

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

DELAWARE DEPARTMENT OF)
SERVICES FOR CHILDREN,)
YOUTH, AND THEIR FAMILIES,)
DIVISION OF YOUTH)
REHABILITATIVE SERVICES,)

Appellant,)

v.)

RYAN BRABSON)

Appellee.)

C.A. NO. N21A-12-007 PAW)

Submitted: August 23, 2022
Decided: November 21, 2022

*Upon Appeal from the Merit Employee Relations Board. **AFFIRMED.***

MEMORANDUM OPINION AND ORDER

Zi-Xiang Shen, Esq., Delaware Department of Justice, Attorney for Employer-Below/Appellant, Delaware Department of Services for Children, Youth, and their Families, Division of Youth Rehabilitative Services.

Ryan Brabson, *pro se*, Employee-Below/Appellee

I. Introduction

The Delaware Department of Services for Children, Youth, and their Families (“DSCYF”), Division of Youth Rehabilitative Services (“DYRS”) filed this appeal of the Merit Employee Relations Board’s (“MERB”) decision dated December 1, 2021, granting Ryan Brabson’s (“Brabson”) grievance that his responsibilities fall outside his merit classification of Family Services Program Support Supervisor (“Support Supervisor”) and properly come within the higher merit classification of Family Services Program Support Manager (“Support Manager”). Appellant contends that the MERB’s decision is not supported by substantial evidence, and the MERB committed legal error by: (1) failing to explain how Brabson’s duties deviate from the essential job functions of the Support Supervisor merit classification; (2) arbitrarily not considering the “Nature and Scope” section of the Support Manager merit classification; and (3) excluding impeachment testimony of one of Brabson’s witnesses, Michelle Darling. For the reasons set forth below, the MERB’s decision is **AFFIRMED**.

II. Factual and Procedural History

Brabson is employed by the Community Services Unit of the DYRS in the Support Supervisor merit classification.¹ He performs his duties under the operating title of Regional Manager, with a badge and business cards exhibiting that title.² As

¹ R002 (MERB Decision and Order at 2, dated December 1, 2021, hereinafter “MERB Decision”).

² *Id.*

a Regional Manager, he reports directly to the Chief of Community Services.³ Brabson is one of three Support Supervisors with the informal operating title Regional Manager within the DYRS.⁴

The three Regional Managers each filed a grievance with the MERB asserting that the tasks and responsibilities they perform fall outside their current Support Supervisor merit classification and properly come within the Support Manager merit classification.⁵ They argue that under Merit Rule 3.2 they are entitled to compensation at the level of Support Manager.⁶

Brabson and his fellow Regional Managers appeared before the MERB on Oct. 21, 2021.⁷ The MERB decided to have Brabson present his case fully, then use the factual findings and decision from Brabson's case as precedent for the other two cases.⁸ Brabson called two witnesses: Michelle Darling, the former Chief of Community Services, and Joe Bryant, the Current Chief of Community Services. Brabson also testified. DYRS called Renee Ciconte, the Deputy Director of DYRS.

The MERB concluded that Brabson met his burden to prove he is serving in a higher position for purposes of Merit Rule 3.2 and was entitled to backpay at the rate of compensation for Support Manager commencing 30 calendar days prior to

³ *Id.*

⁴ R226 (Hr'g Tr. at 55).

⁵ R014 (Prehearing Order at 1, dated Oct. 13, 2021, hereinafter "Prehearing Order").

⁶ R014-015 (Prehearing Order at 1-2).

⁷ MERB Decision at 1.

⁸ R175-177 (Hr'g Tr. at 4-6).

the date on which he filed his grievance and continuing for as long as he continues to perform the duties of Support Manager.⁹

III. Appellant's Contentions

Appellant makes four arguments on appeal. First, Appellant argues that the MERB committed legal error by failing to explain how Brabson's duties deviated from the essential job functions of his then current merit classification of Support Supervisor.¹⁰ On this point, Appellant further alleges the MERB made no real conclusions about whether Brabson performs all of the duties of Support Manager or merely some of them or whether Brabson had performed the duties of Support Manager for more than 30 days.¹¹ Second, Appellant contends the MERB erred by relying on some sections of the Support Manager Classification but not others.¹² Third, Appellant contends the MERB erred by excluding certain impeachment testimony.¹³ Finally, Appellant argues MERB's conclusions are not supported by substantial evidence.¹⁴

IV. Standard of Review

The Court's review of a MERB decision is limited. The Court merely determines whether the decision is supported by substantial evidence and is free

⁹ R005 (MERB Decision at 5).

¹⁰ Appellant Opening Br. at 6.

¹¹ *Id.* at 11-12

¹² *Id.* at 9-10.

¹³ *Id.* at 10-11.

¹⁴ *Id.* at 11-12.

from legal error.¹⁵ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”¹⁶ The substantial evidence standard requires the court to “search the entire record to determine whether, on the basis of all of the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did.”¹⁷ This Court will not weigh the evidence, determine questions of credibility, or make its own factual findings.¹⁸ The Court reviews questions of law *de novo*.¹⁹ If the decision is supported by substantial evidence and free from legal error, then the administrative board’s decision must be affirmed.

In addition, the Court recognizes that evidentiary rulings are within the discretion of the administrative board and will not be reversed absent a clear abuse of discretion.²⁰ An abuse of discretion occurs when a decision “exceeds the bounds of reason given the circumstances” or the “rules of law or practice have been ignored so as to produce injustice.”²¹ If the Court finds that an evidentiary ruling amounts

¹⁵ *Cooper v. Delaware Bd. Of Nursing*, 264 A .3d 214 (Del. Oct. 21, 2021) (TABLE).

¹⁶ *Id.*

¹⁷ *Cooper v. Delaware Bd. Of Nursing*, 2021 WL 754306, at *2 (Del. Super. Ct. Feb. 26, 2021) (internal quotations omitted), *aff’d Cooper v. Delaware Bd. of Nursing*, 264 A .3d 214 (Del. Oct. 21, 2021) (TABLE).

¹⁸ *Id.*

¹⁹ *Finney v. Delaware Dep’t of Transp.*, 2021 WL 321072, at *3 (Del. Super. Ct. Feb. 1, 2021).

²⁰ *Id.* at *4.

²¹ *Johnson v. First State Staffing Sols.*, 2020 WL 591776, at *3 (Del. Super. Ct. Feb. 6, 2020) (quoting *Peregoy v. Del. Hospice*, 2011 WL 3812246, at *1 (Del. Super. Ct. Aug. 12, 2011)).

to a clear abuse of discretion, then the Court must “determine whether the mistake constituted significant prejudice so as to have denied the appellant a fair hearing.”²²

V. Discussion

A. The MERB determined the Regional Managers, including Brabson, were working out of class in the Support Manager merit classification and had done so for more than 30 days

Appellant contends the MERB committed legal error by failing to explain how Brabson’s duties deviate from the Support Supervisor classification and its conclusions were not supported by substantial evidence. The Court does not agree. To find that Brabson is working out of class, the MERB had to conclude that Brabson was “serv[ing] in a higher position.”²³ The MERB found that Regional Managers at DYRS have duties and responsibilities beyond those contained in the Support Supervisor classification.²⁴ Specifically, the MERB found that Regional Managers supervise a staff of 14-20 persons, have statewide responsibilities, and perform the essential duties of the Support Manager merit classification.²⁵ In addition, the MERB concluded that insofar as the duties of Support Manager needed to be performed for

²² *Warren v. Amstead Indus.*, 2020 WL 4582504, at *3 (Del. Super. Ct. Aug. 10, 2020) (citing *Strauss v. Biggs*, 525 A.2d 992, 997 (Del. 1987)); see also *Hellstern v. Culinary Servs. Grp.*, 2019 WL 460309, at *10 (Del. Super. Ct. Jan. 31, 2019) (quoting *Harper v. State*, 970 A.2d 199, 201 (Del. 2009)) (“If the Court determines that the Board abused its discretion, then the Court must determine ‘whether the error rises to the level of significant prejudice which would act to deny the [appellant] a fair trial.’”).

²³ Merit Rule 3.2.

²⁴ R003-004 (MERB Decision at 3-4).

²⁵ *Id.*

DYRS to function, it had devolved upon the Regional Managers in DYRS to perform those functions.²⁶

The MERB also made specific findings regarding Brabson. The MERB found Brabson supervises more than ten people, has statewide responsibilities, ensures programs conform with Federal/State regulations, departmental goals and objections and that he performs certain essential functions of the Support Manager.²⁷

Further, there was substantial evidence in the record to support the MERB's decision. Much of the questioning throughout the hearing, whether from Brabson, Appellant, or from the MERB itself, was centered around the essential job duties listed in the Support Manager merit classification and whether Brabson and the other Regional Managers were substantially performing them. For example, the MERB heard testimony from the former chief of the Community Services Unit, Ms. Darling. She testified that the Regional Managers supervised a staff of 14-20 subordinate individuals²⁸, had statewide responsibilities²⁹, and performed all eight of the essential job functions listed in the Support Manager merit classification.³⁰ Mr. Bryant, the Current Chief of Community Services, similarly testified that the Regional Managers, including Brabson, supervised more than 10 people³¹, had

²⁶ R004 (MERB Decision at 4).

²⁷ R003-004 (MERB Decision at 3-4).

²⁸ R194 (Hr'g Tr. at 23).

²⁹ *Id.*

³⁰ R194-207 (Hr'g Tr. at 23-36).

³¹ R242-243 (Hr'g Tr. at 71-72).

statewide responsibilities³², and performed some of the job functions listed in the Support Manager classification, but that he had not been in the role long enough to know whether or not they performed the others.³³ Lastly, Ms. Ciconte, the deputy director of DSCYRS, testified that the Regional Managers, including Brabson perform some of the functions listed in the Support Manager essential job functions.³⁴

Substantial evidence also exists to support a finding that Brabson and other Regional Managers perform the essential duties of Support Manager for more than 30 days. It appears from the record that for at least 21 years no one at DYRS had the merit classification of Support Manager.³⁵ Rather, the essential job duties in the Support Manager merit classification were instead performed by Regional Managers. Based on these facts, this Court concludes substantial evidence exists to support a finding that Brabson and the other Regional Managers were serving in the higher merit classification of Support Manager for more than 30 days.

In sum, the MERB's decision regarding whether Brabson is working out of class is free from legal error, and its finding that Brabson served in a higher position for more than 30 days is supported by substantial evidence.

³² *Id.*

³³ R252-255 (Hr'g Tr. at 81-84).

³⁴ R339 (Hr'g Tr. at 168) and R004 (Decision at 4, fn. 7).

³⁵ R337 (Hr'g Tr. at 166).

B. It is within the MERB's discretion to consider some portions of the Support Manager merit classification but not others

Appellant next contends that the MERB erred in not relying on the Nature and Scope section of the Support Manager merit classification, but rather on the Essential Job Function and Summary sections.³⁶ Appellant argues that the result of this decision was that the MERB arbitrarily factored in the reporting structure up to Brabson, but not the reporting structure above Brabson.³⁷

It is not this Court's role to weigh evidence. It is within MERB's discretion to assign more weight to the Support Manager classification's Summary and Essential Job Duties section and to the fact that Brabson supervises 14-20 subordinates as opposed to the fact that he does not report directly to the Director of DYRS. Accordingly, the Court concludes the MERB did not err in relying on some portions of the merit classification but not others.

C. The MERB's refusal to allow questioning of Ms. Darling's bias was an abuse of discretion, but it did not cause Appellant's significant prejudice

The MERB abused its discretion in immediately cutting off questioning of Ms. Darling's motivation for testifying.³⁸ Delaware Rule of Evidence 616 provides that a witness's credibility may be attacked with evidence of the witness's bias or interest for or against any party.³⁹ The comments to D.R.E. 616 state that this rule,

³⁶ Appellant Opening Br. at 9-10.

³⁷ *Id.*

³⁸ Appellant's Opening Br. at 10-11.

³⁹ D.R.E. 616.

“codifies the principle that the bias of a witness is subject to exploration at trial.”⁴⁰

Although the rules of evidence do not strictly apply to an administrative board hearing, the board should apply the rules insofar as practicable.⁴¹

Appellant sought to bring before the MERB evidence that Ms. Darling had herself sought a change in classification prior to leaving the agency.⁴² The MERB should have given DYRS counsel some latitude and allowed this line of questioning.⁴³ But abuse of discretion alone is not enough to warrant reversal.

The next question this Court must evaluate is whether the abuse of discretion caused the Appellant significant prejudice. Appellant cites to *Finney v. Dep’t of Transp.*, to support its assertion that exclusion of impeachment testimony constitutes substantial prejudice and warrants reversal. In *Finney*, Finney filed a grievance contesting the Delaware Department of Transportation’s (“DelDOT”) decision not to promote him alleging, *inter alia*, that DelDOT abused its discretion by not contacting references on his reference list.⁴⁴ In hearings before the MERB, Finney’s counsel asked Gilliam, a member of the promotion panel, whether she checked with

⁴⁰ D.R.E. 616 COMMENT; *see also Weber v. State*, 457 A.2d 674, 680 (Del. 1983) (“It is well settled that the bias of a witness is subject to exploration at trial and is always relevant as discrediting the witness and affecting the weight of his testimony.”) (internal quotations omitted).

⁴¹ *Imhof v. Delaware Board of Medical Licensure and Discipline*, 2022 WL 247464, at *4 (Del. Super. Ct. Jan. 26, 2022).

⁴² R219 (Hr’g Tr. at 48).

⁴³ *See Walker v. State*, 790 A.2d 1214, 1218-1219 (Del. 2022) (“It is the essence of a fair trial that reasonable latitude be given the cross-examiner in putting the weight of the witnesses’ testimony and credibility to a test so that the jury can fairly appraise them.”) (internal quotations omitted).

⁴⁴ *Finney v. Dep’t of Transp.*, 2021 WL 321072, at *2 (Del. Super. Ct. Feb. 1, 2021).

the references of both candidates under consideration.⁴⁵ Gilliam testified that she checked only with Finney's supervisor and his supervisor's supervisor.⁴⁶ Counsel then called Finney to the stand and sought to elicit from him impeachment testimony that Gilliam testified at a prior hearing that she pulled references from both candidates.⁴⁷ In *Finney*, the Court found excluding the testimony a clear abuse of discretion, and, because the question of whether the reference check was evenhanded was at the heart of Finney's grievance, this decision by the MERB caused Finney significant prejudice.⁴⁸

Finney is distinguishable. In the instant case, the question is whether Brabson is performing the essential job functions in the Support Manager merit classification. Appellant had ample time and opportunity to cross examine Ms. Darling on her testimony that Brabson was performing the duties of Support Manager and to present countervailing evidence and testimony on this point.

Although the MERB should have given Appellant some latitude to question Ms. Darling's motivation for testifying, its decision did not cause substantial prejudice to Appellant. Accordingly, this Court finds no reversible error in the

⁴⁵ *Id.* at *7.

⁴⁶ *Id.*

⁴⁷ *Id.*

MERB's decision to disallow questioning into Ms. Darling's motivation for testifying.

VI. Conclusion

For the reasons stated above, the Court finds that the MERB's decision is supported by substantial evidence and free from legal error.

The Decision and Order of the MERB is therefore **AFFIRMED**.

IT IS SO ORDERED.

/s/Patricia A. Winston
Patricia A. Winston, Judge