

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

ERICA LAMPLEY,)	
)	
Employee/Grievant,)	DOCKET No. 19-01-711
v.)	
)	DECISION AND ORDER
DEPARTMENT OF TRANSPORTATION/)	
DIVISION OF MOTOR VEHICLES,)	
)	
Employer/Respondent.)	

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 May 16, 2019 at the Public Service Commission Room, Cannon Building, 861 Silver Lake Boulevard, Dover, DE 19904.

BEFORE W. Michael Tupman, Chair, Jacqueline D. Jenkins, Ed.D, and Sheldon N. Sandler, Esq., Members, a quorum of the Board under *29 Del. C. §5908(a)*.

APPEARANCES

Rae M. Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Raymond Heineman, Esq.
Kroll Heineman Carton LLC
on behalf of Erica Lampley

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of
Transportation/DMV

BRIEF SUMMARY OF THE EVIDENCE

The Department of Transportation/Division of Motor Vehicles (“DOT”) offered twelve exhibits and the Board admitted eight marked for identification as Exhibits A - D,¹ F, and I - K. DOT called one witness: Dina Burge (“Burge”), its Labor Relations Manager.

The employee/grievant, Erica Lampley (“Lampley”), offered five exhibits and the Board admitted them all into evidence, marked for identification as Exhibits 1 – 5. Lampley testified on her own behalf.

FINDINGS OF FACT

Lampley has worked for DOT in the Division of Motor Vehicles (“DMV”) for nearly twenty years. She is currently employed as a Senior Motor Vehicle Technician in the Vehicle Inspection Lanes at the Delaware City DMV facility. As part of her job responsibilities, she was assigned to serve as the timekeeper for the Vehicle Inspection unit in early 2011.² She is responsible to enter and verify time records and leave reporting from employee time sheets into the State’s Payroll and Human Resources Statewide Technology (“PHRST”) database.³ She also provides employees in her unit with individual leave balance information on a quarterly and annual basis. TR⁴ p. 74.

When Lampley was assigned timekeeper responsibilities, she received PHRST training. At the completion of the training, she signed the PHRST Security Authorization Form on April 6, 2011, which states:

I acknowledge that upon being provided security access to PHRST, I will have

¹ *Exhibit C* was admitted into evidence at the hearing.

² DOT Unit Supervisors are usually assigned to monitor and enter timekeeping records for DMV units; however, Lampley has been assigned this duty for the Delaware City Vehicle Inspection Lane unit.

³ PHRST is an electronic State application and database for managing human resource, benefits and payroll information. Employees are granted access to enter, update, modify, delete, retrieve data and generate reports, as necessary to perform their job duties. Scheduled data entry dates for timekeeping and payroll are established by the Department of Human Resources.

⁴ Citations to the May 16, 2019 hearing transcript are noted by “TR” followed by a page number.

access to confidential information pertaining to State of Delaware employees. I agree that I will not disclose or permit disclosure of any confidential information to any other individual except for either the purpose of carrying out the duties of my position or as otherwise permitted or authorized by law. Further, I will take all necessary precautions to prevent the unauthorized use, disclosure or modification of PHRST data and will bring to the immediate attention of my supervisor any situation which does, or might, result in the unauthorized use, disclosure or modification of PHRST data. I understand that any breach of such confidentiality or wrongful or unauthorized use, disclosure or modification of PHRST data may result in disciplinary action against me including, but not limited to, termination of employment. *Exhibit I*

Lampley did not recall receiving any training identifying or otherwise related to the confidentiality of any records to which she had PHRST access. TR p. 75.

During the spring of 2018, while conducting her timekeeping duties, Lampley noticed a discrepancy in the payroll records for a Vehicle Inspection unit employee who received a retroactive wage payment. Lampley had not previously encountered this type of entry in the PHRST system and she found it highly unusual that it had been entered on a Sunday, outside of regular working hours. TR p. 77. Lampley spoke with the Lane Inspection Supervisor (her direct supervisor) who was unsure of the origin of the retroactive payment. He told Lampley it may have resulted from the employee's prior employment with another State agency. TR p. 78.

Lampley did not pursue her question further until she was approached by the supervisor of the Driver Services unit⁵ who asked Lampley if she had noticed anything unusual on the timesheets for the Vehicle Inspection unit. Lampley mentioned that she had discovered an unusual retroactive pay entry. TR p. 79-80. The Driver Services supervisor then told Lampley that she had learned that DOT Human Resources was revising the starting salaries of a number of newer DMV employees. TR p. 80.

Following this conversation, Lampley went back into PHRST (during her working hours) and

⁵ The Driver Services supervisor was the timekeeper for the Driver Services unit. She was not Lampley's direct supervisor.

opened the Payable Time tab⁶, which contains personal employment information including each employee's wage rate. She examined the information contained under this tab for all fourteen employees in the Vehicle Inspection unit. TR. p. 82. She testified the Payroll Time tab was not one she had previously accessed or used when entering or monitoring time records and/or leave usage. She did not require any extraordinary credentials to access this tab but it contained information which she did not need as the timekeeper. Lampley reviewed the pay rate records for all Vehicle Inspection unit employees, compared their current wage rates with each employee's initial wage rate, and compared their wage rates across titles, pay grades and seniority. TR p. 83. Lampley noticed a part-time casual-seasonal employee who was working in a Paygrade 6 position but whose wage rate was essentially equal to hers as a permanent employee in a Paygrade 8 position. TR p. 83-84.

Lampley recorded the payroll data she discovered for each employee in the Vehicle Inspection unit in a handwritten chart, including the hourly wage rate, initial wage rate at time of hire, and current wage rate from PHRST. TR p. 84. She then gave her handwritten chart for her unit to the Driver Services unit supervisor. TR p. 84. The Driver Services supervisor then created a data chart for both Driver Services and the Inspection Lane units which included, for each employee: full-time/part-time status, initial wage rate, paygrade, current wage rate, and relative rate of wage increase over time served. *Exhibit C*. Lampley and the Driver Services supervisor took the compiled information directly to the Delaware City Lane Manager to discuss. TR. p. 90.

On or about May 4, 2018, the Driver Services Supervisor submitted a complaint to DOT, which was signed by twenty-two employees of the Delaware City DMV facility. The chart was attached to this complaint and included signatures from employees of both units. *Exhibit C*. It was not established whether any or all of the twenty-two signatories had previously seen or reviewed the

⁶ *Exhibit 5*

information in the chart. TR p. 86.

Lampley was aware that the News Journal⁷ has reported the salaries of State employees. TR p. 87. Data on State employee salaries was also available on the “Open the Books” webpage⁸. Salary information from these sources was available at the time the complaint was filed by May 4, 2018. TR p. 87.

Lampley filed a Freedom of Information Act (“FOIA”) request on August 24, 2018, to the DOT FOIA mailbox requesting the salaries of all DMV employees for 2017.⁹ DOT responded on September 5, 2018, that the requested information was available for a fee of \$123.15. Lampley did not follow up because she did not believe she needed to confirm the information she had gathered through PHRST through FOIA. TR p. 88-89. Lampley did not consider the information she gathered was confidential because she was not aware of any policy limiting her access to information within PHRST or any policy prohibiting sharing salary information with other managers and timekeepers. TR p. 92.

On or about August 9, 2018, the Delaware City Lane Manager notified Lampley that he was proposing she be suspended for one day for violating the PHRST Confidentiality/Acceptable Use Agreement which she had signed on April 6, 2011. Specifically, he alleged:

Based upon information presented during a grievance hearing conducted on June 18, 2018, it was discovered that you shared confidential salary information, which you obtained through the PHRST system, with other DMV employees. You provided other DMV employees with detailed employee salary data. In so doing, you used your PHRST access inappropriately and outside the scope of your responsibilities as timekeeper.” *Exhibit B*.

Following a pre-decision meeting which was conducted pursuant to Merit Rule 12.3 on

⁷ The News Journal is a daily newspaper published in Wilmington, Delaware with statewide circulation. Exhibit Number 1.

⁸ *Exhibit 3* <https://www.openthebooks.com>

⁹ *Exhibit 4*

September 10, 2018, the DMV Chief of Vehicle Services notified Lampley that he was upholding the recommendation and suspending her for one day without pay. *Exhibit A*

Lampley grieved the suspension directly to the Department of Human Resources on or about October 1, 2018, consistent with MR 12.9. *Exhibit J*. Following receipt of the DHR decision, she requested her grievance be heard by MERB.

PRELIMINARY ISSUE

As a preliminary matter, DOT responded to the Board's query as to whether the discipline imposed on Lampley was reviewed by the Department of Human Resources ("DHR") as required by 29 *Del. C.* § 5924¹⁰ for violations of the Department of Information and Technology's ("DTI") Acceptable Use policy. DOT did not forward the recommended discipline to DHR because Lampley was disciplined for violating the PHRST Confidentiality/Acceptable Use Agreement found in the PHRST Security Authorization Form (*Exhibit I*) and not DTI's Acceptable Use Policy.

The Board held 29 *Del. C.* § 5924 requires DHR to review proposed discipline only if there is an allegation a merit employee has violated the DTI Acceptable Use policy. DOT did not discipline Lampley for violating the DTI policy. Consequently, 29 *Del.C.* §5924 is not applicable in this case.

CONCLUSIONS OF LAW

Merit Rule 12.1 provides:

Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has

¹⁰ "The Secretary shall ensure that each merit employee signs a copy of the Department of Technology and Information's acceptable use policy and that the signed copy is placed in each employee's personnel file. If an investigation concludes that a merit employee has violated that policy, any discipline resulting in the loss of wages must first be reviewed by the Department of Human Resources prior to implementation of the discipline."

sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

Lampley was provided with the specified due process rights set forth in Chapter 59 of Title 29 of the Delaware Code.

The Board holds as a matter of law Lampley violated the PHRST Confidentiality/Acceptable Use Agreement located within the PHRST Security Authorization form, as alleged. While DOT shifted its focus from confidentiality and dissemination, as set forth in the September 10, 2018 suspension letter, to unauthorized use during the course of the MERB hearing, the Board concludes Lampley violated the Agreement when she obtained salary information about her fellow unit employees which was not required or necessary to her timekeeping duties. The Board finds Lampley, upon learning of the pay inequity, should have reported the issue to Human Resources rather than divulge the information to the Driver Services supervisor, who was not in Lampley's chain of command.

The Board finds Lampley admitted she accessed the Payable Time tab in PHRST to obtain the salary information even though she could have legally obtained the information through a FOIA request had she been willing to pay the fee. Specifically, Lampley stated she did not pursue the FOIA request because she had obtained the information through PHRST. Lampley accessed the salary information during her paid working hours to support a salary inequity grievance for herself and other Delaware City DMV employees.

The Board finds the PHRST Security Authorization Form, although weak in its protocols, definitions and its authority, prohibits the unauthorized disclosure of confidential information "... to any other individual except for either the purpose of carrying out the duties of my position or as otherwise permitted or authorized by law." Lampley had no reason to access the payroll information

of the employees for which she was responsible to record and verify time reporting and leave records, nor did she have a work related reason to gather or share that information with any other person or employee.

ORDER

It is this **20th** day of **August, 2019**, by a vote of 3 -0, it is the Decision and Order of the Board to deny Lampley's appeal. The Board finds there is just cause to conclude the Grievant violated the Confidentiality/Acceptable Use provision of the PHRST Security Authorization form.

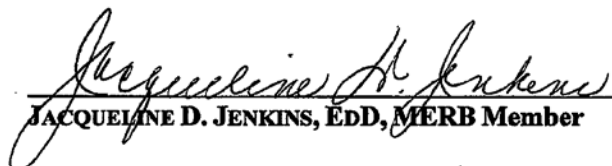
A one-day suspension is appropriate under the circumstances.



W. MICHAEL TUPMAN, MERB CHAIR



SHELDON N. SANDLER, ESQ., MEMBER



JACQUELINE D. JENKINS, EDD, MERB Member