

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. EH17WB-64506

Andrea Staton, )  
 )  
 Complainant, )  
 ) Administrative Action  
 v. )  
 ) **FINDING OF PROBABLE CAUSE**  
 Aryzta Bakery, )  
 )  
 Respondent. )

This is an employment discrimination matter. On April 23, 2014, Andrea Staton (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, Aryzta Bakery (Respondent), discriminated against her based on national origin and race, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. The DCR investigation found as follows.

**Summary of Investigation**

Respondent is a wholesale bakery with a facility located in Swedesboro, New Jersey. Complainant was hired as a Scoring Operator on March 12, 2012. In this position, Complainant was responsible for forming and slicing products to specification, aligning product entering the oven, monitoring product quality, and maintaining the sanitary conditions of the product areas. Employees holding this position were often rotated into other production areas, depending upon the needs of the bakery.

Complainant, who is Black, alleged that Foreman Raquel Ramirez discriminated against her by treating her less favorably than Hispanic employees. Complainant alleged that she was refused overtime, required to work in the freezer area, yelled at in a demeaning manner, and assigned to perform undesirable duties such as collecting trash and cleaning under the ovens. Complainant alleged that Ramirez did not subject Hispanic employees to this treatment. Respondent denied that Complainant was treated differently due to her national origin or race.

DCR's investigation found that on September 24, 2013, Complainant reported discriminatory treatment to Senior Human Resources Manager Janelle Reid-Bailey. Specifically, Complainant reported that Ramirez unfairly rotated Black employees into less desirable positions and sent them home early when the department was overstaffed. Respondent investigated the matter and found Complainant's allegations to be unsubstantiated, but verbally reminded Ramirez

of the policy against harassment and discrimination. On October 13, 2013, Reid-Bailey discussed the results of the investigation with Complainant, and Complainant told Reid-Bailey that conditions had improved with Ramirez since she filed her internal complaint.

Complainant told DCR that the majority of her co-workers were Hispanic, either from Mexico or Guatemala. She alleged that while conditions may have improved during the course of the internal investigation conducted by Respondent, following the completion of that investigation Ramirez continued to require her and other Black employees to collect trash and clean underneath the ovens on a daily basis, while exempting Hispanic employees from these duties.

With respect to Complainant's allegations that she was denied overtime, Respondent alleged that Complainant was offered overtime on a number of occasions, and was scheduled for more, but called out of work. During a Fact-Finding conference with DCR, General Manager Tom Bent referenced Complainant's time card reports, which indicated she worked a total of 23.60 hours of overtime in the six months prior to her filing her complaint with DCR. Complainant admitted to being offered overtime and also agreed that she had failed to work some of the overtime hours for which she had been scheduled.

With respect to Complainant's allegations that she was required to work in the freezer area, Respondent told DCR that Complainant, and others, were occasionally assigned to work in the freezer area if the production department needed additional support. During DCR's Fact-Finding Conference, Operations Manager Joseph Yankus stated that employees were assigned daily duties on a rotating schedule, and asserted that Complainant had not been assigned to work in this area any more frequently than others. Complainant admitted that she had only worked in the freezer area on one or two occasions.

Respondent also told DCR that Complainant was never given trash duty, and was only assigned to clean waste in the bakery feeds room from March 9-12, 2014, due to a co-worker's vacation. In a witness interview following the conference, Complainant maintained that contrary to Respondent's assertions, she was assigned trash duty and oven cleaning duty on a daily basis.

DCR interviewed four of Respondent's Black employees. All of them expressed that Ramirez treated Hispanic employees more favorably than Black or white employees. All four also stated that while Hispanic employees were occasionally assigned some of the less desirable duties, they were not assigned as often as non-Hispanic employees. None of the individuals interviewed felt that Ramirez spoke to Black employees more harshly than Hispanic employees.

DCR also interviewed five of Respondent's Hispanic employees. All of them stated that Ramirez assigned all employees the same duties, regardless of national origin or race.

## Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit a complainant’s allegations of the verified complainant.” N.J.A.C. 13:4-10.2. For purposes of that determination, “probable cause” is defined as a “reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe” that the LAD was violated. Ibid. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits, N.J.A.C.13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division of the Supreme Court of New Jersey. N.J.A.C.13:4-10(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director 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., 498 U.S. 1073. 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.

The LAD makes it unlawful for an employer to discriminate in the “terms, conditions, or privileges of employment” based on national origin and/or race. N.J.S.A.10:5-12(a).

Here, Complainant alleged that she was subjected to differential treatment based on her national origin and race, and she offered a number of examples, including assignment of overtime, assignment of menial duties, assignment to work in the freezer section, and being yelled at in a demeaning manner. The investigation did not support Complainant’s allegations that she was not offered overtime or that she was required to work in the freezer area more frequently than her Hispanic co-workers. The evidence also did not support Complainant’s allegation that Black employees were spoken to in a more demeaning manner than Hispanic employees. However, the evidence did suggest that Black employees were assigned to perform undesirable tasks, such as collecting trash and cleaning the ovens, on a more regular basis than Hispanic employees. All four of the Black employees interviewed supported Complainant’s allegations that Ramirez assigned non-Hispanic employees these less desirable jobs more frequently than she assigned them to Hispanic employees. The evidence also demonstrated that Complainant complained to Human Resources that she was being treated unfavorably due to her race, and although an internal investigation was conducted, the differential treatment continued thereafter.

At this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56. Based on DCR’s investigation, the Director finds there is PROBABLE CAUSE to support Complainant’s allegations of discrimination based on national origin and race.

Date: April 8, 2019

A handwritten signature in blue ink that reads "Rachel Wainer Apter". The signature is fluid and cursive, with a long horizontal stroke at the end.

Rachel Wainer Apter, Director  
NJ DIVISION ON CIVIL RIGHTS

