



STATE OF NEW JERSEY

In the Matter of N.B., Department of
Environmental Protection

CSC Docket No. 2024-1837

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

Discrimination Appeal

ISSUED: June 12, 2024 (SLK)

N.B., an Administrative Assistant with the Department of Environmental Protection, appeals the determination by the Director, Office of Equal Opportunity and Public Contract Assistance (EEO), which was unable to substantiate that she was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, N.B., who is African-American, alleged that K.A., a Caucasian Assistant Commissioner for the Watershed Land Management (WLM), discriminated against her based on race/color and religion. N.B.'s duties included making travel arrangements. N.B. previously performed these duties while working in the Assistant Commissioner's Office for the WLM. However, after a reorganization so that K.A. would not be supervising N.A., a Caucasian Government Representative 1, who was her husband and therefore her supervision of N.A. would be an ethical concern, N.B. moved out of the Assistant Commissioner's Office and worked directly for A.A., Director of the Division of Watershed Protection and Restoration, which is a division of WLM¹. On December 4, 2022, while attending Sunday church services, A.A. informed N.B. that K.A. called about a travel flight reservation issue. N.B. indicated that because K.A. and N.A. continued to call and text her about the flight reservation issue, she had to leave church services early to return home and address their travel concerns. However, despite N.B.'s best efforts,

¹ A.A.'s employment is not indicated in personnel records. In the appointing authority's response, it indicates that A.A. resigned, effective February 25, 2024.

N.A.'s assistant missed her flight that day. Thereafter, N.B. was able to ascertain that the issue was due to a scam that occurred, which was outside of her control. Further, on December 5, 2022, A.A. advised N.B. that K.A. no longer wanted her to oversee travel responsibilities and subsequently her travel job responsibilities were reassigned to D.A., a Hispanic/Latino and Caucasian Secretarial Assistant 3, Non-Stenographic, in K.A.'s office. N.B. also expressed ethical concerns regarding the need for her to work on N.A.'s travel arrangements when he is married to K.A.

The EEO found that the allegations did not implicate the State Policy because N.B. did not provide any evidence that there was a link between the reassignment of N.B.'s duties and her race/color as the mere assignment of job responsibilities from an African-American employee to a Caucasian employee is not on its face race-based discrimination. Further, the EEO indicated that the screenshots that N.B. submitted with her complaint demonstrate that K.A. expressed that the centralization of travel was not about complaints against N.B. Rather, it was about determining the appropriate location for travel management within a properly functioning Assistant Commissioner's Office. The EEO also noted that although N.B.'s handling of K.A.'s husband's and his assistant's traveling arrangements did not implicate the State Policy, it referred the matter of a potential conflict of interest to the appointing authority's Ethics Liaison. Regarding N.B.'s allegation of religious-based discrimination because she was contacted about the travel issue while in the middle of attending Sunday church services, which caused her to miss a Baptism, the investigation revealed that N.B. was contacted due to a time-sensitive travel-related issue requiring her assistance, and there was no evidence submitted that indicated that K.A. contacted N.B. to harass or discriminate against her because she was observing her religion at Sunday service. Therefore, the EEO found that the allegation did not implicate the State Policy, and it advised her to contact her supervisor in the event she needs a religious accommodation to indicate that she is not to be contacted on Sundays. Finally, referring to N.B.'s allegation that she was retaliated against because K.A. does not acknowledge her and provide common courtesy towards her, as N.B. had not previously filed a State Policy complaint, this is not an allegation of retaliation as defined under the State Policy.

On appeal, N.B. highlights that she had been tasked with travel responsibilities under three different Assistant Commissioners in the WLM for over seven years without a complaint. N.B.'s notes that prior to K.A. being appointed as an Assistant Commissioner, her husband N.A. worked in the WLM, and she did many travel arrangements for him. However, since K.A. was not allowed to supervise N.A. due to ethical concerns, even though there was a new organization structure, she continued to make N.A.'s group's travel arrangements. Further, when the subject travel issue arose where one of N.A.'s staff could not travel with him, N.A. contacted K.A. to reach her, which she believes is an ethical violation.

N.B. emphasizes that she is a deeply religious woman who serves as an Elder in her church, and her Sundays are devoted to her Lord. She contends that this is common knowledge in the WLM and K.A. and N.A. both knew this. While in church, she presents that she received many text messages from A.A. advising her that K.A. was upset about travel arrangements for her husband N.A. N.B. indicates that she responded to A.A. that she was in church, and she would attend to the issue after church services, including a Baptism that she was to perform. However, A.A. replied that K.A. and N.A. need the issue to be resolved immediately, and therefore she left church to go home to attempt to fix N.A.'s travel issue. Unfortunately, she was not able to resolve the issue on Sunday, and she had to wait until Monday to contact the appointing authorities' travel office, which led to one person being unable to travel on Sunday as they did not have an airplane ticket. On Monday, N.B. indicates that she spoke to the travel office which informed her that there had been a breach of the booking database that enabled an outside person to snatch the ticket and put it under another name. Thereafter, despite the issues being out of her control, K.A. removed her travel responsibilities and reassigned them to a Caucasian woman with no experience. N.B. argues that this act was retaliatory and racist. Moreover, N.B. states that although K.A. spoke to A.A. about the incident, she refused to speak to her about it, and K.A. is hostile towards her as she does not speak to or acknowledge her. N.B. asserts that this situation has embarrassed her and put her professional reputation in a poor light. She reiterates her contention that it was disrespectful for K.A. to insist that she leave church and attend to her husband's travel issue and her not caring if she violated ethics policy.

In support of her claims, N.B. submits texts to show that she worked on travel arrangements on Friday, December 2, 2022, which was her day off, she was contacted on Sunday, December 4, 2022, about the travel issues, she attempted to resolve the issues on Sunday, and N.A. was contacting K.A. on Sunday asking if she could get N.B. to work on travel issues on Sunday. Additionally, N.B. presents a text exchange between A.A. and K.A. where while K.A. acknowledges that the travel issues were not N.B.'s fault, she indicates that she wants the travel duties in her office. In the exchange, A.A. indicates how well N.B. handles travel arrangements and there should be a conversation with N.B. before such a change is made, and N.A. replies that although she is not complaining about N.B., she still wanted travel centralized in the Assistant Commissioner's Office. Further, N.B. presents December 14 and 15, 2022, emails between A.A. and K.A. which indicate that the travel issue occurred because the travel arrangements for N.A.'s assistant somehow got re-routed to an unauthorized site. Moreover, N.B. supplies January 2023 emails between A.A. and K.A. where A.A. reiterates that she disagrees with the change on how travel is to be handled as she has not had any complaints about N.B.'s work, although she acknowledges that it is K.A.'s call. In response, K.A. reiterates that the reason for the change is that she is more comfortable with travel responsibilities being in the Assistant Commissioner's Office. N.B. notes that K.A. provided N.A. with her personal cell phone number so that he could call her while she was at church, and she

never gave K.A. permission to share her cell phone number. N.B. attaches a vacancy announcement for a position in her title, Administrative Assistant 2, in another department. To remedy the toxic and hostile environment, she requests to be reassigned to this position.

In response, the appointing authority states that the ethical concerns that N.B. presents regarding handling N.A.'s group travel while her supervisor, A.A., reports to K.A., N.A.'s wife, was referred to the appointing authority's Ethics Liaison, and N.B. has not provided any evidence as to how this concern falls under the State Policy. Therefore, her appeal about this issue should be denied. Referring to N.B.'s claim of religious discrimination because she was contacted on Sunday while attending church services, while N.B. asserted that her attending church on Sunday was common knowledge, she did not provide any evidence that she had a religious accommodation that clearly established that she was unavailable during church services, and she did not provide any evidence that she had informed N.A. that she should not be contacted while attending church. Additionally, N.B. has not presented evidence that indicates that K.A. instructed A.A. to tell N.B. after she was informed that N.B. was at church that N.B. should leave church. Instead, there was a screenshot of a text message demonstrating that A.A. told K.A., "[W]hen she gets back from church [N.B.] will call me and we can resolve this issue." K.A. replies "I think the flight will have been missed by the time [N.B.] responds. We will try to get her on a flight tomorrow. I recognize that the process is problematic and that is absolutely not a [*sic*] N.B. [*sic*] fault. The transition has also been a challenge." The appointing authority asserts that this dialogue indicates that N.B. mischaracterized the immediacy of K.A.'s request as K.A. does not even suggest that N.B. leave church to address the issue. Instead, the exchange demonstrates that K.A. understood that flights will be missed and then K.A. goes on to discuss rebooking the flight and there are challenges regarding the WLM reorganization/transition. Further, K.A. specifically notes that N.B. is not to blame for the issue.

The appointing authority emphasizes that the evidence indicates that N.B. was only contacted on Sunday due to the time-sensitive nature of the travel issue which required her assistance and there is no evidence that she was contacted in attempt to discriminate or harass her based on her religious observance. On appeal, N.B. claims that she informed A.A. that she would attend to the matter after church and A.A. replied that K.A. indicated that the matter needed to be addressed now. However, the appointing authority states that N.B. did not make this claim when she submitted her complaint, and if this was so, it questions why A.A. was not named in the complaint. Regardless, it reiterates that the text exchanges do not indicate that N.B. was instructed to leave church to address the travel issue. As no evidence has been presented that indicates that anyone, either directly or indirectly, instructed N.B. to leave church early to address the travel issues, the appointing authority argues that the appeal of its decision to not open a formal investigation regarding this issue should be denied.

Regarding the reassignment of N.B.'s travel duties to D.L., who is Caucasian, the appointing authority states that there has been no evidence presented that this decision was based on N.B.'s race/color or any other protected category. Rather, the evidence indicates that K.A. expressed that she is uncomfortable with the travel duties not being in her office, as she wanted the responsibility to be centralized, and the decision was not about any complaints regarding N.B.'s work. In fact, the appointing authority notes that before the WLM was reorganized, N.B. handled travel responsibilities while working in the Assistant Commissioner's Office. As N.B. has not presented any evidence that the decision to return travel responsibilities to the WLM Assistant Commissioner's Office was not based on legitimate business reasons, this allegation should be denied. Moreover, since N.B. had not filed a prior State Policy complaint, her allegation of retaliation is not retaliation as defined under the State Policy and should be denied. Finally, concerning N.B.'s request to be laterally reassigned to an Administrative Assistant 2 position in a different program, this request has been forward to human resources. It also notes that the EEO has forwarded to human resources N.B.'s concern that K.A. shared N.B.'s personal phone number with N.B.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) provides, in pertinent part, the State is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon race/color and religion will not be tolerated.

N.J.A.C. 4A:7-3.1(h) provides, in pertinent part, that no employee bringing a complaint under the State Policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

N.J.A.C. 4A:7-3.2(m)4 provides that the burden of proof shall be on the appellant.

Initially, it is noted that N.B.'s ethics concerns and her request for a lateral reassignment are not issues that implicate the State Policy, and it was appropriate for the EEO to refer these issues to other departments.

In this matter, N.B. alleges that because she is deeply religious and was contacted on Sunday while attending church services regarding a travel-related issue, which lead her to leave church early to attend to the issues, she was discriminated against based on religion. Further, she claims that since she is African-American, and her travel-related duties were reassigned to a Caucasian, she was discriminated against based on race/color. Finally, N.B. asserts that K.A. retaliated against her by acting hostile towards her after the subject incident.

Regarding the religious discrimination allegation, the record indicates that N.B. did not ask for any reasonable accommodation or otherwise inform her superiors in advance of the subject incident that she should not be contacted on Sunday. Further, there is nothing in the record that indicates that N.B.'s superiors contacted her on Sunday to harass or discriminate against her due to her religious observance. Rather, the record indicates that she was contacted on Sunday to help resolve a time-sensitive travel issue. Moreover, there is nothing in the record, other than N.B.'s unsupported statement, that indicates that any of her superiors instructed her to leave church services early once they learned that N.B. was attending church when contacted. To the contrary, N.B. provided a text messages exchange between A.A. and K.A. which indicates that it was understood that N.B. was not immediately available, "I think the flight will have been missed by the time [N.B.] responds. We will try to get her on a flight tomorrow."

Similarly, concerning the reassignment of N.B.'s travel duties, in the aforementioned text message exchange, K.A. states to A.A., "I recognize that the process is problematic and that is absolutely not a [sic] [N.B.'s] [sic] fault. The transition has also been a challenge. All that said, I'm uncomfortable having travel in a program and want it in my office. I'm troubled that you don't know about the Amtrak mishap [sic] I [sic] didn't even more concerned about whether or not those tickets were able to be canceled without charge. I will be moving travel under [K]. I'm sure there are many things that [N.B.] can work in in your shop." As such, this email exchange, along with other texts and emails, indicate that K.A. made the decision to reassign travel duties to her office based on her desire to have travel in a centralized office, and not based on any concerns about N.B.'s performance and race/color. It is noted that prior to the WLM reorganization, travel had been in the Assistant Commissioner's Office. Further, the reassignment of duties from an African-American employee to a Caucasian employee is not evidence of racial discrimination without other confirming evidence. Additionally, the fact that A.A. disagreed with the decision, without more, does not signify that race/color factored into K.A.'s decision.

Moreover, referring to N.B.'s claim that K.A. "retaliated" against her by allegedly being hostile toward her after the subject incident is not an allegation that implicates the State Policy as, under the State Policy, retaliation is only adverse behavior due to filing a prior State Policy complaint or other involvement in a prior State Policy complaint, which was not the case here. In other words, N.B. alleged behavior, being contacted on Sunday, having her duties reassigned, and general treatment by K.A., which she did not agree with. However, disagreements between co-workers cannot sustain a violation of the State Policy. *See In the Matter of Aundrea Mason* (MSB, decided June 8, 2005) and *In the Matter of Bobbie Hodges* (MSB, decided February 26, 2003). Moreover, N.B. has not presented any witness statement, document, or any other confirming evidence that indicates that any action was taken by K.A. or anyone else due to N.B.'s religion and/or race/color. Mere


speculation, without evidence, is insufficient to support a State Policy violation. *See In the Matter of T.J.* (CSC, decided December 7, 2016). Accordingly, N.B. has not met 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 12TH DAY OF JUNE, 2024



Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Nicholas F. Angiulo
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: N.B.
Rohini C. Gandhi, Esq.
Division of EEO/AA
Records Center