



STATE OF NEW JERSEY

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

In the Matter of A.K., Rowan
University

CSC Docket No. 2019-776

Discrimination Appeal

ISSUED: MAY 24, 2019

(SLK)

A.K., an Assistant Supervisor 2, Facilities with Rowan University, appeals the decision of the Chief of Staff, which found sufficient evidence to support a finding that he violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, A.D., an Indian American Assistant Vice President for Facilities, Planning and Operations, filed a complaint alleging that A.K. was hostile towards him and made derogatory and insulting comments to and about him. For example, A.D. alleged that A.K. told others that A.D. was engaged in illegal activity, told others not to work with him, and expressed a lack of respect for his nationality/national origin by mimicking his accent in a room full of other people during a departmental pizza lunch on May 2, 2018. The investigation revealed that sufficient and consistent first-hand witness testimony verified that A.K. mimicked A.D. based on his ethnicity and that A.K.'s response to the allegation, that he was "doing a turkey call," was inconsistent with the witnesses' statements. The determination indicates that A.K.'s behavior not only impacted A.D., but also created a hostile working environment for others as the witnesses were uncomfortable when they knew A.K.'s behavior was overheard by another employee of the same ethnicity. In fact, these witnesses felt the need to apologize to both men even though their behavior was not in question. As such, it was determined that A.K. violated the State Policy by creating a hostile work environment for other employees in A.K.'s division. The determination recommended that A.K. receive

diversity and unconscious bias training and be subject to disciplinary proceedings. However, it is noted that A.K. has not been served a Preliminary Notice of Disciplinary Action as the appointing authority is awaiting the outcome of this appeal.

On appeal, A.K. asserts that A.D. filed the complaint against him in retaliation for a complaint that A.K. previously filed against A.D. A.K. contends that his complaint was not properly investigated as all his witnesses were not interviewed and the second part of his complaint was not investigated. A.K. states that A.D. used his power and authority to intimidate employees and students by advising individuals that they should not associate with him or that it would be detrimental to their careers. A.K. claims that there were at least five people who told him this; yet his complaint did not lead to any action. A.K. states that those employees who associate with him have been left out of opportunities for advancement and have been flooded with excessive demands from A.D., which are either impossible to meet or discounted. A.K. presents that A.D. went to a new Assistant Vice President stating that the first order of business was to deal with A.K. and another employee, who is of Indian ethnicity. Thereafter, this other employee spoke with a Vice President of Human Resources and A.D. and was relocated into a larger office which had been reserved for A.K.

Concerning the May 2, 2018 incident, A.K. explains that it was the department's pizza day, which normally has six or seven people. However, on this date, there were 11 or 12 people, and A.K. alleges that two of those extra people were close with A.D. and assisted in generating this story against A.K. A.K. presents that these two people were sitting next to the television and there were multiple conversations taking place at the same time. He suspects that it was these two individuals who said he made inappropriate comments as they were not near him.

Regarding the investigation, A.K. complains that the Chief Human Resource Officer/Vice President (CHRO) who led the investigation did not conduct all the interviews and did not interview everyone on his list who attended the pizza lunch. A.K. complains that some of the interview questions were for irrelevant or about long-past events, that witnesses could not bring up issues prior to A.D.'s hiring, but the CHRO could, and the CHRO was very defensive during his interview when he answered questions clearly and accurately. A.K. felt that the CHRO had a personal interest in substantiating A.D.'s claim. As A.D. oversees allocating square footage for the move of the CHRO's department, A.K. wonders if this had any impact on the determination. Additionally, his union expressed concern about the CHRO's investigating the complaint and making a determination without even notifying A.K. that there was a complaint against him or questioning him. A.K. states that he was initially informed that another person was handling the complaint, but that the CHRO would be conducting most of the interviews. He is concerned that the

interviews that this other investigator conducted without the CHRO present were not considered in the determination. A.K. asserts that a number of people who attended the pizza lunch informed him, including the people who sat next to him, that they never heard any comments related to ethnicity and these individuals were not interviewed. A.K. denies the allegations and highlights that he has worked for the appointing authority for over 34 years, has always had high evaluations, and has good working relationships with individuals regardless of nationality, ethnicity, or race.

In response, the appointing authority, represented by Tracy Asper Wolak, Assistant General Counsel, explains that the Director, Talent Management (DTM) conducted the investigation for violations of the Disruptive Behavior Policy and the CHRO conducted the State Policy violation investigation. As several witnesses overlapped, many of the interviews were jointly conducted. After interviewing several witnesses, the DTM prepared a report which concluded that A.K. violated the Disruptive Employee Policy, which was sustained after he internally appealed. It is noted that this matter is not before the Civil Service Commission (Commission).

Concerning the State Policy violation, the investigation revealed five witnesses who attended the pizza lunch who confirmed that A.K. mimicked an Indian accent. The appointing authority presents that the witnesses' testimony was consistent and there was no evidence that their recollections were fabricated. Further, it highlights that there was both supervisory and non-supervisory staff who corroborated A.K.'s actions. As such, A.K.'s claim that the findings were based on only two individuals who are close to A.D. and "assisted in generating this story against him" is not supported by the testimonial evidence. Additionally, A.K.'s claims that A.D. filed this complaint in retaliation for A.K.'s prior complaint against him is not supported by the evidence as the witness testimony corroborated the allegations. Further, although A.K. spoke to a Senior Vice President for Facilities about his allegations against A.D., he never filed a formal complaint. Nevertheless, A.K.'s allegations led to a team building program and A.D. was instructed not to discourage employees from interacting with each other. Also, the appointing authority emphasizes that A.K.'s complaint has no bearing on the determination as to whether A.K. violated the State Policy. Finally, A.K.'s attacks against the CHRO are irresponsible and without support. The CHRO was not required to sit in on all interviews and she was able to review the record of the witnesses' statements when making her report. A.K.'s questioning of the CHRO's objectivity, without evidence, because he believes that her office could potentially receive better accommodations by substantiating A.D.'s allegations is unsubstantiated and is indicative of the concerns that have been raised against A.K.

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 national origin/nationality is prohibited. *N.J.A.C.* 4A:7-3.1(h) provides, in pertinent part, that retaliation against any employee who files a State Policy complaint is prohibited. *N.J.A.C.* 4A:7-3.2(i) provides that at the EEO's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. *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.

The Commission has conducted a review of the record in this matter and finds that A.K. violated the State Policy. Specifically, on May 2, 2018 during a departmental pizza lunch, A.K. mimicked A.D., who is of Indian ethnicity, by speaking with an Indian accent. It is noted that A.K.'s claim of "retaliation" is not considered retaliation under the State Policy as he did not file a State Policy complaint against A.D. Further, any complaints that A.K. has regarding his "complaint" against A.D., which was not a State Policy complaint, is outside the jurisdiction of the Commission. Regardless, contrary to A.K.'s accusations that A.D.'s complaint was only filed in retaliation for his prior "complaint" and that the allegations were only corroborated by two individuals who were close to A.D. who fabricated the story, the investigation revealed that A.D.'s actions were confirmed by five witnesses, both supervisory and non-supervisory staff. Moreover, even if A.D. did engage in inappropriate behavior concerning A.K., this does not justify A.K.'s actions in violation of the State Policy. Additionally, it is noted that A.D.'s response to the investigator as indicated in the determination letter that he was not mimicking A.D., but was "doing a turkey call," is not credible as he has not provided any context where such noises would be made during a departmental pizza lunch. Moreover, A.K.'s complaint that not all the witnesses he presented were interviewed is without merit, as even if there were individuals who attended the pizza lunch who did not hear A.K. mimic A.D., this would not negate the testimony of the five witnesses who heard A.K. engage in the conduct in question. Additionally, the fact that the CHRO did not personally interview every witness does not mean that the investigation was flawed as she had access to the notes from the other investigator when preparing her report. Finally, A.K.'s questioning the CHRO's objectivity, without evidence, is inappropriate.

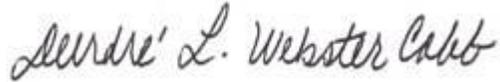
Thus, the Commission finds that the investigation was thorough and impartial and A.K. has failed to meet his burden of proof.

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 22nd DAY OF MAY, 2019



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