



FILED:  
May 23, 2022

STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

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| <b>Mouhamed Dieng,</b><br>Complainant,<br>V.<br><b>Kuehne &amp; Nagel, Inc.,</b><br>Respondent. | Administrative Cause No.: ICRC-0821-001626<br>Underlying Agency Action No.:<br>EMno21020052<br>24F-2021-00459 |
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*Subject to the Ultimate Authority of the Indiana Civil Rights Commission*

**FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

*Pursuant to IC 4-21.5 and the Commission's June 19, 2020 Order: Automatic Adoption and Approval of Certain Non-Final Decisions, this Order is final, having been automatically approved by the Indiana Civil Rights Commission.*

**PROCEDURAL HISTORY & JURISDICTION**

The Commission of the Indiana Civil Rights Commission ("ICRC") has subject matter jurisdiction over employment discrimination complaints based on national origin that are filed under the Indiana Civil Rights Law ("ICRL"). IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-6. On July 27, 2021, the ICRC, after conducting a neutral investigation, made a probable cause finding on Mouhamed Dieng's February 8, 2021 complaint that alleged Respondent violated the Indiana Civil Rights Law ("ICRL") by discriminating against him in the protected area of employment on the basis of national origin. When a finding of cause is made under the ICRL, pursuant to the Commission's June 19, 2020 Finding of Necessity, the Office of Administrative Law Proceedings ("OALP") shall appoint an Administrative Law Judge ("ALJ") to preside over the matter and to conduct a hearing. IND. CODE § 22-9-1-6; IND. CODE § 4-15-10.5-12; IND. CODE § 4-15-10.5-13.

**ISSUE**

Is Complainant's Withdrawal of Complaint ("Motion") effective in dismissing this matter?

**FINDINGS OF FACT**

1. The Motion was filed on May 20, 2022.
2. As represented in the Motion, the Parties have reached a settlement. As a result, Complainant requests that this matter be dismissed.
3. The Motion was served on all Parties before a Notice of Hearing was issued.

4. There is no evidence of fraud, coercion, duress, or any other reason not to grant the requested dismissal.
5. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such, and this Order's statement of Procedural History is incorporated into these Findings of Fact.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the Parties. IND. CODE § 22-9-1-2; IND. CODE § 22-9-1-3.
2. The Parties did not file a "consent agreement" or "conciliation agreement" that requires the approval and signature of a majority of the Commissioners. IND. CODE § 22-9-1-6(o); 910 IAC 1-3-4.
3. A Complainant can withdraw an ICRC complaint by filing a Notice of Withdrawal with the Commission. 910 IAC 1-2-6.
4. A Notice of Withdrawal is a written statement made by the Complainant in which the Complainant requests that the matter be closed. *Id.* The Notice of Withdrawal must be served on all Parties. *Id.*
5. If a hearing has been set, then the majority of the Commission must agree to the withdrawal before the withdrawal is effective in closing the matter. *Id.*
6. However, if a hearing has not been set, then the Notice of Withdrawal filed by a Complainant is immediately effective in closing the matter as of the date of filing. *Id.*
7. Furthermore, on June 19, 2020, the ICRC Commission issued its Order: Automatic Adoption and Approval of Certain Non-Final Decisions ("Commission's Order"). As detailed in the Commission's Order (attached as Exhibit A), the Commission, by majority vote, agreed to automatically approve any non-final decision issued by an ALJ in which an ALJ accepts a "Notice of Withdrawal filed by Complainant before a date for a hearing has been set," provided the Notice of Withdrawal complies with 910 IAC 1-2-6 or in which an ALJ accepts a joint motion to dismiss, provided the Parties waive their right to object to the ALJ's decision under IAOPA.
8. Complainant filed Complainant's Motion prior to the setting of a hearing in this matter, and Complainant's Motion complies with 910 IAC 1-2-6.
9. Accordingly, this matter is dismissed, and pursuant to IC 4-21.5-3-29 and the Commission's Order, this Order is an automatically affirmed as a Final Order disposing of the proceedings. IND. CODE § 4-21.5-3-27(a).
10. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such, and this Order's Statement of Jurisdiction is incorporated into these Conclusions of Law.

## DECISION

Having duly considered the above, the undersigned Administrative Law Judge ("ALJ") for the Office of Administrative Law Proceedings ("OALP") hereby orders as follows:

1. Complainant's Withdrawal of Complaint is GRANTED.
2. Mouhamed Dieng's February 8, 2021 Complaint is DISMISSED, with prejudice.
3. Either Party to a dispute filed under IC 22-9 may, not more than thirty (30) days after the date of receipt of the Commission's final appealable order, appeal to the court of appeals under the same terms, conditions, and standards that govern appeals in ordinary civil actions. IND. CODE § 22-9-8-1.

SO ORDERED: May 23, 2022



Hon. Caroline A. Stephens Ryker, Administrative Law Judge  
Indiana Office of Administrative Law Proceedings  
100 North Senate Ave., Room N802  
Indianapolis, IN 46204  
(317) 234-6689

### Distribution List:

*The following distribution list includes the names and mailing addresses of all known Parties and other persons to whom notice is being given. IND. CODE § 4-21.5-3-18.*

Mouhamed Dieng: 704 Northfield Ct., Indianapolis, IN 46227

Charles Shute and Ivo Becica\*: Center Square West, 1500 Market St., Suite 3400, Philadelphia, PA 19102

J. Thomas Vetne\*: 600 Key Bank Building, 202 S. Michigan St., PO Box 4577, South Bend, IN 46634

Frederick Bremer\*: 100 North Senate Ave., Room N300, Indianapolis, IN 46204; (317) 232-2634

Chair Slash of the Indiana Civil Rights Commission – ultimate authority and served at [docketclerk@icrc.in.gov](mailto:docketclerk@icrc.in.gov)

*\*served in care of appearing attorney through ALP system at the email address on file with the Indiana Roll of Attorneys – all other service by mail.*