

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

<b>ERICA LAMPLEY,</b>	)	
	)	
Employee/Grievant,	)	
	)	<b>DOCKET No. 19-02-715</b>
v.	)	
	)	<b>DECISION AND ORDER</b>
<b>DELAWARE DEPARTMENT OF TRANSPORTATION,</b>	)	
<b>DIVISION OF MOTOR VEHICLES,</b>	)	
	)	
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 April 18, 2019, at the Delaware Public Service Commission, 861 Silver Lake Boulevard, Dover, DE 19904.

**BEFORE** W. Michael Tupman, Chair; Jacqueline Jenkins, and Sheldon 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

Erica Lampley, Grievant  
*Pro se*

Kevin Slattery  
Deputy Attorney General  
on behalf of the Delaware  
Department of Transportation

## **BRIEF SUMMARY OF THE EVIDENCE**

The Board heard legal argument on the motion by the Department of Transportation (“Agency”) to dismiss the grievance for lack of jurisdiction. The Agency appended a copy of the grievance to its Motion.

The Grievant, Erica Lampley (“Lampley”), provided a written response to the Agency’s motion. The Board also heard from Dina Burge, DOT Labor Relations Manager, during the hearing.

During the Board’s hearing on April 18, 2019, it also heard the matter of *Yaros v. DOT/DMV* (MERB 19-02-713). Both the *Yaros* grievance and this grievance arise from the same set of circumstances. The Board takes administrative notice of the testimony offered by DOT Representative Burge during the *Yaros* hearing concerning the changes made in wage rates of DOT/DMV employees which are relevant to both cases.

## **FINDINGS OF FACT**

The Grievant, Erica Lampley, has been employed by the Delaware Division of Motor Vehicles for approximately 20 years. She is currently employed as a Senior Motor Vehicle Technician. Her current wage rate is 99% of the midpoint for Pay Grade 8.<sup>1</sup>

## **CONCLUSIONS OF LAW**

Merit Rule 4.4.2 provides:

**Agencies may approve a starting rate up to 85% of midpoint where applicants’ qualifications are clearly over and above the job requirements as stated in the class specification. Upon agency request, the DHR Secretary may approve a starting rate higher than the 85<sup>th</sup> percentile if supported by documentation of the applicant’s qualifications.**

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<sup>1</sup> FY 2019 (current) annual wage rates for PG 8: 75% = \$ 27,870; 100% (or midpoint) = \$ 34,838; 125% = \$41,806.

Merit Rule 4.4.3 provides:

**Upon agency request, the DHR Secretary may approve a starting rate above the minimum for the paygrade where a critical shortage of applicants exists. The DHR Secretary and Controller General may provide that all lower paid, equally qualified employees in the same class within the same geographic area receiving a lower rate shall also have their pay rates set as stated above if their performance is satisfactory.**

Merit Rule 4.12, Pay Rates After Reclassification or Grade Change, states:

**4.12.4 Employees shall receive the pay increase provided in the Budget Act, unless their latest Performance Review is unsatisfactory. If the unsatisfactory performance has already resulted in a reduction in paygrade, however, they shall receive the pay increase. Employees who are denied such increase shall become eligible for it when, as evidenced by a Performance Review, their performance is no longer rated as unsatisfactory. Such an increase is not retroactive.**

Merit Rule 18.2 defines a “grievance” to mean,

**... an employee complaint about the application of the Rules or the Merit System law (29 Del.C. Chapter 59), which remains unresolved after informal efforts at resolution have been attempted. A grievance shall not deal with the substantive policies embodied in the Merit System law.**

Section 5943, Enforcement of chapter by legal action, of Title 29, Chapter 59, Merit System of Personnel Administration states, in relevant part:

**(a) The exclusive remedy available to a classified employee for the redress of an alleged wrong, arising under a misapplication of any provision of this chapter, the merit rules or the Secretary's regulations adopted thereunder, is to file a grievance in accordance with the procedure stated in the merit rules. Standing of a classified employee to maintain a grievance shall be limited to an alleged wrong that affects his or her status**

**in his or her present position...**

The Board concludes as a matter of law that the grievant does not have standing to assert a claim under either Merit Rule 4.4.2, 4.4.3, or 4.12.4 because she has not suffered any change in her employment status in her current position.

In her grievance, Lampley asserts DOT gave improper advanced salaries to Department of Motor Vehicle employees (including some retroactive increases) contrary to the Merit Rules. She does not believe it is fair that employees who were earning less than 95% of the midpoint for their pay grade were automatically advanced to that level. Employees earning more than 95% of the midpoint did not receive any increases.

The Agency's representative, DOT Labor Relations Manager Dina Burge, explained, without dispute, the underlying circumstances of this grievance. In December, 2017, DOT Human Resources became aware that there were inequities in starting salaries for new or promoted employees because some managers routinely requested advanced salaries pursuant to MR 4.4.2, while other managers never requested advanced starting salaries. In an effort to remove this subjectivity, Human Resources undertook a systematic review of starting salaries and instituted automatic reviews at the time of any subsequent new hire or promotion. If employees qualified for advanced salaries, they were automatically approved, without the need for a manager or employee to request such review. More senior employees saw new employees coming into the workplace with salaries which approached their wage rates, despite their longevity and experience.

In October, 2018, DOT received approval from the DHR Secretary and Controller General to "level up" the wage rates of all lower paid, equally qualified DMV employees in the same classes statewide, consistent with MR 4.4.3. Because this affected only employees being paid less than 95% of midpoint, Lampley was not eligible and did not receive a wage increase.

DOT is also currently engaged with the Department of Human Resources in an effort to


reclassify the positions working in the Division of Motor Vehicles. Both the job functions and responsibilities, as well as the equipment and technology used in the DMV lanes, have changed dramatically in the last 10 – 15 years. DOT does not believe the wage scales have kept pace and are experiencing difficulty hiring and retaining employees in these positions.

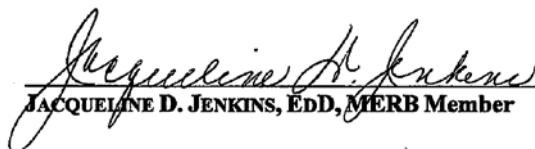
The Board cannot, through adjudication of a grievance, change the merit rule itself or create a new equity standard. Merit Rule 18.2 states, "...A grievance shall not deal with the substantive policies embodied in the Merit System law." A grievance is further limited in the grievance definition found in MR 19.0, "...A grievance may not deal with the content of the Rules or the Merit system statute." (*emphasis added*) The Merit Rules do not address basic issues of wage equity within the pay grade for specific classifications.


In this case, there is no dispute that Lampley did not personally suffer an alleged wrong that affected her employment status in her current position. While the wage compression which resulted from advancing all junior employees to 95% of the midpoint for their pay grades undoubtedly feels unfair to more senior employees at higher levels of the pay grade, it does not violate a current Merit Rule.

### **ORDER**

It is this **19<sup>th</sup>** day of **June**, 2019, by a unanimous vote of 3-0, the Decision and Order of the Board to grant the Agency's Motion to Dismiss. Pursuant to 29 Del.C. §5943(a), the grievant does not have standing to assert a claim under either Merit Rules 4.4.2, 4.4.3 and/or 4.12.4 because she has not suffered any change in her employment status in her current position.

  
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W. MICHAEL TUPMAN, MERB CHAIR

  
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JACQUELINE D. JENKINS, EDD, MERB Member



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**SHELDON N. SANDLER, ESQ., MEMBER**