



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
Office of Civil Rights

777 S. Aviation Blvd., Suite 150
El Segundo, CA 90245

August 8, 2018

Jessica Rogers
Assistant City Attorney
City of Rapid City
300 Sixth St.
Rapid City, SD 57701-2724

Re: Complainant v. Rapid City Regional Airport
DOT #: 2018-0107

Dear Ms. Rogers:

This letter is in response to the above complaint against City of Rapid City, the airport sponsor for Rapid City Regional Airport (RAP). The Federal Aviation Administration (FAA) opened an investigation for the complaint on February 15, 2018, and received the City's written response to the complaint on March 27, 2018. The FAA has completed its investigation.

The complaint alleges discrimination on the basis of sex in violation of the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123). The Act is enforced consistent with Title VI of the Civil Rights of 1964 (42 U.S.C. § 2000d et seq.), and the U.S. Department of Transportation (DOT) implementing regulations at 49 CFR Part 21.

FAA Jurisdiction for Complaint Investigation

The FAA Airport Nondiscrimination Compliance Program is responsible for investigating complaints that allege discrimination by recipients of Federal assistance on the basis of race, color, national origin, sex, creed, or age, in violation of Federal law.

At the time of the alleged discrimination, the City was a recipient of Federal financial assistance from FAA. FAA awarded \$1,615,000 in FAA Airport Improvement Program (AIP) grants to the City for RAP in Fiscal Year 2017. AIP recipients commit that they will ensure against discrimination as a grant program condition. The City continues to be subject to 49 U.S.C. § 47123 and FAA jurisdiction based on its commitments and as a condition of receiving Federal assistance.

We will not address related safety, security, and operations issues as part of this letter because they fall under jurisdiction of other Federal offices.

Background

The complaint indicates that Ms. Linda Rydstrom is an owner of WestJet Air Center, Inc. (hereafter “WestJet”), a tenant at RAP. According to the complaint, WestJet is the largest tenant at RAP and a majority women-owned business.

The complaint alleges RAP management mistreated WestJet and its personnel, primarily through the actions of Mr. Patrick Dame, who started as Executive Director at RAP in 2015.

The complaint alleges several instances where Mr. Dame was hostile in his interactions with Ms. Rydstrom and/or WestJet female employees, but in which neither he nor RAP management took any specific actions. They include a Nov. 25, 2015 meeting to sign a lease agreement, July 11, 2016 meeting to discuss issues with a ramp and another RAP tenant, Sept. 29, 2016 meeting to discuss a fuel spill, Oct. 18, 2016 meeting at the fuel storage facility to discuss the spill, Jan. 10, 2017 meeting with Mr. Rydstrom to discuss the spill, and a late Fall 2017 planning meeting where Mr. Dame left a meeting upon seeing Ms. Rydstrom¹. Mr. Dame did not, according to the allegations, mention anyone’s sex in any of the instances. Instead, the complaint alleges that he expressed disapproval about lease terms, Mr. Rydstrom’s absence, and disagreements concerning the fuel spill. Nevertheless, the complaint alleged that Mr. Dame was motivated by hostility toward WestJet and WestJet personnel due to sex, based on changes in his tone when Ms. Rydstrom asserted herself in conversations with him, his hostility toward Ms. Rydstrom in particular, and Ms. Rydstrom’s perception that Mr. Dame was trying to avoid interacting with her and another female WestJet employee.

With the exception of the Sept. 29, 2016 meeting, the City responded that the identified meetings were not hostile. Both parties indicated that the reason for hostility at that meeting was a disagreement over responsibility for the spill. In addition, the City responded that Mr. Dame was never instructed to not meet with Mr. Rydstrom and that RAP management believed that Ms. Rydstrom and Mr. Rydstrom shared leadership and decision-making roles. The City also disputes that Mr. Dame stormed out of the late Fall 2017 planning meeting and disputes whether Ms. Rydstrom attended either the Oct. 6 or Dec. 7, 2017 meetings that could be the referenced late Fall meeting, based on minutes and information in the complaint.

In addition, the complaint alleges several discrete discriminatory actions taken by RAP management. They include holding special meetings on Nov. 8, 2016, for other tenants and not WestJet, inadvertent public distribution of offensive materials² by a RAP employee, refusing to renew Ms. Rydstrom’s parking pass despite renewing Mr. Rydstrom’s pass, issuance of a rate study that proposed increases for WestJet, and an

¹ There are other similar instances in the allegations, for which less relevant supporting information was provided.

² The document appeared to be an altered version of a TSA poster, with sexually suggestive modifications. In addition, the document includes negative references to TSA.

attempt to exclude Ms. Rydstrom from a Sept. 2017 strategic planning meeting. Concerning the special tenant meeting, the City responded that WestJet never requested and thus was never denied or granted a similar meeting. Concerning the parking passes, the City responded that its parking vendor restricted parking to RAP employees and denied new passes to both Ms. Rydstrom and Mr. Rydstrom³. The City responded that the rate study was applied to all tenants and was based on data from eight similar airports. Lastly, the City responded that the strategic planning meeting was not initially intended to be a public meeting, requiring discussion and clarification before the participants agreed to open it.

In its response, the City also indicated that it was not aware that WestJet was a majority women-owned business, as it is not certified as such under any known programs, public information for WestJet refers to it as simply family-owned, and the City has never been informed otherwise. The City indicated that it believes WestJet to have both male and female officers and a majority of male employees. They also indicated that the Airport Board⁴ advised WestJet representatives that allegations of misconduct, including offensive comments, could be filed with the City's Human Resources or City Attorney's offices; they have not independently received any specific information related to the complaint allegations. The City believes that the poor relationship between RAP management and WestJet is due instead to the ongoing dispute related to the fuel spill.

Relevant Legal Authority

Title VI of the Civil Rights Act of 1964 prohibits discrimination under any program or activity receiving Federal financial assistance. Under DOT regulations implementing Title VI, discrimination is prohibited in "any program or activity," where any part receives Federal financial assistance. See 49 CFR § 21.23(e). Furthermore, AIP Grant Assurance 30 prohibits discrimination by airport sponsor recipients based on disability, race, color, national origin, or sex "in any activity conducted with, or benefiting from, funds received from this grant." Nondiscrimination requirements therefore apply to a recipient's activities that are not directly Federally funded.

Prohibited discrimination under Part 21 includes intentional discrimination, such as denial of benefits and imposing restrictions, based on the person's race, color, or national origin. 49 U.S.C. § 47123 added sex as a prohibited basis of discrimination. Discriminatory actions are defined as those that have either the purpose or effect of discriminating against people based on a protected basis. See 49 CFR §§ 21.5(b)(1) and (2). The two categories are commonly referred to as disparate treatment and disparate impact discrimination, respectively.

³ The City concedes that it cannot confirm that Mr. Rydstrom's existing pass was collected, but no new pass was issued, as required by the policy change.

⁴ The Airport Board for RAP consists of five members appointed by the Mayor of Rapid City and confirmed by the City's Common Council.

Proving disparate treatment discrimination requires a showing that the challenged action was motivated by an intent to discriminate. See *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394 (11th Cir.), reh'g denied, 7 F.3d 242 (11th Cir. 1993).

Absent direct evidence of discriminatory intent, complainants can provide indirect evidence, using the framework first established for Title VII cases in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). Complainants must first establish a prima facie case of discrimination by demonstrating: (1) they are a member of a protected class; (2) they were subjected to an adverse action; and (3) they were treated differently than similarly situated individuals who are not of their protected class. A successful showing shifts the burden to the recipient to articulate a legitimate nondiscriminatory reason for its actions. If the recipient meets this burden, the complainant must then show that the recipient's stated reason for its actions was pretext for discrimination.

Proving disparate impact discrimination requires a showing that a neutral practice has a disproportionate impact on a protected group. See *Elston*, 997 F.2d at 1407 (citing *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985)). Once the prima facie case is made, the recipient must show a substantial legitimate nondiscriminatory reason for the practice. That reason must then be evaluated to ensure it is not merely pretext for a discriminatory motive. See *Georgia State Conference*, 775 F.2d at 1417 and *McDonnell Douglas*, 411 U.S. at 802.

Analysis

There is no direct evidence that the City or RAP management were motivated by discriminatory intent on the basis of sex in their conduct toward WestJet or any individual associated with WestJet. There are, for example, no statements from the City or RAP management indicating discriminatory bias on the basis of sex, either specifically related to the alleged conduct or in a general sense. There are no allegations or evidence that identify airport policies or practices that result in different treatment based on sex, broadly.

The complaint does allege instances where WestJet and its personnel, particularly Ms. Rydstrom and a female employee, were treated poorly. However, there is no allegation or evidence pointing to mistreatment of females as a group, such as examples of similar treatment of females working for other tenants or similar examples related to airport employees or other tenants, contractors, or their employees. The City's response disputes the existence of hostility at most of the meetings, and offers a plausible nondiscriminatory reason for the hostility at the remaining Sept. 29, 2016 meeting: the parties were at odds over the serious matter of the fuel spill.

The complaint also points to an offensive document that was inadvertently distributed by an airport employee. The document is sexually explicit, but not specifically associated with bias toward either males or females. It appears to be a crude critique of TSA. In addition, all parties agree that the distribution was inadvertent, that it was sent to a general public audience rather than specifically targeted person or group, and that

management representatives immediately apologized when they were made aware of the error.

Consequently, we find that there is no clear direct evidence of discriminatory intent.

Turning to circumstantial evidence of discriminatory intent, under the *McDonnell Douglas* framework, the key issue is whether WestJet or its female personnel were treated differently based on sex. Complainants have the burden to show different treatment.

The evidence presented does not meet the burden of demonstrating different treatment. The City's response indicates that all tenants were treated the same in the parking pass and rate study matters, following generally applicable policy decisions. Though there is no evidence in the record that others attempted to attend a closed meeting, the City has cited a nondiscriminatory and generally applicable rule for some meeting participants initially questioning Ms. Rydstrom's attendance at the planning meeting. Concerning the special tenant meeting, there is no evidence that WestJet requested and was denied a similar meeting. Airport management had legitimate nondiscriminatory business reasons for each of these decisions, including ensuring adequate parking for employees, ensuring market-rate revenue, and compliance with open meeting requirements. Further, there is no evidence in the record indicating that reasons provided by the City were merely pretext for a discriminatory motive. The City's response also indicates that RAP management was not aware that WestJet was a majority women-owned business. Consequently, we find that the burden of showing discriminatory intent through circumstantial evidence is not met.

Turning to the potential discriminatory impact of neutral RAP management decisions, the allegations identify three facially neutral actions or policy decisions by RAP management or its agents: the changes to the parking pass policy, the rate study, and open meeting rules. No data has been provided demonstrating that any of the policies had a disproportionate adverse impact on the basis of sex. For example, there is no showing that non-employees affected by the change in parking policy are disproportionately female. Further, as noted above, the City has identified nondiscriminatory reasons for the actions, and there is no indication that they are merely pretext for a discriminatory motive. Consequently, we find that the burden of showing discriminatory impacts is not met.

Conclusion

Based on the information provided regarding the claims made in the complaint, the FAA has determined that the City has not violated its obligations to ensure against discrimination based on sex in its operations under 49 U.S.C. § 47123 and AIP Grant Assurance 30.

This is an informal preliminary determination, and not a final agency action or an order subject to judicial review within the meaning of 49 U.S.C. § 46110. You may request

reconsideration of this informal preliminary determination in writing (or submitted initially in an alternate format, which FAA must ultimately put into writing) within 30 days of receipt of this letter with the Assistant Administrator for Civil Rights, Office of Civil Rights, Federal Aviation Administration, 800 Independence Avenue, SW, Orville Wright Bldg. (FOB 10A), Washington, DC 20591.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has taken action or participated in an action to secure rights protected by the Federal Regulation 49 CFR § 27.123(e). Any individual alleging such harassment or intimidation may file a complaint with the FAA. We would investigate such a complaint, if the situation warrants.

We would also like to inform you that under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 55(a)), it may be necessary to release this information, related correspondence, and records upon request. In the event that we receive such a request, we will seek to protect to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

If you have any questions, please contact Jonathan Klein of our staff by phone at (310) 725-3935 or by email at Jonathan.Klein@FAA.gov. Please reference the DOT tracking number cited above in all future correspondence or contact with this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Roth", with a long horizontal line extending to the right.

Gene Roth
Acting for Michael Freilich
Director, National External Operations Program
Office of Civil Rights