



STATE OF NEW JERSEY

DECISION OF THE CIVIL SERVICE COMMISSION

Enforcement

In the Matter of Betsy Ruggiero, Camden County

CSC Docket Nos. 2021-323

ISSUED: OCTOBER 23, 2020 (SLK)

Betsy Ruggiero, represented by James Katz, Esq., requests enforcement of In the Matter of Betsy Ruggiero (CSC, decided September 2, 2020).

By way of background, Ruggiero was issued a Final Notice of Disciplinary Action removing her for using a derogatory racial term while making a personal call on her cell phone while at work. Ruggiero appealed, and the matter was transmitted to the Office of Administrative Law as a contested case. The Administrative Law Judge (ALJ) found that Ruggiero made the offensive remark in question and recommended that Ruggiero’s removal be modified to a six-month suspension. In In the Matter of Betsy Ruggiero, supra, the Civil Service Commission (Commission), accepted the ALJ’s Findings of Fact and Conclusion, but did not adopt the recommendation to modify the removal to a six-month suspension. Rather, the Commission imposed a 30 working day suspension. As such, the Commission ordered mitigated back pay from 30 working days after Ruggiero’s initial separation to the date to the date of her actual reinstatement.

In her request, Ruggiero presents that her counsel repeatedly attempted to discuss her back pay and mitigation with Camden County’s (County) counsel; however, its counsel refused to discuss it. Finally, on September 24, 2020, the County indicated it had no intention to reinstate Ruggiero or resolve any back pay issues until after all of its appeals were exhausted. She requests that the County be held in “contempt,” and be ordered to immediately reinstate her, work in good faith to resolve all back pay issues and make prompt payment to her.

In reply, the County, represented by Ilene M. Lampitt, Assistant County Counsel, acknowledges that in its September 24, 2020 letter, it indicated that it would not bring Ruggiero back due to her use of racist and inappropriate language. The County states that she violated the County's zero-tolerance policy towards racism, bigotry and hatred and it has a responsibility to its employees to create a workplace that is free from harassment and discrimination. It presents that it understands that the Commission's order required Ruggiero to be reinstated. However, it argues that the Commission failed to appreciate the gravity of the word used and instead gave a "slap on the wrist" to an employee that clearly had no remorse for her action. The County highlights that even the ALJ recommended that she receive a six-month suspension. It asserts that the Commission's decision protects systematic racism within our State institutions. Therefore, it indicates that it will not be bringing back Ruggiero until it has exhausted all appeal rights. The County argues that to force it to bring her back and require back pay is premature. It reiterates its position that the County is entitled to exhaust its appeal rights and, if it is determined that Ruggiero is entitled to back pay, then it will work to mitigate that issue. However, the County stands firm that Ruggiero violated County policy and, due to the egregiousness of her action, she should be removed from public office. Therefore, it requests that the Commission reverse its order and find that Ruggiero should be removed from public office. In the alternative, the County requests that the Commission issue a Final Order so that it can appeal to the Appellate Division.

In response, Ruggiero states that the County is essentially asking for reconsideration. However, she asserts that it has not met the standard as it has not presented new evidence that would change the outcome or that clear material error has occurred. Ruggiero presents that contrary to the County's position, the Commission did not ignore the seriousness of the issue. Instead, it took a measured approach recognizing the word in question was not used as a racial epithet or directed at anybody in the workplace, but rather occurred during a private conversation by an employee, who for the first time, used racially offensive language in the workplace. The Commission's decision was based on the facts of the case, measuring the seriousness of the language used with the severity of the misconduct, the employee's disciplinary history, and the uncontested mitigating facts.

Additionally, Ruggiero asserts that the County has not met the standard for the Commission to grant a stay as it cannot demonstrate a substantial likelihood of success on the merits or irreparable harm. The Appellate Division views a Final Agency decision with deference and will only overturn the disciplinary action if the decision is shocking to one's sense of fairness. She presents that even the County's own Hearing Officer did not think removal was appropriate. Further, there is a long line of Civil Service cases where penalties far less than the 30-day suspension issued in this case were issued in response to far more egregious language. As such, the Commission's decision is not shocking to one's sense of fairness. Moreover, the County will not suffer irreparable harm if Ruggiero is reinstated, as her supervisor

and the coworkers who reported the statement, all indicated that they could work with her in the future, that she had not used such language in the past, and she has done nothing to interfere with their work. Finally, any issue regarding overpayment of back pay does not constitute irreparable harm and can be easily resolved. While the County has a right to appeal, it does not have the right while the appeal is pending to not promptly reinstate her and resolve the back pay issues.

In further reply, the County argues that the Commission's decision to reduce Ruggiero's penalty to a 30 working day suspension is inconsistent with State and federal law and that the penalty of removal should be upheld. It cites cases that indicate that the use of the word in question can create a hostile work environment, including even a one-time use. The County reiterates its zero-tolerance policy toward racism and how the utterance of the word in questions violates its policy. It highlights its diverse workforce and the use of the word in question should not be tolerated in the workplace. The County argues that the Commission made an error in this matter. It presents that the ALJ took 173 days to issue a recommendation, while the Commission, which received over 200 pages of exceptions and case law, only took eight days to decide. While the County acknowledges that the Commission is the leading authority on human resource matters in the State, it states that the penalty issued to Ruggiero is disproportionate to the offense and in stark contrast to State and federal law. It states that Ruggiero used the racial epithet in the office on multiple occasions. Further, the County argues that a coworker testified that Ruggiero's use of the word in question made her feel nervous, the word was derogatory, and she was offended. It contends that in looking at the totality of the circumstances, it took the appropriate steps to remove her. The County argues that it will suffer irreparable harm if it is forced to reinstate Ruggiero as she has no remorse for her actions and admitted to using the discriminatory language. Further, it argues that the Commission's decision is essentially stating that racism is tolerated. The County asserts that it should not be forced to bring back an employee that continues to promote systemic racism through racially offensive language.

CONCLUSION

In *In the Matter of Ruggiero, supra*, the Commission modified Ruggiero's removal to a 30 working day suspension. The County is stating that it will not comply with the Commission's decision because it disagrees with the Commission's decision. It is essentially asking for reconsideration. However, the County does not meet the criteria for reconsideration as it has not presented new information that was not initially presented that would change the outcome of the original decision nor has it presented that a clear material error has occurred. *See N.J.A.C. 4A:2-1.6 (b)*. Instead, it is essentially rehashing its exceptions. Further, contrary to the County's assertion, there is no State or federal case or law that mandates a certain penalty based on the particular facts and circumstances in this matter. While every party who appeals to the Appellate Division believes that they have a clear likelihood of success on the merits and the County may disagree with the Commission's decision, the Commission

has explained in *Ruggiero, supra*, why it determined that Ruggiero's removal should be modified to a 30 working day suspension and has already rejected the County's arguments. *See In the Matter of Christopher D'Amico* (CSC, decided August 14, 2020).

In the alternative, the County is asking that this matter be considered a final determination so that it can appeal to the Appellate Division. However, as indicated in *Ruggiero, supra*, in light of the Appellate Division's decision, *Dolores Phillips v. Department of Corrections*, unpublished, Docket No. A-5581-01T2F (App. Div. Feb. 26, 2003), the Commission's decision will not become final until any outstanding issues concerning back pay are finally resolved. Therefore, as the back pay issue has not been resolved, the Commission cannot issue a "final decision" in this matter. Moreover, in reviewing the criteria for a stay under *N.J.A.C.* 4A:2-1.2, it is Ruggiero who is suffering immediate or irreparable harm as the Commission has already modified her removal to a 30 day working suspension and ordered that she be immediately reinstated and awarded back pay, but this has not been done. Further, while the County argues that it is premature to determine the back pay issue, there is no evidence in the record that indicates that if the County were ultimately to win in the Appellate Division that Ruggiero will not repay any erroneously conferred back pay. Finally, it is in the public's best interest that County follow the Commission's order and the Commission has no reason to stay its decision.

ORDER

Therefore, it is ordered that this request for enforcement is granted and Camden County shall immediately reinstate Betsy Ruggiero. Any delay in her reinstatement shall subject the County to fines up to \$10,000. *See N.J.A.C.* 4A:10-2.1(a)2.

Further, the County shall immediately engage with Ruggiero in a good faith effort to resolve the back pay issues and shall make payment of back pay upon such resolution. Moreover, should the County not comply the Commission may also award interest on the back pay award in accordance with *N.J.A.C.* 4A:2-2.11 if it determines that the County has unreasonably delayed compliance during an enforcement action. The parties must inform the Commission, in writing, if there is any dispute as to back pay within 60 days of issuance of this decision. In the absence of such notice, the Commission will assume that all outstanding issues have been amicably resolved by the parties and this decision shall become a final administrative determination pursuant to R. 2:2-3(a)(2). After such time, any further review of this matter shall be pursued in the Superior Court of New Jersey, Appellate Division.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21ST DAY OF OCTOBER 2020

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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: Betsy Ruggiero
James Katz, Esq.
Diane Molle
Ilene M. Lampitt, Assistant County Counsel
Records Center