

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

GRIEVANT,)	
)	
Employee/Grievant,)	
)	DOCKET No. 20-03-753
v.)	
)	
DELAWARE DEPARTMENT OF TRANSPORTATION,)	DECISION AND ORDER
DIVISION OF MOTOR VEHICLES,)	
)	PUBLIC (REDACTED)
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 September 3, 2020 at the Delaware Public Service Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. The hearing was closed to the public, pursuant to 29 *Del. C.* §10004(b)(8).

BEFORE W. Michael Tupman, Chair; Paul H. Houck, Jacqueline D. Jenkins, Ed.D, and Victoria D. Cairns, Members; a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Carla A.K. Jarosz
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Employee/Grievant, *pro se*

Victoria Sweeney
Deputy Attorney General
on behalf of the Delaware Department of
Transportation

BRIEF SUMMARY OF THE EVIDENCE

The Employee/Grievant (“Grievant”) offered eight (8) exhibits into the evidence of which the Board admitted four (4) exhibits. The Department of Transportation, Division of Motor Vehicles (“Agency”) offered eight (8) exhibits into the evidence of which the Board admitted seven (7) exhibits.

The Agency called three (3) witnesses: Ronda Hammond (“Hammond”), Amber Sacco (“Sacco”), and Westina Victoria Taylor (“Taylor”). The Grievant testified on her own behalf.

FINDINGS OF FACT

On February 28, 2020, the Agency issued a one (1) day suspension without pay to the Grievant for violating the Agency Code of Conduct and the State of Delaware’s Beliefs and Principles policies.¹

The Grievant and her colleague, Hammond, were friends at work. They worked together in the Department of Motor Vehicle Driver Improvement section. Both Hammond and the Grievant testified they had shared personal details of their lives with each another.

During the fall of 2019, Hammond was appointed as a shop steward for the union which had recently been elected to represent their positions in collective bargaining. The Grievant told Hammond directly that she did not support her appointment. She did not believe Hammond had enough job tenure to be effective in the union position and expressed her concerns to the union president prior to Hammond’s appointment.

In October, 2019, Hammond and the Grievant got into a heated discussion over a 40-hour work week which was being considered as a proposal in the union negotiations. Shortly after this argument, Hammond complained to her supervisor that she was uncomfortable with comments

¹ Agency Exhibit A.

and language the Grievant was using in the workplace. During the ensuing investigation, the Grievant denied Hammond's allegations. She did admit that she had called Hammond "Stella", a reference to the character in the 1998 movie, "How Stella Got Her Groove Back". The Grievant testified she meant the moniker as a compliment when Hammond started coming to work happier, dressing and doing her hair differently, after a period of difficulties in her personal life.

The record does not support a finding that the Grievant made more sexually explicit comments, as Hammond had alleged. The witnesses testified that although sexual and off-color comments are not uncommon in this workplace, the Grievant was not the only employee to engage in ribald behavior.

The Board finds the Grievant's testimony to be more credible than Hammond's testimony regarding comments and language the Grievant used in the workplace, considering the temporal relationship of Hammond's complaints immediately following their dispute about lengthening the work week. Hammond testified she did not express her discomfort to the Grievant before complaining to her supervisor and that after the Grievant was made aware of Hammond's concerns, they have not had any further interactions which have concerned her and the complained of conduct immediately ceased.

CONCLUSIONS OF LAW

Merit Rule 12.1 states:

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 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.

The Grievant is charged with violating the Agency's Code of Conduct which states that

“[a]s an employee of the Delaware Department of Transportation, your personal conduct at work should reflect the highest professional standards of behavior.”² She is also charged with violating the State of Delaware’s Beliefs and Principles policies which states that “[t]he State of Delaware promotes an environment of mutual respect for all people so that everyone, both employees and citizens, has the ability to achieve his or her best.”³

The Board finds that the Grievant did refer to her co-worker as “Stella” but that comment was not objectively inappropriate and, in fact, Grievant’s subjective intent was not sexually based. Therefore, the Board finds, by the preponderance of the evidence, that the Grievant did not commit the charged offense and the Agency did not have just cause to suspend her without pay.

ORDER

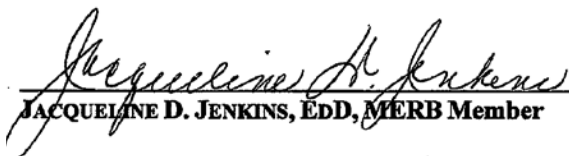
It is this 5th day of October, 2020, by a unanimous vote of 4-0, the Decision and Order of the Board to grant the grievance and to order the Agency to make the Grievant whole for any wages lost for the suspension and to purge any record in her personnel or other file of this disciplinary action.



W. MICHAEL TUPMAN, MERB CHAIR



PAUL R. HOUCK, MERB Member



JACQUELINE D. JENKINS, EDD, MERB Member



VICTORIA D. CAIRNS, MERB Member

² Agency Exhibit C.

³ Agency Exhibit B.