



**STATE OF NEW JERSEY**

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

In the Matters of R.G., Department of  
Corrections

CSC Docket No. 2020-890

Discrimination Appeal

**ISSUED: MARCH 13, 2020** (SLK)

R.G., a Correctional Police Lieutenant with Northern State Prison, Department of Corrections, appeals the decision of the Commissioner, which did not substantiate his allegation that he was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, R.G., a Caucasian, alleged that he was subjected to discrimination/harassment based on race/color by D.L., an African-American former Correctional Police Lieutenant<sup>1</sup>. Specifically, R.G. alleged that on August 7, 2018, D.L. denied him working an overtime shift as Shift Commander when she advised him that a “fresh” Lieutenant must be used for the overtime Commander shift. R.G. asserted that African-American Lieutenants were able to work a double overtime shift as the Shift Commander. Additionally, he stated that, in the past, there were no issues with Lieutenants working a double overtime shift as Shift Commander. The investigation revealed that B.K., a Caucasian Correctional Police Major, issued a verbal directive stating, that when possible, a “fresh set of eyes” should serve as Shift Commander. Further, while the Lieutenant who was selected to work as the Shift Commander on August 7, 2018 was African-American, that Lieutenant just arrived at work and had not been working the post as an overtime

<sup>1</sup> Personnel records indicate that D.L. retired on October 31, 2019.

shift. Therefore, R.G. was not similarly situated as this Lieutenant and D.L.'s denying him overtime as Shift Commander was in compliance with the directive. Additionally, D.L. offered R.G. overtime on August 7, 2018 on the North Compound and R.G. declined it. Therefore, the investigation did not substantiate the allegations.

On appeal, R.G. argues that he proved his allegations when he provided copies of schedules showing that he was wrongfully and without authorization denied working a particular spot while others, who were African-American and in the same situation as him, were allowed to work when he was denied. Specifically, he presented to the Equal Employment Division (EED) J.C., a Caucasian Correctional Police Lieutenant and M.S.-S., a Caucasian Correctional Police Lieutenant, as witnesses, but J.C. and M.S.-S. confirmed that they were never interviewed. R.G. asserts that no one has heard of the "fresh eyes" directive. He submits a statement from M.S.-S. that states that he had a similar incident on July 3, 2018 with D.L. where M.S.-S. assigned himself to cover the Shift Commander spot due to a call out, but D.L. pulled him from the Shift Commander spot, reassigned him to the North Compound, had A.B.-B., an African-American Correctional Police Lieutenant fill the Shift Commander spot, and D.L. advised M.S.-S. that he could not work a double as Shift Commander and that a "fresh" Lieutenant was needed. M.S.-S.'s statement also indicated that working a double shift was a regular practice, he was unaware of the practice restricting the double shift, and that the "double shift" practice had been done numerous times in the past without it ever being an issue. Further, R.G. submitted copies of schedules that he asserts showed that a Lieutenant was assigned to work a second consecutive eight hours in the position of Shift Commander when other "fresh sets of eyes" were available to work. Therefore, R.G.'s questions whether this means that B.K.'s verbal directive was disobeyed and there was no action taken by B.K. R.G. does not believe that this verbal directive from B.K. was ever issued and it has been a long-time practice that a Lieutenant can work overtime for a second consecutive eight hours in the position of Shift Commander. Moreover, he asserts that he advised the investigator that on October 17, 2018 and October 24, 2018, R.S., an African-American Correctional Police Lieutenant, was assigned a double shift as Shift Commander by D.L., when he was not a "fresh set of eyes" in violation of the alleged directive. R.G. asserts that he finds it strange that B.K.'s directive was not put in writing.

R.G. also complains that the investigation took longer than 180 days as required by the State Policy. He states that when he followed up on the status of the investigation, the only reply that he received was that the investigation was still being conducted and the determination was only completed shortly before D.L. retired. R.G. requests that his appeal fee (\$20) and postage (\$30) be reimbursed, and he be reimbursed for the time (\$250) that he spent preparing this appeal. Additionally, he requests that he receive \$75,000 "tax free" based on \$25,000 for

D.L. wrongfully denying him overtime in the spot of his choosing, \$25,000 for B.K. attempting to aid and assist D.L.'s discrimination against him and \$25,000 for the EED's bias in handling in this matter.

In response, the EED indicates that it is relying on its determination letter. It presents that B.K., a Caucasian Correctional Police Major, decided who was assigned to work overtime as the Shift Commander and D.L. was merely following his directive.

## CONCLUSION

*N.J.A.C.* 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race/color is prohibited.

*N.J.A.C.* 4A:7:3.2(l) states, in pertinent part, that the investigation of a complaint shall be completed and a final determination shall be issued not later than 120 days after the initial intake of the complaint. The time completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days in cases involving exceptional circumstances.

*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.

In this matter, R.G., a Caucasian Correctional Police Lieutenant, alleged that on August 7, 2018, he was wrongfully denied overtime in the spot of his choosing by D.L., an African-American former Correctional Police Lieutenant, who instead assigned A.B.-B., an African-American Correctional Police Lieutenant, his desired spot. Therefore, R.G. alleged that D.L.'s decision in making the assignment was based on race. However, the investigation revealed that D.L.'s decision was based on Caucasian Correctional Police Major B.K.'s directive that, when possible, a "fresh set of eyes" should serve as the Shift Commander. Further, the investigation revealed that A.B.-B. had just arrived at work that day. Therefore, the investigation did not substantiate R.G.'s allegation as the assignment followed B.K.'s directive and was not based on his race.

R.G. does not dispute that A.B.-B. just arrived at work and therefore, would be considered a "fresh set of eyes." Instead, he submits a statement from M.S.-S. to show that on July 3, 2018, M.S.-S. was also denied the opportunity to work a Shift Commander in favor of A.B.-B. due to the "fresh eyes" directive. Additionally, R.G. indicates that R.S., an African-American Correctional Police Lieutenant, was assigned a double shift as Shift Commander on October 17, 2018 and October 24, 2018. While R.G. submits paperwork concerning assignments on certain dates, he

has not clearly articulated how this paperwork supports his claim that African-Americans were regularly assigned double overtime Shift Commander spots when “fresh sets of eyes” were available. Additionally, R.G. alleges that the investigation was incomplete because the EED did not interview his witnesses, J.C. and M.S.-S. However, the EED did have M.S.-S.’s statement where he makes similar accusations as R.G. Presumably, J.C. would also indicate that he was not aware of the “fresh set of eyes” policy and that a double overtime shift assignment as a Shift Commander had previously been a common occurrence. However, the fact that there might not have previously been a “fresh set of eyes” directive and that J.C. and M.S.-S. were not aware of such policy, does not mean that B.K. did not issue the directive in question. Therefore, the Civil Service Commission (Commission) finds that the investigation was thorough. Further, R.G. makes serious allegations on appeal against B.K. and the EED. Specifically, R.G. alleges that B.K. attempted to aid and assist D.L.’s discrimination against him and that the EED was biased against him. Initially, it is noted that it unclear as to why B.K., a Caucasian, would attempt to aid and assist D.L., an African-American, in discriminating against R.G. based on him being Caucasian. Regardless, R.G. has not provided one scintilla of evidence, such as a witness or document, that confirms R.G.’s allegations against B.K. Similarly, R.G. has not provided any evidence that the EED’s actions were based on a bias against him. Mere allegations, without evidence, are insufficient to substantiate a violation of the State Policy. *See In the Matter of T.J.* (CSC, decided December 7, 2016).

Furthermore, even if it was found that D.L. violated the State Policy, when a violation of the State Policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment. *See N.J.A.C. 4A:7-3.1(g)2 and 3.* In other words, the State Policy is instructive in nature and remedial action can be taken against anyone who is found to have violated the Policy. However, in this matter D.L. retired, so any remedial action would not be possible. Concerning the relief that R.G. is requesting, the appeal fee is for processing purposes only and shall not be refunded for any reason except when submitted in error for an exempt appeal. *See N.J.A.C. 4A:2-1.8(f).* Similarly, under the State Policy, the Commission does not award reimbursement of postage or reimbursement for one’s own time for filing an appeal. Finally, the Commission does not have the authority to award compensatory damages, other than back pay.<sup>2</sup> Therefore, the most that the Commission could award R.G. if he established a violation of the State Policy is lost

---

<sup>2</sup> *N.J.A.C. 4A:2-1.5(b)* provides, in pertinent part, that back pay, benefits and counsel fees may be granted where the appointing authority has unreasonably failed or delayed to carry out an order of the Commission or where the Commission finds sufficient cause based on the particular case. A finding of sufficient cause may be made where the employee demonstrates that the appointing authority took adverse action against the employee in bad faith or with invidious motivation.

wages for one overtime shift on August 7, 2018.<sup>3</sup> However, as he has not met his burden of proof that this one non-assignment of his choosing was based on his race, he is not entitled to such an award.

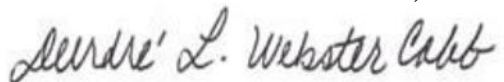
With respect to the promptness of the investigation, a determination letter is to be issued, at the latest, within 180 days of the filing of a State Policy complaint. The appellant submits an August 8, 2018 Special Custody Report and an August 12, 2018 letter regarding his grievance request. The record is unclear if these documents were also submitted around the same time to the EED. However, as the incident took place on August 7, 2018, R.G. alleges that the investigation took well over 180 days. As the EED has not responded to this allegation, and the determination letter is dated August 15, 2019, it is presumed that the investigation took more than the 180 days allotted under the State Policy. Therefore, the Commission warns the appointing authority that it should complete its investigations and issue final determinations within the 180-day time frame as prescribed in the State Policy as, under certain circumstances, the Commission could find that a delay compromises the thoroughness of an investigation and lead to fines for non-compliance.<sup>4</sup> See *In the Matter of S.J.* (CSC, decided April 9, 2014).

### 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 12<sup>th</sup> DAY OF MARCH, 2020



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

---

<sup>3</sup> The determination letter indicates that R.G. was offered overtime on August 7, 2018 on the North Compound and he declined it. Therefore, even if R.G.'s allegation was substantiated, it is unclear how much wages, if any, R.G. would have lost if he accepted the North Compound overtime assignment instead of the overtime assignment that he wanted.

<sup>4</sup> It is noted that the remedy for such non-compliance is **not** an award of damages to the appellant.

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals  
and Regulatory Affairs  
Civil Service Commission  
Written Record Appeals Unit  
P.O. Box 312  
Trenton, New Jersey 08625-0312

c: R.G.  
Leila Lawrence, Esq. Director  
Mamta Patel  
Records Center