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STATE OF NEW JERSEY

In the Matter of L.N., Department of Transportation

CSC Docket Nos. 2014-234

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Discrimination Appeal

ISSUED: APR - 2 2015 (SLK)

L.N., a Truck Driver Single Axle with the Department of Transportation (DOT), appeals the attached decision of the Division of Civil Rights and Affirmative Action (DCRAA) for DOT, which found that the appellant did not present sufficient evidence to support a finding that he 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, filed a complaint with the DCRAA alleging that he had been discriminated against by P.C., a Truck Driver Single Axle, D.W., a Maintenance Worker 1 Transportation, E.K., an Assistant Crew Supervisor Highway Maintenance, and P.M., a Maintenance Worker 1 Transportation on the basis of color, national origin, and race. Specifically, the appellant alleged that P.C., D.W., E.K. and P.M. used the "N-word" and made other derogatory references in the workplace. The DCRAA investigated the matter. While one witness did hear E.K. use the "N-word" while in the break room, despite the witness' account that several witnesses were present, no one was able to support the allegation. Therefore, due to the lack of corroboration, the investigation was unable to substantiate the allegation. However, due to tensions among the work crew as a result of a DOT Inspector General's Office (IG) investigation and concerns raised by the witnesses during the investigation, the DCRAA recommended that management, in consultation with human resources, take steps it deems necessary to improve the work environment.

On appeal, the appellant states that he was discriminated and retaliated against as he was the only African-American working at Bridgeton Yard. The appellant indicates that in 2013, a co-worker asked him to take pictures of a former supervisor and P.M. performing a prohibited activity that resulted in an IG

investigation. The IG investigated the matter and, after the interviews, the appellant's name was left in a notebook that was placed on a former supervisor's desk. D.W. received the notebook and told his co-workers that the appellant took the pictures. After the incident, the appellant maintains that several co-workers advised him that he was being referred to as "[N-word], dumb, and stupid." The appellant also states that his former supervisor threatened to make his time at Bridgeton Yard worse by making statements such as "I am going to take you for a ride." The appellant claims that two co-workers, L.C. and V.A., gave two DCRAA investigators statements that they heard P.C., P.M., E.K., and D.W. refer to him as "[N-word]" and other derogatory remarks. However, the determination letter does not reference these statements. In this regard, the appellant states that since he is the only African-American at this location, he would call himself "[N-word]." The appellant also argues that an environment that fosters favoritism is conducive to discrimination.

The appellant also alleges that after P.M. learned that he took the pictures of her engaging in prohibited activity, she retaliated by filing a hostile work environment complaint against him on the basis of sex and gender. The appellant claims that throughout his ten years while working at Bridgeton Yard, although he had seniority, he has been held back from operating certain equipment in favor of less experienced personnel. Additionally, he asserts that crew members called him "dumb," urinated in his boots, would not acknowledge his presence, referred to biracial children as "trash" and would rub their skin to describe African-Americans. The appellant maintains that P.M. told him that D.W. referred to him as "[N-word]," would tell him that the country that he came from had AIDS and diseases, and she raised her middle finger at him. The appellant seeks compensation for the discrimination he has endured because it has resulted in him being under a doctor's care for a number of medical conditions. Therefore, the appellant requests compensation for discriminatory and retaliatory treatment, pain and suffering, and retirement with full benefits.

In reply, the DCRAA presents that it interviewed nine employees and the investigation revealed that the cause of the tension in this case was the IG investigation. The investigation noted that some of the crew members characterized the appellant as a "rat" since a pad was found with the phrase, "L's photographs on 295." Thus, it was determined that the IG investigation created a divide in the workplace that while operationally problematic, was not race based. The DCRAA also commented that its investigation did not address the appellant's concerns of harassment by crew members after he allegedly took pictures of misconduct as this allegation did not relate to any of the protected categories under the State Policy and the matter would be addressed by the IG. Additionally, the investigation determined that equipment and work assignments were based on perceived favoritism depending on how well you are liked by a supervisor, but there was no evidence to support the allegation that the appellant's truck assignments

were related to his membership in a protected class. As such, the DCRAA made recommendations to management to address the situation.

The investigation found that one witness did hear E.K. say, "that [N-word] does not know how to do his job." However, there were concerns about the credibility of this statement as the investigation found that the crew is divided into cliques, in particular, D.W. and P.C. versus the appellant, V.A., and L.C. When the investigator questioned the witnesses about E.K.'s statement, despite the witness' account that several people were present when the statement was made, she was unable to identify anyone in particular. Further, all of the "neutral" witnesses interviewed did not hear E.K. make such a statement. The investigation also revealed that another witness recounted D.W. being upset and while walking past the truck stated "fucking [N-word]." The investigator questioned D.W. regarding the incident and he advised that the witness who recounted the incident was trying to get him in trouble and the account could not be corroborated by any of the independent witnesses. During the course of the investigation, the investigators found that many witnesses advised that when the appellant gets mad, everything becomes a "racial" thing and one witness stated that the appellant "ribs you, but does not take it well in return." Additionally, witnesses commented that the appellant has called just about every employee a racist, has used the "N-word" in the workplace himself, and that he "likes to stir the pot and then sits back and laughs."

Additionally, the DCRAA replies that the appellant has made new allegations in his appeal including that crew members would ridicule him by making sounds and hand motions, that biracial children were referred to as trash, that African-American names were ridiculed and that employees would rub skin when references to African-Americans were made. Additionally, the appellant did not allege in his initial complaint or during the investigation that P.M. told him that his country had AIDS and other diseases or co-workers urinated in his boots. The DCRAA emphasizes that during the investigation, at the end of both of the appellant's interviews, he was asked if there was anything else he would like to add, but he did not make these allegations during the investigation. Therefore, these additional allegations should not be considered in this appeal as it did not have the opportunity to investigate these matters.

CONCLUSION

N.J.A.C. 4A:7-3.1 states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race, is prohibited and will not be tolerated.

N.J.A.C. 4A:7-3.1(h) states, in pertinent part, that retaliation against any employee who alleges that he or she was the victim of discrimination/harassment, is prohibited by the State Policy.

N.J.A.C. 4A:7-3.1(k) provides that any employee found to have violated any portion of the State Policy may be subject to administrative and/or disciplinary action.

N.J.A.C. 4A:7-3.2(i) provides that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or 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 in this matter and finds that the appellant has not established that P.C., D.W., E.K., and P.M. violated the State Policy. During the course of the investigation, in addition to interviewing the appellant, nine employees were interviewed which revealed that the tension with the crew at Bridgeton Yard was in response to the appellant allegedly taking pictures of prohibited activity by other employees at Bridgeton Yard. However, the investigation could not corroborate that the tension was race based. Additionally, the investigation revealed that work and equipment assignments were based on perceived favoritism, such as how well a supervisor liked you, but not race based. The investigation also found that there were cliques among the crew. It found that D.W. and P.C. formed one clique and the appellant's clique consisted of L.C., and V.A. As such, the investigation had concern about some of the witnesses' credibility. Therefore, although one witness advised that she heard E.K. state "that [N-word] does not know how to do his job," despite that witness' account that several people were present when the statement was made, the witness was unable to identify anyone in particular and all of the "neutral" witnesses interviewed did not hear E.K. make such a statement. Consequently, the investigation could not substantiate this allegation. Further, the investigation also determined that the only witnesses who had confirmed the alleged racial remarks against the appellant were part of the appellant's clique, but no other "neutral" witnesses heard the remarks. Therefore, the appellant's allegations could not be substantiated.

With respect to the appellant's other allegations, such as crew members ridiculing him by making sound and hand motions, that biracial children were referred to as trash, that African American names were ridiculed, and that employees would rub skin when references to African-Americans were made, as these are new allegations which were not made in the appellant's complaint or mentioned during the investigation, the DCRAA never had the opportunity to

investigate these claims. Therefore, they cannot be considered in this appeal. In this regard, it is emphasized that during the investigation, at the end of both of the appellant's interviews, the appellant was asked if there was anything else he would like to add, but he did not make these allegations during the investigation. As such, if he so chooses, the appellant may file a new complaint with the DCRAA in order to provide it with the opportunity to investigate these matters. Finally, even if the appellant's allegations were substantiated, the Commission does not have the authority to provide him with his requested remedies for compensation and retirement. Rather, the purpose of the State Policy is to be instructive and remedial in nature and that any corrective action is limited to administrative or disciplinary action against an individual who has been found to have violated the State Policy.

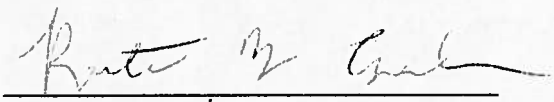
Accordingly, the Commission finds that the DCRAA's investigation was thorough and impartial. Therefore, the Commission finds that appellant failed to support his burden of proof and no basis exists to find a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace.

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 1st DAY OF APRIL, 2015



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