

STATE OF NEW JERSEY  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DOCKET NO. EB13WB-64951

Rosa E. Lopez, and the Director of )  
the New Jersey Division on Civil Rights, )

Complainants, )

v. )

Rockaway Hotel, LLC, d/b/a Homewood )  
Suites by Hilton, )

Respondent. )

Administrative Action

**FINDING OF PROBABLE CAUSE**

On October 14, 2014, Hudson County resident Rosa E. Lopez (Complainant)<sup>1</sup> filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, Rockaway Hotel, LLC, d/b/a Homewood Suites by Hilton<sup>2</sup> (Respondent), paid her less than her male co-workers because of her gender, and then fired her for engaging in protected activity, in violation of the New Jersey Law Against Discrimination (LAD) N.J.S.A. 10:5-1 to -49. On March 31, 2016, Complainant amended her complaint to include an allegation under N.J.S.A. 10:5-12(r). The DCR investigation found as follows.

Respondent operates the Homewood Suites by Hilton located at 10 The Promenade in Edgewater, New Jersey. The hotel markets its proximity to New York City and offers complimentary shuttle van service to the New Jersey Light Rail and New York Waterway Ferry. Employees are assigned to work in departments including but not limited to the Housekeeping, Transportation, and Maintenance departments.

On August 27, 2011, Respondent hired Complainant to work in the Housekeeping Department at \$8/hr. Her duties included cleaning the hotel lobby and other common areas.

General Manager Sandy Padua told DCR that employees are eligible for, but not automatically entitled to, an annual pay increase on the one-year anniversary of their

---

<sup>1</sup> The DCR Director hereby intervenes as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e). However, for the purposes of this determination, the term "Complainant" will refer solely to Ms. Lopez.

<sup>2</sup> The verified complaint identified Respondent as "Hilton Homewood Suites." The caption is hereby amended based on the representation from Respondent's counsel that the entity's proper designation is, "Rockaway Hotel, LLC d/b/a Homewood Suites by Hilton."

employment. In 2012, Complainant received a 20¢ raise. In 2013, she received a 16¢ raise, bringing her hourly rate to \$8.36/hr. In 2014, she received an increase to \$9/hr.

Complainant alleges that in April 2014, she was assigned to work primarily as a driver in the Transportation Department. When driving, she was paid \$10/hr. However, when performing housekeeping, her hourly pay reverted back to her lower salary.

**a. Gender Discrimination**

Complainant alleges that in July 2014, Respondent assigned two “housemen”<sup>3</sup>—David Reis and Herbert Garcia—to work some shifts as drivers. She alleges that like her, the two males performed housekeeping (Housekeeping Department) and driving (Transportation Department) functions. She alleges that unlike her, they were paid \$10/hr. whether they were housekeeping or driving. She alleged that the pay disparity was based on gender.

Respondent denied the allegations of gender discrimination in their entirety. It argued that it was “critical to note” that all salaries were determined by a female, GM Sandy Padua. See Answer to Complaint, Dec. 1, 2014, p.3. It stated that Complainant was “assigned for four days a week as a driver commencing on or about June 23, 2013 and received the driver’s rate of pay on those days.” See Answer, supra, at 2. It stated that on the fifth day, Complainant worked as a “housekeeper” and therefore “received pay that was appropriate to the rates paid in the departments to which she was assigned work.” Ibid.

It acknowledged that Reis and Garcia were paid a higher rate for all duties but argued that the two males were not similarly-situated to Complainant. It argued:

Complainant’s duties were somewhat different. Herb [Garcia] and David [Reis] were at all relevant times housemen who operated as drivers on a daily basis for the full five day work week. Complainant was offered and accepted a different position in that her reassignment as driver was for four days a week with her fifth day work assignment to be as a housekeeper assigned to lobby cleaning. Housekeeping was the position she had held prior to her reassignment. On the days she worked as a driver, she was paid at the driver rate. On the day she worked as a housekeeper, she was paid her former housekeeping rate.

[See Answer, supra, at 2.]

DCR interviewed the two comparators identified by Complainant. Garcia, who was hired in the Housekeeping Department on August 18, 2012, at \$10/hr., told DCR that although he drives five days a week, he also performs housekeeping tasks when he is not driving. He stated that his salary has since been increased to \$10.40/hr.

---

<sup>3</sup> Respondent referred to females in the Housekeeping Department as “housekeepers” and males as “housemen.”

Reis, who was hired in the Housekeeping Department on September 30, 2010, at \$8.50/hr., told DCR that he does not always function as a driver. He stated that his housekeeping duties include cleaning bathrooms, taking out the garbage, vacuuming, shampooing carpets, and sometimes cleaning the lobby. He said that when he was hired, he worked with Complainant and they had the same duties. Reis stated that he was given driving duties in or around 2012 and a pay increase to \$10/hr.<sup>4</sup> Respondent's payroll records indicate that for the pay period ending May 18, 2013, he worked 62.5 hours in the Housekeeping Department and was paid \$10.20/hr. Payroll records also indicate that for the pay period ending June 15, 2013, he worked 64 hours in the Transportation Department at \$10.20/hr., and 16 hours in Housekeeping Department at \$10.20/hr.

During the investigation, Respondent indicated that Complainant had replaced Juan Javier who performed the driving duties on Reis's and Garcia's days-off. Payroll records indicate that for the pay period ending May 18, 2013, Juan Javier worked 56 hours in the Transportation Department at \$10.05/hr., and 6 hours in Housekeeping Department at \$10.05/hr. DCR identified at least four other pay periods where Javier was paid a single, hourly rate whether working in the Housekeeping or Transportation Department.

In support of its assertion that hourly rates vary by department, Respondent stated that Gabriel O. was hired to be a member of the Maintenance Department at \$12/hr., but was subsequently assigned to drive four days a week. Respondent stated when Gabriel O. worked as a driver, he was paid \$10/hr., but when working in Maintenance, he was paid \$12/hr. It identified four other employees (two male, two female) who were paid \$12/hr. when working in the Night Auditor Department and \$10.30/hr. when working in the Food Department. It also identified a male employee, Jovan H., who it said was hired a year after Complainant was discharged, and worked as a relief van driver in the Transportation Department four days a week at \$10/hr., and worked as a houseman on the fifth day at \$9/hr.

In response to questions about the identities and salary histories of the employees who worked in the Housekeeping Department during the relevant time period, Respondent produced information that indicates as follows.

<u>Employee</u>	<u>Gender</u>	<u>Hire Date</u>	<u>Starting Salary</u>
D.R.	M	9/30/10	\$8.50/hr.
J.S.	M	2/14/11	\$10
COMPLAINANT	F	8/27/11	\$8
J.B.	M	10/5/11	\$9
J.L.	M	3/1/12	\$9
N.F.	M	5/20/12	\$9

<sup>4</sup> Respondent's records indicate that Reiss began driving in August 2011.

J.W.	M	7/27/12	\$10
H.G.	M	8/18/12	\$10
W.P.	M	10/5/12	\$9
J.A.	M	4/8/13	\$9
L.L.	F	4/23/13	\$8
A.G.	M	5/14/13	\$9.25
D.L.	M	11/18/13	\$9

L.L., who is female and was hired on April 23, 2013, at \$8/hr., told DCR that it was general knowledge that female employees in the Housekeeping Department were paid less than males even though they performed the same tasks. She told DCR that she requested and received a raise to \$9/hr.

J.S., who is male and was hired on February 14, 2011, at \$10/hr., told DCR that he was hired as a driver and transferred to a houseman assignment approximately two years later,<sup>5</sup> but his pay remained the same. He stated that approximately one year later, he was transferred to the Maintenance Department and his pay increased to \$12/hr. The next year, he received a raise to \$12.36/hr. J.S. stated that he requested to return to housekeeping for personal reasons, and his pay was reduced to \$10.30/hr.<sup>6</sup> J.S. stated that he does not recall Complainant but knows L.L. He stated that he and L.L. perform similar duties.

J.L., who is male and hired on March 1, 2012, at \$9/hr., is Complainant's son. He told DCR that he and his mother worked the same shift and had essentially the same housekeeping duties.<sup>7</sup>

D.L., who is male and was hired on November 18, 2013, at \$9/hr., told DCR that he and Complainant performed the same duties, which included vacuuming, cleaning, and laundry.

The LAD makes it illegal to discriminate against a current or prospective employee in "compensation or in terms, conditions or privileges of employment" based on gender. N.J.S.A. 10:5-12(a). Each payment of discriminatory wages constitutes a renewed and actionable wrong under the LAD, and the statute of limitations operates to limit the back period for which an employee may seek recovery under the LAD. See Alexander v. Seton Hall Univer., 204 N.J. 219, 235 (2010). At the conclusion of an investigation, DCR is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause" for

<sup>5</sup> Complainant told DCR that Respondent could not keep J.S. in a driving position, because his driver's license was from Maryland and not from New Jersey.

<sup>6</sup> Respondent's records show that as of November 1, 2015, J.S.'s pay changed from \$12.36/hr. to \$10.30/hr. This occurred after the verified complaint was filed and served on Respondent.

<sup>7</sup> Complainant was earning \$8.20/hr. when her son was hired at \$9/hr.

purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid.

A finding of probable cause is not an adjudication on the merits, but merely an initial “culling-out process” in which DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

As an initial matter, the evidence provided by Respondent in this investigation suggests a pattern of gender-based pay disparity in its initial wage-setting decisions. Although males and females in the Housekeeping Department perform the same functions, males were paid more. The two females in the Department were its lowest paid employees. By way of example, in 2012, Complainant’s son obtained a job in the same Department. At the time, Complainant was being paid \$8.20/hr. (even after an annual increase). Although the mother and son performed the same work on the same shift, and she had more seniority and more experience, he was paid \$9/hr. Likewise, L.L. (female) was hired at \$8/hr. Two years later (as of September 22, 2015), she was earning \$8.93/hr., compared to males who were given starting salaries of \$9/hr. and \$10/hr. It, however, appears that at some point L.L. requested and received the higher \$9/hr. salary.

Here, Complaint alleges that when Respondent assigned her driving duties, she was paid lower wages as compared to the two male employees because she received two hourly rates (\$10/hr. and \$9/hr.) depending on whether she was performing driving or housekeeping duties, whereas the male employees received one single hourly rate (\$10-\$10.40/hr.) whether they were driving or housekeeping. Although Complainant and her two male comparators (Garcia and Reis) were each functioning mostly as drivers with some housekeeping duties, the two males were paid more than Complainant.

With respect to Complainant’s allegations, Respondent argues that it was justified paying more to Garcia and Reis because they were “housemen who operated as drivers on a daily basis for the full five day work week.”

Neither Garcia nor Reis fully supported the employer’s explanation. Garcia told DCR that he performs housekeeping tasks when he is not driving. He stated that he earns \$10.40/hr. And Reis had a similar trajectory to Complainant but was consistently paid more than her. He was hired as a housekeeper at \$8.50/hr. Complainant was hired a year later to the same position at \$8/hr. Two years later, at the end of 2013, Complainant was still being paid less than Reis’s starting salary.

Respondent's position appears to be contradicted by its payroll records, which confirm that in 2013, Respondent paid \$10.20/hr. to Reis whether he was working in the Transportation or Housekeeping Department. Similarly, it repeatedly paid \$10.05/hr. to Juan Javier, the person Respondent stated Complainant replaced, whether he was working in the Transportation or Housekeeping Department.

Respondent's explanation also appears to be contradicted by another witness, J.S., who told DCR that he worked as a driver and then as a houseman but his pay remained the same (i.e., \$10/hr.). He said that he and Complainant performed similar housekeeping duties. At the time of the interview, he said that he was paid \$10.30/hr.

During the investigation, Respondent identified a male worker, Jovan H., who was paid \$10/hr., when driving and \$9/hr. when performing housekeeping. However, Respondent's counsel stated that the arrangement went into effect a year after Complainant was discharged and is, therefore, of questionable relevance.

Based on the above, Respondent's reasons for treating Complainant differently from the two male employees who also performed both driving and housekeeping duties were not substantiated. As such, the Director is satisfied at this preliminary stage of the process that the circumstances of this case support a "reasonable ground of suspicion. . . to warrant a cautious person in the belief" that probable cause exists to support the allegations of wage disparity resulting from gender discrimination. N.J.A.C. 13:4-10.2.

#### **b. Retaliation**

At the end of her shift on September 22, 2014, Complainant was summoned into GM Padua's office and handed a letter that stated in pertinent part:

We have determined that it is in the best interest of the Homewood Suites-Edgewater to terminate your employment effective immediately. This termination is necessitated by actions you have taken in violation of Homewood Suites policies. This action is taken in accordance with hotel policy 701 Employee conduct and Work Rules. Rosa, even though you are competent the fact is that your behavior is interfering with the positive performance and full engagement of the staff. Your behavior is demotivating and distracting and our happy engaged employees should not have to deal with your unsatisfactory conduct. Over your past 4 weeks, [*sic*] coached and counseled in regards to your performance and negative attitude. Our efforts have not resulted in a modification of your attitude or work habits.

Complainant claims that upon presenting the letter, Padua mentioned their prior conversations about salary issues and her displeasure with Complainant's decision to address Respondent's CEO, Minesh Patel, about her concerns.

Respondent produced an undated document that purported to be Padua's handwritten notes on her decision to fire Complainant. Those notes state in part:

Rosa - Last straw:

Questioning Minesh about her getting paid differently when working lobby.

- I had 1 counseling sessions w/ Rosa explaining how her position was only 4 days driver 1 day lobby[.] Even after this she went to the OPS MGR & HSKP MGR. making comments that I am taking food off her table & I'm discriminated against her cuz she is a woman. Call her in again for another counseling session to iron thing out.
- She walked the floors questioned housekeeper about garbage.
- Driver about pay.
- Bad mouthed manager to all team members then cornered our owner after he was finished mtg w/ me complaining.
- I had staff complain that they did not feel comfortable around her.

When later asked about the rationale behind the personnel decision, Padua told DCR that Complainant had been "disruptive" by continuously asking supervisors for a raise and asking "all the other workers what they were being paid." She stated that two employees—Garcia and a former employee, Patricia M.—complained to her that Complainant was asking about their pay. Padua said that both told her that Complainant's questions made them uncomfortable.

Padua stated that Complainant was also not completing all her tasks. Padua stated that Complainant failed to throw out the garbage and did not sufficiently clean the hotel lobby. Padua stated that Complainant's failure to perform those duties placed an unfair burden on other employees. Padua said that despite verbal counseling, Complainant's behavior did not improve. Padua stated that she never saw Complainant complain to CEO Patel, and that Patel never complained to her about Complainant's discussion of salary issues with him.

DCR requested copies of any written warnings or notes relating to any disciplines or counseling about performance deficiencies. Respondent did not produce anything responsive to that request. Complainant denied ever receiving any written or verbal warnings and/or counsellings about her work performance.

D.L. told DCR that Complainant never asked him about his pay and he never heard her complain to other employees about her pay.

Garcia told DCR that when Complainant asked him how much he was paid, he replied, "It's personal." Garcia stated that although he did not want to discuss his pay with Complainant, he never considered her questions to be harassing, and he never complained to anyone about Complainant. He told DCR, "There was nothing to complain about." He stated that after Complainant was fired, Padua called him into her office and said that "other drivers" had complained about Complainant, and asked if Complainant ever approached him about his pay. He stated he told Padua that she did,

but that he “nipped it in the bud.” DCR asked Garcia if he knew who Padua was referring to when she said that “other drivers” complained. He replied that the only drivers at that time were him and Reis.

Reis told DCR that he never heard anyone complain that Complainant was harassing or bothering them, and he never complained to anyone about Complainant. Reis said that Complainant told him that she was being paid less than the male employees, but he did not find the discussion to be harassing or annoying.

DCR was unable to contact Patricia M. The contact information provided by Respondent was no longer valid. Respondent’s counsel told DCR that its attempts to contact Patricia M. were unsuccessful.

An employee cannot be fired for complaining in good faith that she is being discriminated against based on gender. N.J.S.A. 10:5-12(d). Nor can an employee be fired for asking other employees about their salaries “if the purpose of the request for the information was to assist in investigating the possibility of the occurrence of, or in taking of legal action regarding, potential discriminatory treatment concerning pay, compensation, bonuses, other compensation, or benefits.” N.J.S.A. 10:5-12(r).<sup>8</sup>

A complainant’s burden to establish a *prima facie* case of retaliation is “not an onerous one.” Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 253 (1981). A complainant must show that he or she engaged in LAD-protected activity known to his employer, that the employer thereafter subjected him to an adverse employment action, and that there was a causal connection between the two. Jamison v. Rockaway Twp. Bd. of Ed., 242 N.J. Super. 436, 445 (1990). Moreover, a plaintiff “need not prove the merits of the underlying discrimination complaint, but only that [she] was acting under a

---

<sup>8</sup> The full text of the statutory provision, which was added to the LAD in 2013, is as follows:

It shall be an unlawful employment practice . . . [f]or any employer to take reprisals against any employee for requesting from any other employee or former employee of the employer information regarding the job title, occupational category, and rate of compensation, including benefits, of any employee or former employee of the employer, or the gender, race, ethnicity, military status, or national origin of any employee or former employee of the employer, regardless of whether the request was responded to, if the purpose of the request for the information was to assist in investigating the possibility of the occurrence of, or in taking of legal action regarding, potential discriminatory treatment concerning pay, compensation, bonuses, other compensation, or benefits. Nothing in this subsection shall be construed to require an employee to disclose such information about the employee herself to any other employee or former employee of the employer or to any authorized representative of the other employee or former employee.

[N.J.S.A. 10:5-12(r).]



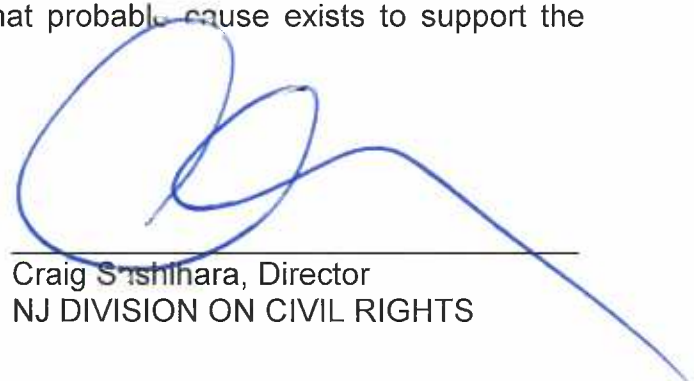
good faith, reasonable belief that a violation existed.” Carmona v. Resorts Intern’l, 189 N.J. 354, 373 (2007).

Here, it is undisputed that Complainant was fired after inquiring and complaining about what she perceived to be illegal gender discrimination. The investigation found no persuasive evidence to support Respondent’s assertion that Complainant was being disruptive by harassing employees about salary issues. To the extent that she asked her supervisors for a raise because she thought she was being underpaid based on her gender, such would appear to be consistent with Respondent’s “Hotel Team Member Handbook,” which states in part, “If employees have concerns about work conditions or compensations, they are strongly encouraged to voice these concerns openly and directly to their supervisor.” To the extent that Respondent found it to be disruptive for Complainant to be asking other employees about their salaries, such inquiries would appear to be protected activity under the circumstances. Any doubts as to whether Complainant was fired in retaliation for making inquiries about what she viewed as wage discrimination are put to rest by Padua’s handwritten notes on her decision to fire Complainant, which state in part, “Last straw: Questioning [the CEO] about her getting paid differently when working lobby.”

Respondent asserts that another factor that led to its decision was Complainant’s failure to complete tasks. However, it provided no persuasive evidence to support that claim. Indeed, its letter of termination stated that Complainant was being discharged despite being “competent.” The termination letter did not reference any alleged failure to complete tasks.

Based on the above, the Director is satisfied that at this preliminary stage of the process, the circumstances of this case support a “reasonable ground of suspicion . . . to warrant a cautious person in the belief” that probable cause exists to support the allegations of retaliation. N.J.A.C. 13:4-10.2.

DATE: 8-26-16



Craig Sashihara, Director  
NJ DIVISION ON CIVIL RIGHTS