



STATE OF NEW JERSEY

In the Matter of R.R.,
Department of Law and Public Safety

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

CSC Docket Nos. 2019-3298

Discrimination Appeal

ISSUED: FEBRUARY 28, 2020 (JET)

R.R., a Building Management Services Specialist 1 with the Department of Law and Public Safety, appeals the determination of the Director, Office of Equal Employment Opportunity and Affirmative Action, Department of Law and Public Safety, which found that the appellant failed 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).

R.R., an African American female, filed a complaint with the Office of Equal Employment Opportunity and Affirmative Action (EEO), alleging that she was subjected to discrimination based on race and disability status, and to retaliation in violation of the State Policy. Specifically, the appellant reported that R.B., a Personnel Assistant, discriminated against her because she filed a prior EEO complaint and discrimination lawsuit. In this regard, the appellant alleged that she was charged for one and one-half hours of “NX – Not Authorized” time which should properly have been designated as time used pursuant to the Family and Medical Leave Act (FMLA). Additionally, the EEO was advised that, at the time the appellant initiated a grievance with respect to the aforementioned allegations, R.B. served as the Management Representative during Step One of the grievance hearing. The appellant also alleged that her supervisors, T.G. and S.M. (retired)¹ corrected issues regarding time use for two Caucasian employees. The appellant alleged that T.G. and S.M. assigned her to supervise more units than another employee, J.B., a Building Management Services Specialist 2, on the basis of race

¹ Official personnel records indicate that S.M. retired effective September 30, 2018.

and retaliation. The appellant also alleged that T.G. and S.M. subjected her to disciplinary action based on race and in retaliation for filing a prior EEO complaint and a discrimination lawsuit. The appellant also alleged that several Caucasian employees were involved in serious infractions and were not disciplined by T.G. and S.M. Moreover, the appellant submitted a November 16, 2018 e-mail, where she alleged that J.B. was not required to disclose his work location despite that the appellant was required to do so; that, as a part of her application for a classification reevaluation, the appointing authority submitted a false employee evaluation to this agency; and that, on November 6, 2018, T.G. informed the appellant that she failed to comply with the appointing authority's dress code policy but did not criticize other employees for the same reason.²

Additionally, the appellant alleged that, on February 6, 2018, the appellant's unit received a request to transport Human Resources employees to and from the agency. The appellant explained that, since she was busy at the time the request was received, she asked S.M. to ask T.G. if she would respond to the request. The appellant stated that T.G. e-mailed the appellant inquiring why the appellant and another employee were unable to address the request, and T.G. asked the appellant to appear in her office to discuss the matter. The appellant indicated that, when she appeared in T.G.'s office, she and T.G. raised their voices, and as a result, the appellant left T.G.'s office and went back to her own office and then reported the incident to the Office of Human Resources. Moreover, the appellant alleged that the Support Services unit was experiencing staffing shortages, and by 2018, three full-time employees left employment due to attrition, two full-time staff members were on medical leave, and two temporary employees left the unit. The appellant alleged that, as a result of the shortage, her duties included inventory purchasing, stocking supply room shelves, sorting, opening mail, answering telephones, assigning tickets, retrieving records, and reviewing resumes, and such assignments were below the level of work that is performed in her title.

After an investigation was conducted, the appellant's claims were not substantiated. Specifically, the April 29, 2019 EEO determination indicated that R.B. had no authority to process and designate the appellant's time use. With respect to the appellant's allegations pertaining to R.B.'s participation during Step One of the grievance hearing, the EEO determined that it was unnecessary to investigate that allegation, as the appellant did not provide any substantive evidence to show that R.B.'s participation in the grievance matter was a violation based on the protected categories of the State Policy. Regarding the appellant's allegations pertaining to her supervisors addressing time use by two Caucasian

² It is noted that the appellant refers to a second EEO determination letter. However, she did not provide a copy of that determination in support of her appeal in the instant matter. Additionally, the record reflects that, although the appellant paid an appeal processing fee to this agency to review the appeal of the instant matter, she did not pay such a fee for the separate EEO matter. As such, the separate EEO determination the appellant refers to in this matter will not be considered.

employees, the EEO determined that the appellant did not provide any substantive evidence to show that T.G. and S.M. addressed such issues in order to discriminate against the appellant based on her disability or in retaliation for filing a prior EEO complaint and a discrimination law suit. However, the EEO stated that, since T.G. had authority to record the appellant's time use, it would investigate whether T.G. properly designated the appellant's time use and issue a decision in that regard. However, the EEO explained that, since S.M. had retired, it would not investigate the appellant's allegations against him. With respect to the appellant's allegations pertaining to supervising more units than J.B., the EEO determined that such information did not implicate the State Policy, and a review of those assignments revealed that such work was assigned prior to when T.G. served as the appellant's supervisor. As such, the EEO did not conduct an investigation with respect to that allegation. The EEO also indicated that there was no evidence to show that T.G.'s and S.M.'s conduct was motivated by the appellant's filing of a prior EEO complaint and discrimination lawsuit. With respect to the appellant's allegation that T.G. and S.M. improperly subjected her to disciplinary action, and various Caucasian employees had committed more egregious violations, the EEO stated that it would investigate whether T.G. subjected the appellant to disciplinary action based on race and issue a determination. With respect to the allegations contained in the appellant's November 16, 2018 e-mail, the EEO determined that that T.G. required the appellant to disclose her work location which was not based on the appellant's race, there was no evidence that an employee evaluation was improperly submitted to this agency based on the appellant's race, and there was no evidence that the appellant was singled out in violation of the dress code policy based on race. In this regard, the EEO indicated that the appellant acknowledged during the investigation that she had a tear in her jeans at the time T.G. informed her about the dress code policy, and she indicated in a separate e-mail that while she believed she was singled out for violating the dress code, she did not indicate it was based on race.

Regarding the appellant's allegations pertaining to the incident in T.G.'s office where they raised their voices while discussing a transport request, the EEO determined that such information did not constitute a violation of the State Policy, and as such, it did not conduct an investigation into that matter. With respect to the appellant's allegations pertaining to the staffing shortage and the extra duties she was performing, the EEO determined that such information did not implicate the State Policy and, as such, would not be investigated. Accordingly, the EEO determined the appellant's allegations did not constitute a violation of the State Policy.

On appeal, the appellant reiterates all of the allegations in her original complaint.

In response, the EEO, represented by Andres J. Sarol, Deputy Attorney General, maintains there was no violation of the State Policy. Initially, the EEO asserts that, although the appellant refers to two separate EEO determination letters issued on April 29, 2019, she only submitted a copy of one of the EEO's determinations in support of her appeal. The EEO submits a copy of the other determination in this matter. Additionally, the EEO asserts that many of the appellant's claims presented in this matter were addressed in the separate EEO determination. The EEO adds that it previously advised the appellant that several of her allegations remain subject to an ongoing EEO investigation, and therefore, such allegations cannot be considered as a part of this appeal. The EEO contends that, with respect to the appellant's allegations of improperly being subjected to disciplinary action, the appellant did not provide sufficient details about those matters. Nonetheless, the EEO maintains that such allegations were addressed in the determination and there were no findings that she was subjected to discrimination based on her race for filing a prior EEO complaint and lawsuit. However, the EEO indicated that it would pursue an investigation to determine whether T.G. disciplined the appellant based on her race. The EEO states that, at the time of the investigation, the appellant did not make any allegations against another employee (P.T.), and, as such, those allegations could not be investigated. Further, the EEO asserts that it did not investigate the appellant's retaliation claims as she did not provide any evidence that connected her disciplinary action with the filing of a prior complaint or lawsuit. The EEO adds that there was no evidence to show that the appellant's employee evaluation was fabricated. The EEO states that there was no evidence to show that T.G. and S.M. unfairly enforced timekeeping practices against the appellant based on her disability status or in retaliation for filing a prior EEO complaint. However, the EEO explains that it is pursuing an investigation to determine if T.G. used unfair timekeeping practices against the appellant due to her race. With respect to the appellant's allegations pertaining to her Step One Grievance hearing, the EEO indicated that the appellant, S.G., a Personnel Trainee, E.F., a union representative, and R.B, Personnel Assistant, were present at the meeting. The EEO determined that, although the appellant may have filed a lawsuit against S.G.'s mother, there was no information to show that S.G. discriminated against her based on her race or in retaliation for filing a prior complaint and lawsuit.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides that under the State Policy, discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or

disability. Additionally, retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by the State Policy. Examples of such retaliatory actions include, but are not limited to, termination of an employee; failing to promote an employee; altering an employee's work assignment for reasons other than legitimate business reasons; imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees). *See N.J.A.C. 4A:7-3.1(h)*. It is noted that the burden of proof is on the appellant to provide information in support of her case. *See N.J.S.A. 11A:2-6(b)* and *N.J.A.C. 4A:2-1.4(c)*. The appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)(3)*.

Initially, as noted above, the appellant only filed an appeal of the EEO's initial April 29, 2019 determination letter. Since the appellant did not file an appeal of the EEO's second April 29, 2019 determination, the Civil Service Commission (Commission) will only conduct a review of the EEO's initial determination in this matter.

The Commission has conducted a review of the record in this matter and finds that the appellant has not provided any substantive evidence in this matter to show that she was discriminated against on the basis of race or disability, nor is there any information to show that she was subjected to retaliation in violation of the State Policy. The record reflects that the EEO conducted a proper investigation. It interviewed the relevant parties in this matter, including the appellant, and appropriately analyzed the available documents in investigating the appellant's complaint. The underlying determination was correct when it determined that there was no violation of the State Policy. Additionally, the EEO informed the appellant that several allegations were still under investigation, and at this time, there is no record that the appellant has filed an appeal of any of those outstanding issues. The appellant's arguments on appeal and the allegations of her complaint do not evidence that she was discriminated against based on any of the above listed protected categories listed in the State Policy.

Regarding the appellant's allegations pertaining to R.B., S.M. and T.G., she has not provided one scintilla of evidence to show that she was discriminated or retaliated against based on her race or disability status. With respect to the appellant's allegations that her time use was improperly designated, she was improperly disciplined, she was assigned additional work duties, and she was required to report her work location, none of those allegations, in and of themselves, constitute a violation of the State Policy. Moreover, there was no evidence that the appellant's employee evaluation was falsified. Other than the appellant's tenuous

claims, there is no information to show that R.B.'s, T.G.'s and S.M.'s actions as alleged by the appellant were anything other than their exerting legitimate supervisory authority at the time of the incident. Even if the appellant disagreed with R.B.'s, T.G.'s and S.M.'s style of management, the Commission has consistently found that 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). Additionally, management or supervisory style is not reviewable under the State Policy unless that style evidences some form of discriminatory conduct under the Policy. Moreover, there is no information to show that the appellant was singled out or harassed based on her race or disability status. Moreover, there is no evidence that the appellant was subjected to retaliation for filing prior lawsuits and discrimination complaints.

With respect to the appellant's allegations that the Step One grievance procedure was improperly conducted, she has not provided any substantive evidence of that claim on appeal. Although the EEO confirmed that R.B. was in attendance at the time of the Step One grievance procedure, such information does not substantiate a violation of the State Policy or establish the appellant's claims on appeal. The appointing authority has the discretion to appoint R.B. to participate in the appellant's grievance procedure, and there is no evidence that R.B. discriminated against the appellant at that time. While the appellant may disagree with this methodology, she has not established that the grievance procedure was improperly implemented or that the process was utilized for an improper or impermissible reason. Moreover, the appellant has not provided any information to show that R.B.'s participation during the grievance procedure was in violation of the State Policy. Other than the appellant's allegations in this matter, she has failed to provide any evidence that she was discriminated against or subjected to retaliation in violation of the State Policy. Accordingly, she has not satisfied her burden of proof in this matter.

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 26th DAY OF FEBRUARY, 2020



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