



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT
MHRC Case Number: E18-0121
April 25, 2019

Kenneth Lloyd (Caribou)

v.

City of Caribou (Caribou)

I. Summary of Case:

On March 26, 2018 Complainant filed his Complaint with the Maine Human Rights Commission ("Commission") alleging that Respondent retaliated against him for engaging in protected activity under the Maine Whistleblowers' Protection Act ("WPA"). Respondent denied discrimination and retaliation stating that Complainant was discharged because he did not maintain the required driver's license for his position.

II. Summary of Investigation:

The Investigator reviewed the following documents as part of the investigation: (i) Complaint filed by Complainant on March 26, 2018; (ii) Respondent's Response received on June 7, 2018; (iii) Complainant's Rebuttal received on June 22, 2018; and (iv) responses to additional requests for information.

III. Analysis:

The Maine Human Rights Act ("MHRA") provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Complainant was employed by Respondent as a Groomer Operator in January 2014 and was promoted to Director of Parks and Recreation in September 2015. According to Complainant, from May to November 2017, he made the following three reports to his supervisor ("Supervisor") of what he believed to be violations of law: 1) that Supervisor hired his son, who did not possess a license, to operate Respondent's vehicles and equipment, 2) that Supervisor instructed him to use fictitious license plates on a trailer, and 3) that a plow truck was being operated without a valid state inspection.

Respondent provided that Complainant was never instructed to place fictitious license plates on a trailer and any conversation about doing this was done only in a joking manner. Respondent asserted that Complainant did not report any other violation until after he was discharged in January 2018 for not maintaining a valid driver's

license. Once Complainant made these post-discharge reports, Respondent immediately conducted an investigation and took appropriate corrective action.

The MHRA prohibits retaliation against employees who, pursuant to the WPA, make good faith reports of what they reasonably believe to be a violation of law or a condition jeopardizing the health and safety of the employee or others in the workplace. *See* 5 M.R.S. § 4572(1)(A); 26 M.R.S. § 833(1)(A)&(B).

In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that he engaged in activity protected by the WPA, he was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse employment action. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; One method of proving the causal link is if the adverse job action happens in “close proximity” to the protected conduct. *Id.* at 1998 ME 227, ¶ 16, 719 A.2d at 514-15.

The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then “produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse employment action.” *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes that showing, the Complainant must carry his overall burden of proving that “there was, in fact, a causal connection between the protected activity and the adverse employment action.” *Id.*

Complainant has established a prima-facie case of WPA retaliation. He alleged that on three occasions he reported what he believed to be violations of law and within approximately eight months of making the first of these reports he was discharged. Respondent, in turn, provided that Complainant never reported these alleged violations until after his discharge for his failure to renew and maintain a valid driver’s license.

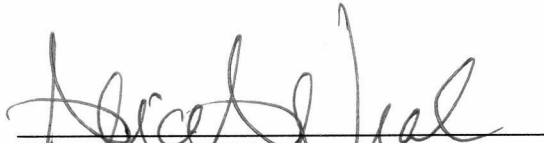
At the final stage of analysis, Complainant failed to establish that his reports were the cause for his discharge. It was undisputed that Complainant did not report many, if not all, of the alleged violations of law until after he was discharged. Even assuming that Complainant reported that an unlicensed driver was operating Respondent’s vehicles and equipment, that a fictitious license plate was placed on a trailer, and a snow plow truck was operated without a valid state inspection, the record does not support that Respondent retaliated against Complainant for making these reports. This is evidenced by the fact that Complainant received a wage increase on January 5, 2018, just 12 days before he was discharged. However, Respondent substantiated that it had a non-discriminatory reason for the discharge. Complainant’s job required that he possess a valid driver’s license. Complainant’s license expired on October 27, 2017, and Supervisor instructed Complainant on multiple occasions to renew it. When it was discovered on January 17, 2018 that Complainant had not done so, he was discharged. The failure to renew his driver’s license, rather than any protected reporting, was the motivating factor in Complainant’s discharge.

Retaliation for engaging in WPA protected activity is not found.


IV. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following findings:

- 1) There are **No Reasonable Grounds** to believe that the City of Caribou retaliated against Kenneth Lloyd for engaging in WPA protected activity; and
- 2) The complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).



Alice A. Neal, Chief Investigator



Ron Dreher, Extern