

STATE OF NEW JERSEY

In the Matter of B.W., Department  
of Labor and Workforce  
Development

FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket Nos. 2016-4090

Discrimination Appeal

ISSUED: DEC 14 2016 (SLK)

B.W., a Claims Adjudicator Supervisor, Disability Determinations with the Department of Labor and Workforce Development, appeals the decision of the Office of Diversity and Compliance (OD&C), which found that the appellant did not present sufficient evidence to support a finding that she had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, the appellant, an African-American female, filed a complaint alleging Acting Director C.S. discriminated against her on the basis of her race. Specifically, the appellant indicated that she filed a Workplace Violence complaint against a co-worker, P.T., a Caucasian male. Initially, the appellant did not hear about the status of her complaint, but her concerns were put at ease when P.T. was on placed on a different floor and in a different unit. However, in March 2016, P.T. returned and C.S. assigned him to the appellant's region. Thereafter, the appellant learned that her complaint had been closed and that P.T. was directed not to have any contact with her. In mid-March 2016, the appellant's sister and co-worker, H.W., advised her that she had a conversation with another co-worker, J.S., who told her that their supervisor, M.R., asked J.S. if she would mind if P.T. would sit and work within close proximity to her. J.S. said she had no objection since her issue with P.T had occurred many years ago. J.S. confirmed with the appellant that she had this conversation with M.R. In her discrimination complaint, the appellant alleged that C.S. did not direct M.R. to have a similar conversation with her regarding P.T. working near her because of her race.

The OD&C conducted an investigation and found that C.S. admitted she was aware of previous negative interactions between P.T. and several staff members,

including the appellant and J.S. C.S. explained that since she was contemplating placing P.T. under J.S.'s supervision, she consulted with J.S. regarding her willingness to supervise and work in close proximity to him. She also explained that since she was not contemplating any new employment action relative to the appellant and P.T., she did not see the need to consult with her. As such, the investigation found that C.S. provided a legitimate non-discriminatory reason for not consulting with the appellant and that that her decision was not based on race.

On appeal, the appellant states that C.S. did not ask J.S. about the possibility of her supervising P.T. The appellant claims that she confirmed this by separate conversations that she had with J.S. and H.W. The appellant believes that C.S. told the investigator that she was contemplating J.S. supervising P.T. in order to disguise her true motives. In this regard, she asserts that if the investigator interviewed J.S., she would have confirmed that she only had been asked about how she felt about sitting near P.T. and he was actually placed under the supervision of a different co-worker. In support of her assertion, she presents that C.S. could have assigned P.T. to a different region other than where she is assigned. Instead, C.S. chose to place him in her region where she has to encounter him on a daily basis which is frightening to her. Further, the appellant explains that she is required to be a "stand in" manager when M.R. is not in the office and it is likely that she will have interaction with P.T. at some point. Additionally, she states that C.S. was aware that by just having P.T. being assigned to her region means that she has to have daily interactions with him in the office. The appellant also indicates that P.T. was approved by C.S. to answer work-related questions for her staff which puts her in a stressful situation when her staff comes to discuss with her information that he has provided them. Therefore, the appellant contends that the only reasonable and logical reason for this set-up is that C.S. has acted out of bias.

In reply, the EEO states that it is immaterial as to whether C.S. spoke to J.S. about just sitting near P.T. or about both sitting near J.T. and the possibility of also supervising him. Regardless, as C.S. was not contemplating having P.T. sit near the appellant or have her supervise him, her explanation as to why she did not consult with the appellant is plausible as it is based on a legitimate business reason. Additionally, C.S. explained that the appellant being a "stand-in" manager would not require her to be within close proximity with P.T. as it would have been for J.S. if she had been assigned to supervise him. As a "stand-in" manager, she would only have supervisory responsibilities up to a week. Further, "stand-in" managers do not assume substantive duties relative to case-work and other duties that would require close interaction with lower level staff. Instead, a "stand-in" manager would have limited managerial functions, such as approving leave, which do require close interaction. However, if J.S. would have been made P.T.'s direct supervisor, she would have close interaction with him on a daily basis. Moreover, while the appellant disagrees with C.S.'s decision to assign J.T. to her region, she

has not presented any evidence that this decision was based on racial animus. The EEO emphasizes that the mere fact that C.S. and J.S. are Caucasian and B.W. is African-American, especially when there are plausible explanations for C.S.'s actions, is not enough to substantiate a State Policy violation.

In response, the appellant contends that the investigator should have interviewed H.W. and J.S. who would have confirmed that C.S. only spoke with J.S. about whether she minded sitting near P.T. In this regard, she asserts that if C.S. was thinking about having J.S. being P.T.'s supervisor, then it is not logical that she would only ask J.S. about sitting near him. Therefore, she reiterates her assertion that C.S. gave the "supervision" reason to the investigator as an explanation for her actions in order to hide her true discriminatory intentions. Additionally, the appellant claims that C.S. minimized what is involved as a "stand-in" manager by stating that she would not have to interact with P.T. in this role. She explains that she could be P.T.'s "stand-in" manager for two weeks or more due to vacations, sick time, and other days off. Further, there are potentially numerous situations, such as medical issues and disputes among co-workers, that could come up while she is "stand-in" manager where she should have to have a great deal of interaction with P.T.

### CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* states, in pertinent part, that the State is committed to providing every State employee a work environment free from prohibited discrimination based on race.

*N.J.A.C. 4A:7-3.2(i)* provides that at the EEO's discretion, a prompt, thorough, and impartial investigation into the alleged discrimination will take place.

*N.J.A.C. 4A:7.3-2(m)4* states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

The Civil Service Commission (Commission) has conducted a review of the record and finds that the appellant has not established that C.S. violated the State Policy. The appellant alleged that C.S., a Caucasian, discriminated against her by failing to provide her the same courtesy that she provided J.S., a Caucasian female, when deciding to assign P.T., a Caucasian male, to her region even though both she and J.S. had issues with P.T. in the past and she was the only one who had filed a Workplace Violence complaint against P.T. The appellant also alleged that there was not any legitimate business reason to assign P.T. to her region and that C.S. knew that having him in her region would make her uncomfortable. Therefore, she concludes that the only logical reasons for C.S.'s actions were based on racial discrimination.

The investigation revealed that C.S. explained that she spoke to J.S., and not the appellant, because she was considering having J.S. supervise P.T. and, since she was not considering having the appellant supervise him, there was no reason to speak to her. She also claims that she has two witnesses who can confirm that C.S. only spoke to J.S. about how she felt about sitting near P.T. and not about supervising him. Therefore, the appellant contends that this evidence C.S.'s mindset to discriminate against her. Further, she claims that the investigation was not thorough because the investigator did not interview two individuals who could confirm that C.S. never spoke to J.S. about supervision. However, the fact that the appellant believes that it would have made more business sense to assign P.T. to another region is not a basis to find that C.S. discriminated against her as disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Further, C.S. provided a reasonable explanation as to why she spoke to J.S. and not her before assigning P.T. to her region. Additionally, even if the investigator interviewed J.S. and H.W., and they confirmed that C.S. only spoke to J.S. about her sitting near P.T. and not about the possibility of her supervising him, this is not evidence that C.S.'s actions were motivated by race. Mere speculation about C.S.'s mindset is not enough to substantiate a State Policy violation. Regardless, the EEO found that C.S. indicated that she had been contemplating placing P.T. under J.S.'s supervision, as she recently consulted with her regarding her willingness to supervise. It did not find that C.S. spoke to her about her "willingness to supervise" at the same time she spoke to her about working in close proximity to P.T. Therefore, the appellant has not presented any witnesses or other evidence that could potentially provide confirmation that C.S.'s actions were motivated by race.

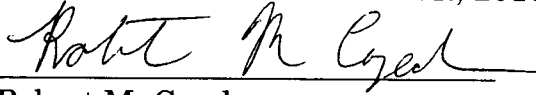
Accordingly, the Commission finds that the OD&C's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support her burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 7<sup>th</sup> DAY OF DECEMBER, 2016



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