



## STATE OF NEW JERSEY

In the Matter of S.J., Department of  
Human Services

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

CSC Docket No. 2022-1891

Discrimination Appeal

**ISSUED: MAY 23, 2022 (SLK)**

S.J., a Staff Clinical Psychologist 3, with Woodbine Developmental Center (WDC), Department of Human Services, appeals the decision of an Assistant Commissioner, which was unable to substantiate her allegations that she was subject to discrimination in violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, S.J. an African-American female, alleged that D.C., a Caucasian female Secretarial Assistant 1, Non-Stenographic, sent a discriminatory and inaccurate email about the Juneteenth holiday. S.J. spoke to D.C. about the email and S.J. alleged that D.C. told her to “kiss her ass.” Thereafter, S.J. filed a complaint with the United States Equal Employment Opportunity Commission (EEOC) alleging racial discrimination, which the EEOC dismissed. Subsequently, S.J. filed a State Policy complaint alleging that D.C.’s comment to “kiss her ass” constituted sexual harassment. The Office of Equal Employment Opportunity (EEO) investigated by conducting interviews and reviewing relevant documentation and it was unable to substantiate a violation of the State Policy. However, as D.C. admitted that she told S.J. to “kiss my ass,” which was inappropriate for the workplace, the EEO recommended that the WDC address it administratively.

On appeal, S.J. asserts that given that D.C. admits that she told her to “kiss my ass” in response to her merely stating the origins of Juneteenth and questioning the inaccuracies in D.C.’s email about it, D.C. was disrespectful given the current

climate in the country regarding race relations. S.J. presents that she was “highly offended” by D.C.’s cavalier and disrespectful attitude and D.C. was unwilling to receive her correction and not receptive to her knowledge of black history pertaining to Juneteenth. In fact, S.J. indicates that D.C. told her to be happy that it is now a legal holiday. S.J. states that she was deeply offended by D.C.’s actions given that there have been other unpleasant encounters with her in the past that have been troublesome, and this incident was just the latest disrespectful and condescending interaction towards her. S.J. notes that her work requires her to have frequent interactions with D.C. and she seeks to stop this behavior to create a more professional work environment. She also seeks monetary compensation.

In response, the EEO presents that D.C. sent the following email to the Psychology Department regarding coverage for the Juneteenth holiday:

As most of you know, we have a new State Holiday this year – Juneteenth, the emancipation holiday that commemorates the end of slavery in the United States, is now a state holiday in NJ that will be celebrated yearly on the third Friday of June. That being said, please let me know by noon on Friday, 6/11/21, if you will be working this holiday. I will be off for at least part of the week next week, so I need to get the schedule done early.

The investigation revealed that S.J. felt uneasy about the “historical inaccuracy” of D.C.’s email regarding what Juneteenth celebrates. S.J. called D.C. to tell her that Juneteenth was not when the slaves were freed, the details about the Juneteenth holiday were unnecessary, and she should have only asked about employees’ interest in working on the holiday. In response to S.J.’s confronting D.C. about the email, D.C. stated, “[S.J.], kiss my ass” and hung up the phone. S.J. conveyed to the investigator that the email D.C. sent was “unnecessary and grossly inaccurate and put in such a manner which could be construed as negative and discriminatory to those of color” and she was adamant that D.C.’s email should have only asked who was working without the further clarification of Juneteenth. During her interview with the investigator, S.J. alleged that D.C. sexually harassed her by telling her to “kiss her ass.”

The investigator also interviewed D.C. who reported that S.J. called her and verbally attacked her about the email. D.C. stated that a few employees expressed that they were unaware that Juneteenth was a holiday and commemorated. D.C. indicated that because she did not know everything about the holiday, she looked it up on the internet to find a short, reasonable explanation that she could put in the email. She stated that she saw an article discussing the Governor and Juneteenth and she used the statement from that in her email. Additionally, D.C. explained that the Central Office of the Department of Human Services sent an email to everyone with similar wording explaining Juneteenth several days later. D.C. presents that

after several minutes of being kind and considerate to S.J. and what D.C. interpreted as S.J. continuously badgering her, D.C. admitted that she lost her cool and told S.J. to “kiss her ass.” D.C. indicated to the investigator that “It was just a phrase that came out due to my frustration. It was said out of a feeling of being unreasonably attacked; I was frustrated and felt the need to end the conversation.”

Regarding S.J.’s allegation that D.C. discriminated against her due to her race, although the EEO indicated that D.C.’s email touched the State Policy, it determined that this allegation was unfounded as there was not a preponderance of the evidence that the email was derogatory. Additionally, the EEO determined that S.J.’s allegation that she was sexually harassed by D.C. when she told her to “kiss her ass” during a verbal exchange was unfounded. While D.C. acknowledged that she made the statement, there was not a preponderance of the evidence that D.C.’s remark was meant literally. Specifically, D.C. indicated that S.J. “was attacking me,” “was forceful,” “kept attacking me with her words,” and “implied” that she was racist. D.C. admitted that she told S.J. to “kiss her ass” and said “I am very ashamed of that, it’s not my normal demeanor. I was worked up about that. In every way I was trying to be kind, I was trying to be courteous and respectful in that phone conversation. After several minutes of being kind and considerate and her continuing to badger me, I lost my cool at the very end.” Additionally, when asked about S.J.’s response, she commented, “I didn’t give her the opportunity to say anything because I hung up the phone.”

Concerning the allegation that S.J. claimed that she was sexually harassed by D.C. telling her to “kiss my ass,” D.C. replied:

There was no specific meaning to what I said. It was just a phrase that came out due to my frustration with the continued verbal attack by [S.J.] even though I tried several times to deescalate the situation. It was said out of a feeling of being unreasonably attacked and no matter what I said regarding the email I sent, [S.J.] was not listening to me and continued her constant attempts to take the conversation in a negative direction. I was frustrated and felt the need to end the conversation.

The EEO presents that per yourdictionary.com, the common meaning of “kiss my ass” is to “go away; an expression of disdain or dismissal;” “rejection or refusal to perform a requested action.” Further, the Cambridge dictionary states the expression is “used to tell someone that you will not do what they want you to do.” Another description found in 7esl.com of the idiom is that it “can mean either go away and leave me alone or it can be in response to something that someone has told you to do and you refuse to do it.” Therefore, the EEO found that D.C.’s remark was meant to let S.J. know that their conversation was over. Although the EEO determined that the remark did not violate the State Policy, it recommended that it be addressed administratively by the WDC as it was inappropriate for the workplace. The WDC

advised the EEO that D.C.'s supervisor counseled her regarding her use of profanity as a General Conduct policy violation and there would be no further action. The EEO argues that there was not one scintilla of evidence that D.C. discriminated against S.J. Instead, S.J. described her professional relationship with D.C. as less than stellar. However, it asserts that interpersonal disputes among employees, without a preponderance of evidence of discrimination, are insufficient to rise to the level of a State Policy violation.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon race will not be tolerated. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

*N.J.A.C. 4A:7-3.1(c)3* provides that it is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

*N.J.A.C. 4A:7-3.1(g)2* provides, in pertinent part, where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate action to stop the behavior and deter its reoccurrence, such as moving two employees apart.

*N.J.A.C. 4A:7-3.1(g)3* provides that the remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

*N.J.A.C. 4A:7-3.1(k)* provides that any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

*N.J.A.C.* 4A:7-3.2(m)4 provides that the appellant shall have the burden of proof in all discrimination appeals brought before the Civil Service Commission (Commission).

Initially, with respect for S.J.'s request for monetary compensation, even where a violation of the State policy is sustained, the Commission does not award such remedies for State Policy violations as the purpose of the State Policy is to be remedial in nature to stop the behavior and deter its reoccurrence. *See In the Matter of P.D.* (CSC, decided March 27, 2018).

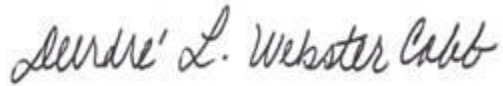
In this matter, S.J. claimed that D.C. discriminated against due to her race based on her email regarding the State holiday commemorating Juneteenth. Specifically, S.J. claimed that the email was "unnecessary and grossly inaccurate and put in such a manner which could be construed as negative and discriminatory to those of color" and she was adamant that D.C.'s email should have only asked who was working without the further clarification of Juneteenth. However, a review of the email on its face does not indicate any negative reference to one's race. Further, while S.J. may have disagreed with D.C.'s description of Juneteenth or found her description of it as unnecessary in the email when asking who would be working on the State holiday, 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). Further, concerning D.C.'s telling S.J. to "kiss my ass," a review of the common meaning of the phrase indicates that it is an expression of disdain or dismissal. Additionally, a review of the record indicates that D.C. used the expression within the common meaning and no reasonable person could have interpreted it as sexually harassing. While the expression may have been unprofessional, it was not an expression that was sexual in nature that touched the State Policy.

### **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 18<sup>TH</sup> DAY OF MAY, 2022



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