



STATE OF NEW JERSEY

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

In the Matter of Betsy Ruggiero,
Camden County

CSC Docket No. 2021-1118

Request for Stay

ISSUED: MARCH 5, 2021 (SLK)

Camden County, represented by William M. Tambussi, Esq., requests a stay of the Civil Service Commission (Commission) decisions in *In the Matter of Betsy Ruggiero* (CSC, decided September 2, 2020), *In the Matter of Betsy Ruggiero* (CSC, decided October 21, 2020) and *In the Matter of Betsy Ruggiero* (CSC, decided January 20, 2021) pending its appeal to the Appellate Division.

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 found that Ruggiero made the offensive remark in question and recommended that Ruggiero’s removal be modified to a six-month suspension. In the Commission’s September 2, 2020 decision, it 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 of her actual reinstatement.

Thereafter, Ruggiero requested enforcement of the Commission’s September 2, 2020 decision as the County indicated that it would not reinstate Ruggiero or pay her back pay until it exhausted its appeal rights. Consequently, in the Commission’s October 21, 2020 enforcement decision, it reiterated that the County must immediately reinstate Ruggiero and any delay in her reinstatement would subject the County to fines up to \$10,000. It also ordered the County to immediately engage

in a good faith effort to resolve back pay and make payment of back pay upon such resolution. Moreover, the Commission ordered that it may award interest on the back pay award should it determine that the County unreasonably delayed compliance.

Subsequently, Ruggiero again requested enforcement of the Commission's prior decisions as it presented that the County still refused to reinstate her and discuss her back pay. The County argued that enforcement was inappropriate and requested a hearing to rebut any claims of noncompliance. In its January 20, 2021 decision, the Commission again granted the request for enforcement. Additionally, it ordered that Camden County pay Ruggiero back pay plus interest, front pay¹, and again warned the County that it could be assessed a fine in the amount of \$10,000 if it failed to comply with the order.

In its current request, the County presents that it has appealed the Commission's prior decisions to the Appellate Division, and it requests that the Commission stay these decisions until the Appellate Division renders its decision. The County argues that it is likely to prevail on the merits in the Appellate Division by making the same or similar arguments that it has made in the prior decisions. In this regard, the County presents *In re Hendrickson*, 235 N.J. 145 (2018), where Hendrickson, a Fire Safety Inspector, was given a six-month suspension after the Administrative Law Judge found that he uttered a gender slur and that even if he was just "muttering" to himself in a loud voice about his female supervisor, "[w]ithout an appropriate penalty, such an insult would have a corrosive effect on morale in the workforce." It indicates that Ruggiero used a disrespectful and extremely offensive racial slur in the workplace, in the presence of coworkers, in a space that is open to members of the general public. Therefore, the County argues that the Commission's penalty is inappropriate and will result in manifest injustice. It contends that it will suffer immediate and irreparable harm if its stay request is not granted as the Commission's decision sends a message to its employees, especially its employees of color, and the public at large, that the use of racial slurs is acceptable in government buildings. The County argues that the Commission's decision sends a wrong message as this nation is currently grappling with the issue of systemic and institutional racism. It believes that the Commission's decision places Ruggiero's interest over the public's legitimate interest in a discrimination-free workplace. It presents that employees testified that they were offended by Ruggiero's use of a racial slur and that she had used this language on multiple occasions in the office. The County asserts that the Commission failed to adequately consider witness testimony in this case and the rights of Ruggiero's coworkers. Finally, it alleges that Ruggiero's damages are not irreparable if the Appellate Division upholds the Commission's decisions as her alleged harm can be cured by money damages in the form of back pay and benefits. Additionally, as she is currently employed, she will not be substantially injured if a stay is granted.

¹ The parties had also submitted arguments regarding back pay and front pay which enabled the Commission to determine those awards.

In response, Ruggiero, represented by James Katz, Esq., asserts that the appellant is regurgitating its prior arguments that have already been rejected by the Commission. She asserts that this case does not involve a claim of discrimination, racial harassment or a hostile work environment nor does it concern an offensive racial term used by a supervisor to demean or degrade a subordinate employee. Rather, Ruggiero was disciplined for use on a single occasion, an inappropriate term during a private telephone conversation, unrelated to anyone or anything in the office, which was overheard by two employees. The ALJ concluded that the term was not used as a racial epithet, threat or derogatory statement aimed at coworkers and the County never excepted to this finding. The County has not demonstrated that the Commission's decisions are inconsistent with the New Jersey Law Against Discrimination or the State's commitment to eradicate discrimination. Instead, the Commission, in its September 2, 2020 decision, reiterated that the use of offensive language in the workplace is unacceptable, stressed that it is not minimizing the misconduct, and emphasized that its decision should not "be interpreted to mean that the usage of racially inappropriate language in the workplace would not warrant a penalty far more severe than administered in this matter." However, the Commission opined that in assessing the penalty, it must consider mitigating factors, including that the offensive term was used on a private telephone call overheard by others, not directed at anyone in the workplace, her 15 years of a virtually unblemished work record, and this was the first time she has been accused of using racially inappropriate language at work.

Ruggiero presents that the Appellant Division will not overturn the Commission's decision unless it was arbitrary, capricious, or unreasonable or that it lacked support in the evidence. Further, a reviewing court has no power to independently substitute its judgment for that of the administrative agency and must consider "whether such punishment is so disproportionate to the offense, in light of all the circumstances, as to be shocking one's sense of fairness. *See In re Hermann*, 192 N.J. 1928 (2007). Ruggiero argues that the Commission's decision does not shock the conscience. She states that the County does not offer any cases or identify any facts that demonstrate that based on the totality of the circumstances, that the Commission's penalty shocks one's sense of fairness and/or is inconsistent with prior Commission case law or appellate review. Ruggiero highlights that even the County's own Hearing Officer did not determine that removal was warranted and states that there is a long line of Commission decisions with penalties far less than a 30 day suspension in response to more egregious derogatory behavior. She states that the Commission's decision represents a measured approach weighing all the factors.

Ruggiero asserts that the County has not pointed to any evidentiary support that if she were to return to employment that employee morale or relations would be disrupted. Rather, during the hearing, Ruggiero's supervisor and the two employees who heard the reported statement, agreed that there was no reason that they could not work with her in the future or that she had done anything to interfere with their

ability to work in the Purchasing Department. She presents that this matter has caused her substantial harm as she has been out of work for two years and she is now employed earning half her prior pay without benefits, health insurance or pension, which is causing extraordinary financial and emotional hardship for her and her family. Finally, Ruggiero indicates that the public interest is best served by the Commission's orders being implemented, respected, enforced and adhered to in a timely fashion.

CONCLUSION

N.J.A.C. 4A:2-1.2(b) provides that a request for a stay or interim relief shall be in writing, signed by the petitioner or his or her representative and must include supporting information for the request.

Pursuant to *N.J.A.C.* 4A:2-1.2(c), the standards to be considered regarding a petition for a stay are:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Absence of substantial injury to other parties if the request is granted;
and
4. The public interest.

N.J.A.C. 4A:2-1.2(f) provides that following a final administrative decision by the Commission, and upon the filing of an appeal from that decision to the Appellate Division of Superior Court, a party to the appeal may petition the Commission for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above. *See N.J. Court Rules 2:9-7.*

N.J. Court Rules 2:9-7 provide that on or after the filing with the Appellate Division of a notice of appeal or of a notice of motion for leave to appeal from a state administrative agency or officer, a motion for interim relief or for a stay of the decision, action or rule under review shall be made in the first instance to the agency whose order is appealed from and, if denied, to the Appellate Division.

Initially, the Commission notes that the County was not required to file this stay request before it could proceed with its appeal to the Appellate Division. Although the County did not specifically request a stay in the first enforcement matter, a review of the October 21, 2020 decision indicates that the Commission already reviewed the County's arguments under the standards for a stay under *N.J.A.C.* 4A:2-1.2(c) and found that it had not met the standards. Further, in its January 20, 2021 decision, the Commission again upheld its rejection of the County's contentions.

Regardless, the Commission, for the fourth and final time, rejects the County's arguments as the information provided in support of the instant petition does not demonstrate a clear likelihood of success on the merits. The County presents *Hendrickson, supra*, which it contends supports its position; however, the Commission disagrees. In *Hendrickson*, the Administrative Law Judge determined that Hendrickson used a derogatory epithet directed toward a specific employee. The Administrative Law Judge found that the principles of progressive discipline applied and recommended that he receive a six-month suspension.² Although the Appellate Division vacated the six-month suspension and upheld Hendrickson's removal, the Supreme Court reinstated the six-month suspension as it found that the original decision modifying the penalty was not shocking to one's conscience. In other words, *Hendrickson* stands for the proposition that even when an employee directs an overheard derogatory epithet towards a specific employee, the principles of progressive discipline may still apply and an appropriate penalty short of removal may be imposed.

In this matter, a review of the initial decision indicates that the Administrative Law Judge found that the word in question was not being used in the context of an epithet nor was it used as a derogatory statement against a coworker or any other individual in Ruggiero's place of business. The Administrative Law Judge noted that the word should not be used in a place of business and was said on at least one occasion. Further, although there was testimony that Ruggiero previously used such language, she had never been disciplined for the alleged original use of the word. Therefore, consistent with *Hendrickson, supra*, the Commission applied the principles of progressive discipline. Further, as the context of the use of the word as determined by the Administrative Law Judge was significantly less severe than Hendrickson's comment, and given the other mitigating factors presented previously, the Commission found that a 30 working day suspension was appropriate. While the County clearly disagrees with the Commission's assessment, based on the context, it is unlikely that the Appellate Division will determine that the Commission's decision to modify the penalty is "shocking to one's conscience."

Concerning the County's argument that it will suffer immediate and irreparable harm if its stay request is not granted, the Commission disagrees that its decision sends a message that racial slurs are acceptable in government buildings. On the contrary, the Commission's penalty sends a strong message indicating that if an employee uses offensive racial language, even if it is not used as an epithet and not directed towards any employee or other person at the place of business, such language is not acceptable and is subject to major discipline. Further, it is Ruggiero who is suffering harm and substantial injury as the Commission 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 complied with by the County.

² As the Commission did not have a quorum at that time, the Administrative Law Judge's initial decision was deemed adopted as its final decision.

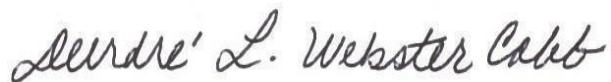
Additionally, it is clearly in the public's interest that that the Commission's decisions be strictly complied with.

ORDER

Therefore, it is ordered that this request be denied. The Commission further orders that all of its previous orders be immediately complied with.

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 3RD DAY OF MARCH, 2021



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