiety, depression, or are suicidal regarding gender identity and sexual orientation. Tr. 165. She provides counseling to individuals who have suffered discrimination on the basis of their sexual orientation or gender identity. Tr. 166. Gilmore received a master's degree in human services and counseling in 2006. Tr. 168. She is a licensed clinical professional counselor. Tr. 170.

91. Gilmore testified that often people who are threatened with violence engage in behavior that may on the surface appear irrational due to changes in the brain's amygdala. Tr. 188-190. The flight or fight response is triggered by changes in the brain's amygdala. Tr. 188-190. The flight or fight response may also impede one's ability to remember details of the event or details clearly known to the victims of violence. Tr. 192, 212. Gilmore concluded that Complainant's behavior after being threatened (following her attacker to the train platform, for example) was consistent with the physiological processes that lead to the flight or fight response after a traumatic incident. Tr. 196-197. Gilmore did not speak to Complainant or evaluate her. Tr. 218.

### **III. APPLICABLE LEGAL STANDARDS AND CONCLUSIONS OF LAW**

1. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination on the basis of gender identity. Section 2-160-020(k) of the Chicago Human Rights Ordinance defines gender identity as "the actual or perceived appearance, expression, identity or behavior, of a person as being male or female, whether or not that appearance, expression, identity or behavior is different from that traditionally associated with the person's designated sex at birth. Complainant is transgender and as such is protected against discrimination based on her gender identity.

2. Section 2-160-070 of the Chicago Human Rights Ordinance prohibits discrimination in a public accommodation operating in the City of Chicago. Public accommodation is defined as "...a place, business establishment or agency that sells, leases, provides or offers any product, facility or service to the general public, regardless of ownership or operation (i) by a public body or agency; (ii) with or without regard to profit; or (iii) for a fee or not for a fee." Respondent CTA and its employees, including Etta Ross, are a covered public accommodation pursuant to Section 2-160-020(j) because the CTA is a business establishment in the City of Chicago that sells, provides, or offers to the general public products and services. Respondent Securitas and its employee Billups acted in an agency relationship with CTA and are thus a covered public accommodation.

3. Section 2-160-070 of the Chicago Human Rights Ordinance states:

No person that owns, leases, rents, operates or manages or in any manner controls a public accommodation shall withhold, deny, curtail, limit or discriminate concerning the full use of such public accommodation by any individual because of the individual's...gender identity.....

Complainant did not prove by a preponderance of the evidence that Respondents violated Section 2-160-070 of the Chicago Human Rights Ordinance. Respondent CTA, its employees and agents, did not withhold, limit, and curtail services or offer its services in a discriminatory manner to Complainant because of Complainant's gender identity.

4. Commission Regulation 520.100 prohibits harassing persons in protected classes in public accommodations and further provides in Commission Regulation 520.150(b):

Slurs and other verbal or physical conduct related to an individual's membership in a Protected Class...constitutes harassment when the conduct: (i) has the purpose or effect of creating an intimidating, hostile or offensive environment; (ii) has the purpose or effect of unreasonably interfering with an individual's full use of the public accommodation; or (iii) otherwise adversely affects an individual's full use of the public accommodation.

Complainant did not prove by a preponderance of the evidence that Respondents violated Section 2-160-070 of the Chicago Human Rights Ordinance. There is insufficient evidence that Respondent CTA or its employees or agents violated Section 2-160-070 of the Chicago Human Rights Ordinance or that its actions constituted harassment of the Complainant at its business establishment by using derogatory language toward Complainant, thereby creating a hostile and offensive environment.

#### IV. ANALYSIS

A complainant has the initial burden of establishing a *prima facie* case of discrimination in violation of the Chicago Human Rights Ordinance. *Williams v. Bally Total Fitness Corp.*, CCHR No. 5-P-94 (May 16, 2007). Each element of the claim must be established by “evidence produced and admitted at the administrative hearing” and proved by a preponderance of the evidence, which means that “the item to be proved is more likely true than not.” *Robinson v. American Security Services*, CCHR No. 08-P-69 (Jan. 19, 2011), *Wehbe v. Contacts & Specs et al.*, CCHR No. 93-E-232 (Nov. 20, 2009).

A complainant may establish a *prima facie* case by two methods: by direct evidence of discriminatory intent or by the indirect method based on inferences drawn from the facts proven in the case. *Sturgies v. Target Department Store*, CCHR No. 08-P-57 (Dec. 16, 2009).

Under the direct method, to prove a *prima facie* case of gender identity discrimination, Complainant must show that: (a) she is a member of the protected class of persons having transgender gender identity; (b) she sought the use of a public accommodation; and (c) respondents stated directly or otherwise clearly indicated that she was refused service or offered lesser service due to her gender identity. *Sturgies, supra*. See also *Johnson v. Johnson v. Hyde Park Corporation*, CCHR No. 08-P-95/96 (Feb. 15, 2012); *Blakemore v. Kinko’s*, CCHR No. 01-P-77 (Dec. 6, 2001).

Under the indirect method, a complainant must prove “by a preponderance of the evidence that sufficient facts exist to imply discrimination in the absence of a credible, nondiscriminatory explanation for the Respondent’s actions.” *Sohn and Cohen v. Costello and Horwich*, CCHR No. 91-PA-19 (Oct. 20, 1993). A complainant may rely on inferences drawn from statements or actions of respondents; the statements and actions from which the inferences are drawn must be established by credible evidence. The Commission adopted the *McDonnell Douglas* test to determine if inferences drawn establish discrimination. *McDonnell Douglas v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). Under the indirect method, Complainant has the initial burden of proving a *prima facie* case of discrimination by establishing that: (a) she is a member of the protected class; (b) she sought the use of the public accommodation; (c) met all the non-discriminatory criteria for access to the public accommodation; and (d) was denied full use of the public accommodation or similarly situated persons not in the protected class were treated more favorably. See *Warren et al., v. Lofton and Lofton Management et al.*, CCHR No. 07-P-62/63/92 (July 24, 2009). If Complainant establishes a *prima facie* case using the indirect method, the burden shifts back to the respondent to provide a legitimate, non-discriminatory reason for the actions complained of. *Id.* If the respondent can provide a non-discriminatory reason for its actions, the burden shifts back to Complainant to establish that the stated reason is a pretext that masks a discriminatory intent. *Id.*

Complainant established that she is transgender. She further established that she sought services from a public accommodation, the CTA and its employees and agents (Ross, Securitas and Billups), and was denied those services by its employees or its agents on September 7, 2008. What Complainant did not establish is that the denial of those services was due to her gender identity either by the direct or indirect method by Ross, Billups, Christmas, or Batts-Edwards and thus Complainant also did not establish that the CTA or Securitas discriminated against her due to her gender identity.

In weighing the evidence and making findings of fact, the hearing officer must determine the credibility of witnesses. *Poole, supra*; *Claudio v. Chicago Baking Co.*, CCHR No. 99-E-76 (July 17, 2002). Whether a statement evinces a discriminatory motive is an issue of fact. *McGavock v. Burchett*, CCHR No. 95-H-22 (July 17, 1996). The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: "The Commission shall adopt the findings of fact recommended by a hearing officer ... if the recommended findings are not contrary to the evidence presented at the hearing." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole, supra*; see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission will not re-weigh a hearing officer's recommended findings of fact unless they are against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

Here, there were seven different witnesses who told stories about some of the events of that morning during the course of the hearing. Each witness was contradicted in part by another's recollection of the events or by documentary evidence. The hearing officer credited some of those conflicts in part with the problems of memory after an intense, frightening and emotional event. As the Commission has found, "[c]redibility is not only about whether a witness has deliberately lied but also about the reliability of the recollections and observations of a witness." *Robinson v. American Security Services*, CCHR No. 08-P-69 (Jan. 19, 2011). Factors which might be considered in any assessment of a witness's credibility include: "the individual's interest in the outcome, bias and demeanor... the plausibility of the story... inconsistencies and contradictions in the testimony of the witness... whether the testimony is corroborated by another witness or contemporaneous documents... [and] whether the testimony is detailed and unprompted...." *Robinson, supra* (citations omitted). Complainant's own witness, Lisa Gilmore, testified that during a frightening or violent event such as being threatened with a knife, the flight or fight response may impede a victim's ability to remember details of the event.

The testimony by each witness will be discussed separately below.

### **Linda Newby**

The hearing officer's assessment was that Complainant no doubt had a horrific experience on September 7, 2008. Being threatened with a knife and called derogatory names on an empty street early in the morning would be extraordinarily frightening. The hearing officer found that Complainant received no assistance from Etta Ross and no obvious assistance from Jeffrey Billups, further exacerbating Complainant's fear and feeling of helplessness. When Complainant perceived that the man who assaulted her was getting away on a CTA train, Complainant felt she had no recourse but to try to stop the CTA train in an effort to hold that person accountable. The hearing officer found that Complainant's actions were rational based on the fact she was attacked, her expressed fears of being attacked due to her gender identity, and

her perception that CTA employees or its agents had failed to assist her. Complainant's expert witness noted that her actions in following her attacker were normal under those frightening experiences. The experience left Complainant shaken and confused about the sequence of events and who said what to whom. This again is supported by Gilmore's testimony about the fact that victims of crime often confuse or forget events. The hearing officer's assessment was that Complainant sincerely believed that her treatment was caused by bias due to her gender identity based on her past experiences. However sincere Complainant's belief, it remains the complainant's responsibility to provide proof of those beliefs. The hearing officer found that Complainant was unable to provide proof by a preponderance of the evidence that bias was a motivating factor in the treatment she received by CTA employees at the Howard station. See *Johnson v. Johnson*, supra.

Complainant maintained that no CTA employee or agent called the police as she requested due to her gender identity. The hearing officer found that while Ross did not contact the police, someone at the Howard station did call the police, who arrived immediately after the event according to Complainant's testimony, although not in time to stop the alleged assailant. In the midst of the yelling, chaos and confusion of the event, the hearing officer found that part of the CTA services was fulfilled.

Complainant's testimony about the events of that day was contradicted in significant parts by her own contemporaneous complaints to CTA supervisors and in some instances by the signed complaint and amended complaint she filed with the Commission. The testimony of her only witness, Juanita Rembert, contradicted Complainant in many aspects, including her statement that Billups called Complainant a derogatory name. Complainant had testified that only the unidentified male had called her a derogatory name.

The Commission has said that while lack of corroboration is not required to prove a case, where corroboration should be available and not provided, that may be taken into account when assessing credibility. *Robinson, supra*. Neither the police report nor the testimony of Complainant's friend, who accompanied her to report this matter to Batts-Edwards, were offered into evidence or in rebuttal at the administrative hearing; Complainant testified she received a document from the police and Batts-Edwards testified that Complainant gave her a copy of the police report.<sup>8</sup>

Complainant's testimony was that two CTA and Securitas employees – unrelated by time or locale or position – on the same date denied services to Complainant based on her gender identity. In *Robinson*, the Commission noted in a similar case that it was "hard to believe that two security guards on two different locations would have made essentially the same verbal statement in the same manner [calling the Complainant a 'faggot'] 'out of the blue' as Complainant has alleged." *Robinson, supra*. Further, it strains credulity to assume that the CTA employee and supervisors and an employee not from the CTA worked in concert to downplay the incident. Both Christmas and Batts-Edwards filed reports based on Complainant's complaints that found Ross's actions worthy of discipline and discipline was administered. Billups and Ross knew each other slightly from the job, but there is no evidence that they worked together on a story to reduce their culpability for these actions. The hearing officer's assessment was that if Ross and Billups had worked together to concoct a story, it is unlikely that Billups's report filed the day of the event would have identified Complainant as a male when Ross knew that Complainant was complaining she was treated differently due to her transgender status. In

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<sup>8</sup> The CTA also did not proffer into evidence a copy of the report although Batts-Edwards testified she received a copy.

order to sustain Complainant's claim, the hearing officer would have to find these CTA supervisors, employees and agents acted in conspiracy and no proof of that was offered by Complainant.

### **Juanita Rembert**

Rembert's testimony about the call she received from Complainant while in the police car immediately after the event had several significant inconsistencies with Complainant's testimony. Rembert said Complainant tried to let the security guard know the man following her was not her "beau"; Complainant did not testify to this. Rembert said Complainant told her the security guard called her a "faggot"; Complainant did not testify that Billups called her a "faggot." Rembert did corroborate Complainant's testimony about the initial assault and the fact that a CTA employee did not provide her with help.

### **Etta Ross**

The hearing officer found that Ross refused to give any reasonable assistance to Complainant either on the street level (where Ross asserts she first met Complainant) or on the mezzanine level (where Complainant asserts she first met Ross) on the date in question. The hearing officer's assessment was that it does not matter where Complainant first encountered Ross: What matters are Ross's actions during that encounter. Ross told Complainant she was not on duty and did not offer any further assistance, which violated both CTA rules and common decency. Ross's inactions in the face of the fear expressed by a woman and customer were deeply disturbing and Ross's demeanor at the hearing indicated that she still did not understand the depth of Complainant's fear and the consequences of her failure to assist Complainant. Ross was subsequently disciplined for her behavior during this incident.

The hearing officer found that Complainant's statement that Ross said Complainant "ain't no lady" in her supervisor's presence was not credible. Complainant's own complaint and amended complaint to the Commission did not attribute that statement to Ross; rather the statement was allegedly said the day after the event by an unnamed CTA employee. Complainant testified that she did not see Ross the day after the event and Batts-Edwards testified that Ross was out on sick leave. When Complainant complained to Batts-Edwards, an individual she trusted, the day after the event, Complainant did not state that Ross made this statement. In addition, Christmas testified that Complainant did not report Ross had called Complainant names. No credible evidence was offered to support Complainant's contention that Ross failed to act because she knew Complainant was transgender and there was no direct evidence that Complainant's gender identity was the reason for Ross's inaction.

Further there is no evidence that Ross treated others who were not transgender differently and better. The hearing officer found that given Ross's demeanor at the hearing, it is more likely that Ross would have been indifferent to anyone approaching her on the street under similar circumstances.

### **Jeffrey Billups**

Complainant testified that CTA's agent and Securitas employee Billups "smirked a little" or laughed and said, "You're a man, he's a man" when she asked him to call the police, but Complainant told neither Christmas nor Batts-Edwards about the laugh or the statement when she filed her complaints immediately after the event. The hearing officer found that no credible

evidence of these actions was offered by Complainant, other than the possibility that Billups may have made a face that Complainant interpreted as a smirk.

In addition, the statement “you’re a man, he’s a man” alone if it had been proved was not direct evidence that Billups failed to assist Complainant because of her transgender status. It is undeniable that Complainant would be deeply hurt being called a man due to her gender identity, but that mistake by itself does not prove Billups intended to discriminate based on gender identity.<sup>9</sup>

On the date of the incident, both Complainant and Billups testified that she was wearing scrubs, a unisex uniform for medical and other personnel. Billups said Complainant was wearing multicolor scrubs. Scrubs come in a multitude of colors, prints and sizes to fit both men and women.<sup>10</sup> Complainant testified she was wearing makeup and jewelry; again, both men and women use makeup and wear jewelry. Billups testified that he thought Complainant was a man based on Complainant’s voice and her appearance, including a “beard shadow.” Billups identified Complainant as male in his report immediately after the event. This mistaken sexual identity was very regrettable, but does not provide direct evidence of discriminatory *animus*.

The Commission has found a single incident of verbal abuse sufficient to establish a violation of the CHRO “where that conduct results in the person using the public accommodation being served differently from other members of the public because of his or her membership in a protected group.” *Robinson, supra; Brekke v. Delia, et al.*, CCHR No. 01-PA-110/117 (July 22, 2005). However, not every statement will be found to violate the CHRO. See *Anguiano v. Abdi*, CCHR No. 07-P-030 (Oct. 2, 2009). “Rather, the Commission considers the nature and context of the comment to determine if it was so ‘separating or belittling’ that it created a hostile environment for the complainant during the use of the public accommodation.” *Id.*

In *Anguiano*, the Commission found that calling the complainant a “fat old man, stupid and not smart enough to get a job” was insufficiently “separating or belittling” to state a claim of age discrimination. *Id.* The Commission found that the “term ‘old’ might be insulting or impolite, but people use the term in common speech without any judgment that a person is actually elderly.” *Id.*

The use of the term “male” by itself is not separating or belittling. In this case, identifying Complainant as male is not separating or belittling unless Billups knew that Complainant was transgender and was using the term “male” in a derogatory manner. Complainant presented no evidence that Billups knew she was transgender. Billups testified credibly that he did not know that Complainant was transgender on the day of the incident and his testimony that he thought Complainant was a man was supported by his contemporaneous report.

Further, there is no evidence that Billups treated others who were not transgender differently and better. Indeed, in contrast to Ross, both Complainant and Billups testified Billups made efforts to separate Complainant and the male passenger and Billups testified that he attempted to gather information regarding what had occurred. The hearing officer found that

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<sup>9</sup> The mistake does point out that the CTA and its agents should investigate the training it gives employees about treating transgender individuals correctly and with courtesy.

<sup>10</sup> <http://www.medicalscrubsmall.com/>



while Billups might have better informed Complainant that he was calling CTA control and thereby allayed Complainant's fears, Billups testified credibly that he did take efforts to provide the services he believed he was authorized to provide.

### **Sharon Christmas and Linda Batts-Edwards**

CTA supervisors Christmas and Batts-Edwards did provide services to Complainant as required by their job duties. They listened to her complaint, wrote up reports and submitted them for administrative disciplinary actions. Complainant told Christmas that she thought she was treated differently because of her gender identity, but did not tell Christmas why she thought this was so.

Batts-Edwards said Complainant did not tell her about any derogatory statements by CTA or Securitas employees. The hearing officer found that in view of the fact that Batts-Edwards was someone Complainant trusted, it is more likely than not that if Complainant felt she was being discriminated based on her gender identity she would have told Batts-Edwards about her feelings and what actions CTA and Securitas employees had taken which caused Newby to think she was being discriminated against due to her gender identity.


The hearing officer found that there is no evidence of direct discriminatory *animus* or disparate impact discrimination by these CTA supervisors. The Commission agrees.

In summary, the Commission finds that the hearing officer's factual findings in this case are not against the manifest weight of the evidence, and the hearing officer's conclusions are consistent with applicable law. Complainant has not proved by a preponderance of the evidence that Respondents violated the Chicago Human Rights Ordinance by failing to provide assistance when she reported being threatened by another passenger.

### **V. CONCLUSION**

Complainant Linda Newby has not proved by a preponderance of the evidence that Respondents CTA, Etta Ross, Securitas Services and Jeffrey Billups discriminated against her concerning the use of a public accommodation based on her gender identity. Accordingly, the Commission finds in favor of Respondents, and the Complaint in this matter is hereby DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS

By:   
Mona Noriega, Chair and Commissioner  
Entered: February 19, 2014