

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAJED SUBH,	§
	§ No. 539, 2010
Appellant Below-	§
Appellant,	§
	§
v.	§
	§ Court Below—Superior Court
WAL-MART STORES EAST, LP,	§ of the State of Delaware,
and DIVISION OF HUMAN	§ in and for New Castle County
RELATIONS,	§ C.A. No. 10A-01-018
	§
Appellees Below-	§
Appellees.	

Submitted: December 10, 2010

Decided: January 14, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 14th day of January 2011, upon consideration of the appellant’s opening brief, the motion to affirm filed by appellee, Wal-Mart Stores East LP (“Wal-Mart”), and the record below,¹ it appears to the Court that:

(1) The appellant, Majed Subh, filed this appeal from the Superior Court’s dismissal of his appeal from a decision of the Human Relations Commission (“the Commission”). The Commission had concluded, after a hearing, that Subh had failed to establish a prima facie claim of discrimination by Wal-Mart. Wal-Mart has filed a motion to affirm the judgment below on the

¹ Wal-Mart’s motion to affirm was filed on November 8, 2010. The record, however, was not received until December 10, 2010.

ground that it is manifest on the face of Subh's opening brief that his appeal is without merit. We agree and affirm.

(2) Subh had filed his complaint with the Commission alleging that he had been subject to discrimination based on his national origin at a place of public accommodation, namely, a Wal-Mart store in New Castle, Delaware. Subh asserted that he had been denied service on his tires, which were covered under warranty, by an employee in Wal-Mart's tire and lube department in December 2008. At a hearing held in August 2009, Subh could not specify the time or date of the incident or describe the employee who had denied him service. He could not say if there were other customers in front of, or behind, him who were offered service when he was not. More importantly, Subh could not identify any statements or evidence to substantiate his claim that he was denied service because of his national origin. In fact, Subh testified that he thought he was denied service because the Wal-Mart employee mistakenly believed that Subh had a no-contact order in place against him.² Based on the evidence presented, the Commission concluded that, even if it assumed that Wal-Mart had refused service to Subh, Subh had failed to present any evidence that he was denied service because of his national origin.

² Subh previously had been an employee of Wal-Mart. After he left Wal-Mart's employment, Subh apparently was court-ordered to have no contact with Wal-Mart, until that order expired in October 2008.

(3) In reviewing an appeal from an administrative board, this Court's standard of review is limited to determining whether the board's decision is supported by substantial evidence and free from legal error.³ After a careful review of the record, we find it manifest that the judgment of the Commission must be affirmed. Subh simply offered no evidence on the record to establish a prima facie claim that he was discriminated against because of his national origin. Accordingly, the Commission did not err in dismissing his complaint, and the Superior Court did not err in dismissing Subh's appeal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ *Public Water Supply Co. v. DiPasquale*, 735 A.2d 378, 380-81 (Del. 1999) (noting that the Supreme Court's standard of review of an administrative board's decision mirrors the Superior Court's standard of review).