



## STATE OF NEW JERSEY

In the Matter of Dominick Compano,  
Morris County, Department of Public  
Works

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2024-193  
OAL Docket No. CSV 09112-23

ISSUED: MAY 1, 2024

The appeal of Dominick Compano, Laborer 1, Morris County, Department of Public Works, of his release at the end of the working test period, effective June 30, 2023, was heard by Administrative Law Judge Patrice E. Hobbs (ALJ), who rendered her initial decision on April 3, 2024. No exceptions were filed.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission, at its meeting on May 1, 2024, accepted and adopted the ALJ's Findings of Fact and Conclusions and her recommendation to uphold the release at the end of the working test period.

ORDER

The Civil Service Commission finds that the action of the appointing authority in releasing the appellant at the end of the working test period was justified. The Commission therefore affirms that action and dismisses the appeal of Dominick Compano.

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 1<sup>ST</sup> DAY OF MAY, 2024

*Allison Chris Myers*

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Allison Chris Myers  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Dulce A. Sulit-Villamor  
Deputy Director  
Division of Appeals and Regulatory Affairs  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

Attachment



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. CSV 09112-23

AGENCY DKT. NO. 2024-193

**IN THE MATTER OF DOMINICK COMPANO,  
MORRIS COUNTY, DEPARTMENT OF  
PUBLIC WORKS.**

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**Dominick Compano, pro se**

**Stephen E. Trimboli, Esq., for respondent Morris County, Department of Public  
Works (Trimboli & Prusinowski, attorneys)**

Record Closed: April 1, 2024

Decided: April 3, 2024

**BEFORE PATRICE E. HOBBS, ALJ:**

**STATEMENT OF THE CASE**

From April 3, 2023, to June 30, 2023, Dominick Compano ("Compano"), was a laborer for the Morris County Department of Public Works (DPW). Compano was absent from work for more than sixteen days during his ninety-day working test period when he was only allowed to be excused for six days. Did DPW wrongfully terminate Compano? "No." The employee who appeals the release from employment during the working test period has the burden of proof to establish that the employer's action was done in bad faith. N.J.A.C. 4A:2-4.3(b).

### PROCEDURAL HISTORY

On April 3, 2023, Compano was hired by DPW. On June 22, 2023, Compano was given a written warning regarding his attendance. On June 30, 2023, DPW issued a termination letter to Compano releasing him from his employment for his excessive absences during the working test period.

On July 3, 2023, Compano submitted an appeal letter to the Civil Service Commission.

On September 13, 2023, the New Jersey Civil Service Commission transmitted this case to the Office of Administrative Law (OAL) for a hearing as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. On October 18, 2023, a prehearing conference was held. On November 1, 2023, DPW propounded discovery to Compano. On January 8, 2024, DPW requested the responses to discovery from Mr. Compano. Compano did not respond to the discovery propounded nor did he propound any discovery upon DPW. On February 5, 2024, DPW requested the dismissal of Compano's appeal for lack of discovery. On February 15, 2024, a status conference was held, and the parties were to exchange all discovery and evidence for the hearing before February 26, 2024. On April 1, 2024, I held the hearing and closed the record.

### FINDINGS OF FACT

Based upon the testimony the parties provided and my assessment of its credibility, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

Compano was hired as a Laborer 1 for the DPW on April 3, 2023 (R-2.) At the time he was hired he informed his supervisor, Robert Sickley ("Sickley") that he had a preplanned vacation in June 2023, and would be absent from work for six days. Sickley informed him that he would have to clear the vacation time off with the Superintendent, John Skewes ("Skewes"). Sickley did not anticipate any issues since Compano would

have accrued at least four days of leave time before his vacation because all employees earn one day of sick time and one of vacation time per month.

Time and attendance are recorded at the DPW through an individual's cell phone or a computer terminal at the office. During his first few days at work, Compano did not have a login code to record his attendance, therefore Sickley recorded it for him. Thereafter, Compano recorded his own time through his cell phone or the computer terminal at the office.

After the first month of employment, Compano took half a day off for sick time. (R-3, R-4.) His father became ill, and he had to take an additional three and one-half days off. By the end of May, Compano had taken off four days, more time than he had earned. (R-3, R-4.) When Sickley advised Compano that he may not be able to take vacation because he will not have accrued any leave time, Compano advised Sickley that he would take time off without pay. Sickley informed Compano that time off without pay during the first few months of employment was not allowed. (R-6.)

On June 8, 2023, two days before Compano's planned six-day vacation, Compano called out sick. (R-3, R-4.) On June 11, 2023, Compano left for vacation to Ecuador. On June 20, 2023, Compano was scheduled to return to work but did not show up. Compano stated that due to travel related issues beyond his control, he did not return from Ecuador until June 20, 2023. He stated he contacted the DPW and notified them that he would not be reporting for work on June 20, 2023. No documentary evidence exists to support this claim, so this is not a fact of this case. On June 21, 2023, Compano did not report to work. On June 22, 2023, two days after his scheduled return date, Sickley informed Compano that he would need a doctor's note for his absences on June 20 and June 21, 2023. The DPW never received a doctor's note. Compano did not provide the doctor's note for those absences during discovery and only did so on the day of the hearing. (P-1.) The doctor's note is dated July 11, 2023, and it excuses Compano from work on June 21, and June 22, 2023. However, Compano reported for work on June 22, 2023. Compano stated that he handed this doctor's note to Sickley in his office on July 11, 2023, after he punched in for work, but Compano's last day of work was June 30, 2023, so this is not a fact of the case.

On June 22, 2023, Skewes prepared and delivered to Compano a memorandum addressing his sick time, and absences from work, and noted that additional time off would result in disciplinary action. (R-5.) There are no progress reports for Compano. However, the absence of progress reports can be rebutted with evidence that the employee was otherwise aware of his performance during the working test period. There is no dispute regarding the number of days that Compano was absent from the job or that he needed to improve his attendance. Sickley informed Compano, and Compano admits, that his attendance on the job was not satisfactory and that it would need to improve. Skewes gave Compano, and Compano admits receiving, a formal memorandum regarding his poor attendance record.

On June 26, 2023, Compano took a half day as a sick day. (R-3, R-4.) On June 30, 2023, Compano took the day off as a sick day. (R-3, R-4.) He gave no explanation. On June 30, 2023, Compano was terminated before the completion of the working test period. (R-1.)

#### **CONCLUSIONS OF LAW**

Compano's employment with a public agency is governed by the Civil Service Act (The Act), N.J.S.A. 11A:1-1 et seq. and its implementing regulations, N.J.A.C. 4A:1-1.1 et seq. The Act details all the employees' rights and duties during employment. The Act was created as an inducement to attract qualified individuals to public service and is liberally construed toward the attainment of merit appointments and broad tenure protections. When an individual is hired for a civil service position, the individual enters a working test period which is designed to be a part of the examination process "to permit an appointing authority to determine whether an employee satisfactorily performs the duties of a title." N.J.S.A. 11A:4-15. During the working test period the employee must perform the duties of the title for which the employee was hired. This enables the employer to evaluate the employee's fitness through observed job performance under actual working conditions. Cipriano v. Department of Civil Service, 151 N.J. Super. 86, 89 (1977). For local service employment, such as for the DPW here, the length of the working test period is three months or ninety days. N.J.S.A. 11A:4-15 (a). Compano was

terminated on his eighty-eighth day. Accordingly, I **CONCLUDE** that Compano was terminated during the working test period.

The employer is required to provide a progress report on the employee "at such times during the working test period ... and a final progress report at the end of the entire working test period." N.J.S.A. 11A:4-15(b). The appointing authority must prepare a progress report at the end of two months and a final report at the conclusion of the working test period. N.J.A.C. 4A:4-5.3(a). There is no dispute that there are no progress reports for Compano. However, the DPW has established, and Compano does not dispute, that Compano was apprised both verbally and in writing that his absences at work were an issue and needed improvement.

At the end of the working test period, an employer may release an employee from his position for unsatisfactory performance during the working test period. N.J.S.A. 11A:4-15(c). The employee who appeals the release from employment during the working test period has the burden of proof to establish that the employer's action was done in bad faith. N.J.A.C. 4A:2-4.3(b). If bad faith is found, the employee shall be entitled to a new working test period. N.J.A.C. 4A:2-4.3(c). Therefore, the employer must have exercised good faith when it determined that the employee was not competent to satisfactorily perform the duties of the position. Briggs v. Department of Civil Service, 64 N.J. Super. 351, 356 (App. Div. 1960), citing Devine v. Plainfield, 31 N.J. Super. 300 (App. Div. 1954) and Lingrell v. Civil Service Commission, 131 N.J.L. 461, 462 (Sup. Ct. 1944).

Good faith has been generally defined as "honesty of purpose and integrity of conduct" regarding a given subject. Smith v. Whitman, 39 N.J. 397, 405 (1963). Thus, "bad faith" can be defined as something that has been done dishonestly, and an individual has acted with a state of mind of having ill will. Lustrelon Inc.v. Prutscher, 178 N.J. Super. 128, 144 (App. Div. 1981). The test of bad faith is therefore a subjective standard and must be determined by the facts in each case. Ibid.

Compano was absent for over fourteen days. While some of the days off were to care for his sick father, Compano had other days where he did not call Sickley to advise him that he would not be at work. Sickley advised Compano, and Compano does not

dispute, that his vacation was in jeopardy as he had taken off more days than he had earned. Given that premise, when he encountered travel delays in Ecuador that would cause him to be absent for an additional day, Compano's message to DPW fell short of a concerted effort to improve his attendance. Compano should have been more diligent in alerting Sickley of his plight. To make matters worse, Compano did not report to work on June 21, 2023, the second day after his scheduled return, and he did not call either Sickley or Skewes to advise them of his absence and the reason for his absence. On June 22, 2023, Skewes delivered a memorandum to Compano that advised him of his repeated absences, the need for improvement and that a failure to improve his attendance would result in disciplinary action. Despite this warning from Skewes and a lack of a doctor's note for the two additional days off after his vacation, Compano took yet an additional day and a half off for an unknown reason prior to his termination.

Based on the facts above, I **CONCLUDE** that Compano has failed to show by preponderance of the credible evidence that DPW acted in bad faith when they terminated him during the working test period.

### **ORDER**

Based upon the foregoing, it is **ORDERED** that Compano be **TERMINATED** from his position as Laborer 1 from DPW.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION**



**OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION,  
44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312, marked  
"Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the  
other parties.**

April 3, 2024  
DATE



PATRICE E. HOBBS, ALJ

Date Received at Agency:

April 3, 2024

Date Mailed to Parties:

April 3, 2024

Isr

**APPENDIX**

**WITNESSES**

**For Petitioner:**

Dominick Compano

**For Respondent:**

Robert Sickley, Supervisor, Morris County Department of Public Works

John Skewes, Superintendent, Morris County Department of Public Works

**EXHIBITS**

**For Petitioner:**

P-1 Medical Excuse Note, dated July 11, 2023

**For Respondent:**

R-1 Termination Letter, dated June 30, 2023

R-2 County of Morris Personnel Requisition

R-3 Payroll Records

R-4 Summary of Absences

R-5 Memorandum from John Skewes, dated June 22, 2023

R-6 Emails, dated June 22, 2023, through July 31, 2023

R-7 Exit Interview Form, dated July 5, 2023

R-8 Separation Information Memorandum, dated July 5, 2023

R-9 Morris County Leave Usage and Verification Chart