

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD  
OF THE STATE OF DELAWARE**

MICHELE CARTY, )  
 )  
 Employee/Grievant, )  
 )  
 v. )  
 )  
 JUSTICE OF THE PEACE COURT, )  
 )  
 Employer/Respondent. )

**DOCKET No. 10-08-479**  
  
**PUBLIC**  
**DECISION AND ORDER**

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on March 30, 2011 at the Delaware Commission of Veterans Affairs, 802 Silver Lake Boulevard, Suite 101, Dover, DE 19904.

**BEFORE** Martha K. Austin, Chair, John F. Schmutz, Paul R. Houck, and Victoria D. Cairns, a quorum of the Board under 29 *Del. C.* §5908(a).

**APPEARANCES**

W. Michael Tupman  
Deputy Attorney General  
Legal Counsel to the Board

Chandra J. Williams, Esquire  
on behalf of Michele Carty

Kevin R. Slattery  
Deputy Attorney General  
on behalf of the Justice of  
the Peace Court

### **BRIEF SUMMARY OF THE EVIDENCE**

The Justice of the Peace Court (JP Court) offered and the Board admitted into evidence eleven documents marked for identification as Exhibits A-K.

The JP Court called five witnesses: Kristine S. Smalley, Judicial Case Processor III; Vanessa J. Marlow, Judicial Operations Manager; Deborah Manelski, Human Resource Specialist; Marianne Kennedy, Court Administrator; and Jody Huber, Staff Attorney.

The employee/grievant, Michele Carty (Carty), offered and the Board admitted into evidence six documents marked for identification as Exhibits 1-6. Carty testified on her own behalf but did not call any other witnesses.

### **FINDINGS OF FACT**

The Board incorporates by reference the Findings of Fact in its Non-Public Decision and Order.

### **CONCLUSIONS OF LAW**

The Board incorporates by reference the Conclusions of Law in its Non-Public Decision and Order.

**ORDER**

It is this 11th of April, 2011, by a vote of 3-1, the Decision and Order of the Board to grant Carty's appeal. The JP Court shall reinstate Carty to the same or comparable position as of the date of issuance of this Decision and Order without back pay and benefits.

  
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JOHN F. SCHMUTZ, MERB Member

  
\_\_\_\_\_  
PAUL R. HOUCK, MERB Member

  
\_\_\_\_\_  
VICTORIA D. CAIRNS, MERB Member

I respectfully dissent.

  
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MARTHA K. AUSTIN, MERB Chairwoman

## APPEAL RIGHTS

29 *Del. C.* §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 *Del. C.* §10142 provides:

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing date: **April 11, 2011**

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel

Human Resource Management.