



STATE OF NEW JERSEY

In the Matter of Bernacine Barnes,
Monmouth County

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-205

Enforcement

ISSUED: DECEMBER 21, 2018 (JET)

Bernacine Barnes, a former¹ Senior Receptionist with Monmouth County, requests enforcement of *In the Matter of Bernacine Barnes* (CSC, decided May 2, 2018), which granted her back pay, benefits and seniority pursuant to *N.J.A.C. 4A:2-2.10*.

As background, Barnes appealed a 20 working day suspension and a separate three working day suspension issued in November 2016 to the Civil Service Commission (Commission). In its May 2, 2018 decision, the Commission modified the 20 working day suspension to a 10 working day suspension, and dismissed the three working day suspension. Additionally, the Commission ordered that Barnes be awarded 13 days of back pay, benefits and seniority, which was to be reduced and mitigated pursuant to *N.J.A.C. 4A:2-2.10*.

In her request to the Commission, Barnes provides a copy of her 2017 W-2s and proof of her income at the time she was separated from employment on August 17, 2017. She adds that her medical benefits were wrongfully terminated at the time of her separation. In support, Barnes provides an earning statement dated December 1, 2017 to December 15, 2017 indicating that her salary was \$49,229. She also provides a form showing the same salary as of August 17, 2017, the date she was terminated. Additionally, her 2017 W-2s indicate that her federal wages were \$26,721 and her State wages were \$33,189. Moreover, Barnes provides

¹ Barnes was removed from employment, effective August 17, 2017. She appealed that removal to the Commission which transmitted the matter to the Office of Administrative Law for a hearing. That matter is pending.

several e-mails that she sent to the appointing authority requesting back pay, and responses from the appointing authority indicating that there would be no further communication with her.

In response, the appointing authority, represented by Steven W. Kleinman, Special County Counsel, asserts that pursuant to *N.J.A.C. 4A:2-2.10(d)3*, the award of back pay should be reduced by the amount of money that was earned during the suspension period. The appointing authority states that Barnes has not provided documentation to show what income she may have earned during her suspension, which is required before back pay can be issued. In addition, the appointing authority asserts that it filed an appeal of the Commission's decision, which is pending in the Appellate Division, Superior Court. The appointing authority states that, as a result of the pending litigation, no communication could take place with Barnes. Moreover, the appointing authority asserts that Barnes is not acting *pro se* in this matter and is represented by an attorney.

In response, John P. Brennan, Esq., submits an August 21, 2018 letter, indicating that, although he is representing Barnes with respect to the Appellate Division matter pertaining to her day suspensions, he is not representing her in the instant request for enforcement.

By way of letter from the Division of Appeals and Regulatory Affairs (DARA), dated October 3, 2018, Barnes was notified that she had until October 19, 2018 to submit documentation pertaining to her income, and the appointing authority was notified that it had until November 2, 2018 to respond. Although Barnes provided documentation, the appointing authority provided no additional information as of November 2, 2018. Barnes also submits unemployment information in support of her claims.²

CONCLUSION

Pursuant to *N.J.A.C. 4A:2-2.10(d)*, an award of back pay shall include unpaid salary, including regular wages, overlap shift time, increments and across-the-board adjustments. *N.J.A.C. 4A:2-2.10(d)3* provides that an award of back pay shall be reduced by the amount of money that was actually earned during the period of separation, including any unemployment insurance benefits received, subject to any applicable limitations set forth in (d)4. Further, *N.J.A.C. 4A:2-2.10(d)4* states that where a removal or suspension for **more than 30 working days** has been reversed or modified and the employee has been unemployed or underemployed for all or a part of the period of separation, and the employee has failed to make responsible efforts to find suitable employment during the period of separation, the employee

² The record reflects that the appellant was issued unemployment benefits for various time frames between October 14, 2017 and May 25, 2018.

shall not be eligible for back pay for any period during which the employee failed to make such reasonable efforts.

In this matter, since the Commission modified the disciplinary action to a 10 working day suspension and reversed the three working day suspension, Barnes' back pay award can only be reduced by any income earned during the suspension period. See *N.J.A.C.* 4A:2-2.10(d)4. Additionally, the appointing authority's argument that it could not communicate with Barnes as it has pending litigation in the Appellate Division is not persuasive. In this regard, it is clear that, the Commission is required to address Barnes' request for back pay. The appointing authority also maintains that Barnes is not entitled to back pay since she has not provided her income earned during that time. The Commission disagrees. In the prior matter, the Commission ordered that she was entitled to 13 days of back pay, benefits and seniority. The record reflects Barnes served the 10 working day suspension from November 7, 2016 to November 17, 2016. It also appears that the appellant served the three working day suspension beginning on December 5, 2016. Accordingly, as none of her unemployment benefits were earned during those times and there is no evidence that she earned any other income during that time, she is entitled to 13 days of back pay. Finally, any issues regarding Barnes' assertions regarding her removal from employment or medical benefits cannot be addressed as those issues pertain to her pending appeal of her removal from employment and not the subject matters.

ORDER

Therefore, it is ordered that Bernacine Barnes be awarded 13 days of back pay within 30 days of the issuance of this decision. In the event that the appointing authority fails to make a good faith effort to comply with this order within the prescribed timeframe, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day, beginning on the 31st day from the issuance of this decision, and continuing for each day of continued violation, up to a maximum of \$10,000, as well as an award of interest on the back pay award pursuant to *N.J.A.C.* 4A:2-2.11.

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 19th DAY OF DECEMBER, 2018



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