



STATE OF NEW JERSEY

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

In the Matter of B.P., Department of
Transportation

Discrimination Appeal

CSC Docket No. 2017-3364

ISSUED: APRIL 6, 2018 (HS)

B.P., a Realty Specialist 2, Transportation with the Department of Transportation (Transportation), represented by Alex Lee, Esq., appeals the determination of the Deputy Commissioner, which found sufficient evidence that the appellant had violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, in a letter dated March 27, 2017, Transportation informed the appellant that its Division of Civil Rights and Affirmative Action (DCR/AA) had conducted an investigation into allegations that the appellant had discriminated against minority employees. Upon the completion of this investigation, DCR/AA determined that a violation of the State Policy had occurred and referred the matter for administrative action. As a result, the appellant was issued a minor disciplinary action notice. In an e-mail dated October 6, 2017, the appellant’s Communications Workers of America (CWA) representative informed Transportation that “the union, on behalf of [the appellant], is withdrawing the pending appeal of minor disciplinary action without prejudice.” The representative also indicated in the e-mail that the departmental hearing had not yet been scheduled. Subsequently, the appellant was issued an official written reprimand on a charge of violating Transportation guidelines regarding harassment or discrimination.

In a letter dated November 30, 2017, staff of the Division of Appeals and Regulatory Affairs (DARA) advised the appellant that it could not process the

appeals of discipline of CWA members and informed her that the procedures for disciplinary action under her collective bargaining agreement must be followed.

In response, the appellant contends that she retains the right to opt in favor of an appeal to the Civil Service Commission (Commission). She cites *N.J.A.C. 4A:2-3.7(a)*, which provides:

Minor discipline may be appealed to the Commission under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

The appellant argues that in the previously noted e-mail of October 6, 2017, she explicitly waived her right to a departmental hearing and the applicable appeal mechanisms delineated in her collective bargaining agreement in favor of an appeal to the Commission. The appellant also provides arguments as to the merits of the case.

CONCLUSION

N.J.A.C. 4A:7-3.2(n)3 provides that in a case where a violation of the State Policy has been substantiated and disciplinary action recommended, the procedures set forth in *N.J.A.C. 4A:2-2* and 3 for the appeal of disciplinary action shall be followed. Additionally, *N.J.A.C. 4A:2-3.1(g)* provides that *N.J.A.C. 4A:2-3*, which concerns minor discipline and grievances, shall not be utilized to review a matter exclusively covered by a negotiated labor agreement. *N.J.A.C. 4A:2-3.2(a)* provides that where departmental minor discipline appeal procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

In this matter, the appellant received an official written reprimand based on a finding that she had violated the State Policy. Therefore, pursuant to *N.J.A.C. 4A:7-3.2(n)3*, the procedures for an appeal of a disciplinary action shall be followed. Since the appellant's position is covered under a collective bargaining agreement with CWA, the procedures for disciplinary action under her collective bargaining agreement must be followed pursuant to *N.J.A.C. 4A:2-3.1(g)* and *N.J.A.C. 4A:2-3.2(a)*. The appellant's contention that the Commission can take jurisdiction in this matter pursuant to *N.J.A.C. 4A:2-3.7(a)* is unpersuasive as *N.J.A.C. 4A:2-3.1(g)* clearly provides that the minor discipline appeal procedures set forth in *N.J.A.C. 4A:2-3* shall not be utilized to review a matter exclusively covered by a negotiated labor agreement. As such, the appellant's reliance on *N.J.A.C. 4A:2-3.7(a)*, in isolation, is misplaced. Moreover, the October 6, 2017 e-mail only indicates that CWA, on the appellant's behalf, withdrew the appeal of the minor disciplinary action notice and that the official written reprimand was subsequently issued. The e-mail provides no evidence that the appellant's collective bargaining agreement

permits her to waive the disciplinary action appeal procedures found therein in favor of an appeal to the Commission. Accordingly, the Commission does not have jurisdiction in this matter and cannot process an appeal of the appellant's discipline.

ORDER

Therefore, it is ordered that this appeal be dismissed for lack of jurisdiction.

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 4TH DAY OF APRIL, 2018



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