

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

WILLIAM FASANO,	)	
	)	
Employee/Grievant,	)	
	)	
v.	)	DOCKET NO. 21-05-803
	)	
DEPARTMENT OF NATURAL RESOURCES AND	)	DECISION AND ORDER
ENVIRONMENTAL CONTROL,	)	
	)	
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 17, 2026, at the Delaware Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Blvd., Suite 100, Dover, Delaware 19904.

BEFORE Vanessa Phillips, Chair, Lester Johnson, Jr., and Curtis Linton, Members, a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Jennifer Singh, Esq.
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Kate Butler
Kate Butler Law LLC
on behalf of Employee/Grievant

Devera Scott, Esq.
Deputy Attorney General
on behalf of DNREC

NATURE OF THE PROCEEDINGS

On July 22, 2026, William Fasano (“Grievant”) filed two motions with the Board: “Motion for Summary Disposition” and “Motion to Limit Scope of New Hearing.” The Department of Natural Resources and Environmental Control (“DNREC”) filed a written response to the Motions on July 31, 2026. The Board held a hearing on the Motions on September 17, 2026. Prior to the hearing, the Board reviewed the Delaware Supreme Court’s June 29, 2026 remand decision, the Grievant’s motions and the Agency response, and the certified record of the Board’s hearing on June 16, 2022. During the hearing, the Board heard the arguments of the parties, asked questions and received answers thereto related to the motions. After deliberating, the Board voted to deny the Motion for Summary Disposition and grant the Motion to Limit Scope of New Hearing.

DISCUSSION

A. Motion for Summary Disposition

Within his Motion for Summary Disposition, Grievant argued that the Board should grant his grievance without further proceedings based upon the Delaware Supreme Court’s June 2026 decision in conjunction with the record from the June 2022 hearing. He argued that there is no evidence that he committed any violations other than dishonesty; that a three-day suspension was the appropriate discipline for that misconduct; and that increasing that discipline to termination was motivated by retaliatory animus or disability discrimination. Grievant contended that there remains no issue of material fact in relation to these claims, so his grievance should be summarily granted.

The Agency conceded that there is no evidence that Mr. Fasano committed violations beyond dishonesty, but counters that his dishonesty was a sufficient basis for his termination. Further, the Agency noted that it articulated this basis when Mr. Fasano was terminated, and the record lacks any evidence that DNREC retaliated against Mr. Fasano for any reason.

The Board agreed with DNREC, noting that neither the documentary evidence nor hearing transcript from June 16, 2022 contain any claim or argument that DNREC retaliated against Mr. Fasano for any reason. As such, the Board found that there remain material issues of fact in this case, particularly in regard to retaliation; therefore, summary disposition in favor of Grievant is not appropriate.

B. Motion to Limit the Scope of the New Hearing

In the Motion to Limit the Scope, Grievant argued that MERB should not conduct a *de novo* proceeding based upon the Supreme Court's remand decision. Grievant noted that the portion of the proceedings the Court deemed defective was the Grievant's case-in-chief, not DNREC's. As such, DNREC should not be granted a second opportunity to present its case and possibly cure any defects or shortcomings. The Agency did not object to this position but reserved the right to present rebuttal evidence to Mr. Fasano's argument that his termination was motivated by retaliatory animus.

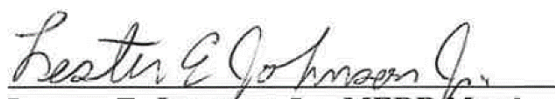
The Board agreed with the parties that DNREC should not have the opportunity to re-present its case in chief and found that Grievant's retaliation claim is a new argument such that DNREC will have the right to offer rebuttal evidence, subject to the discretion of the Board.

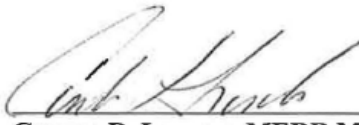
ORDER

It is this **15th** day of **October 2026**, by a unanimous vote of 3-0, the Decision and Order of the Board to deny Grievant's Motion for Summary Disposition and grant Grievant's Motion to Limit the Scope of the New Hearing on Remand as described above.



VANESSA S. PHILLIPS, MERB Chair


LESTER E. JOHNSON, JR., MERB Member

A handwritten signature in cursive script, appearing to read "Curtis D. Linton", written in dark ink.

CURTIS D. LINTON, MERB Member