

Maine Human Rights Commission

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INVESTIGATOR'S REPORT E12-0235

February 28, 2014

██████████ (Biddeford)

v.

██████████ (Biddeford)¹

I. The complaint:

██████████ alleged that his employment was terminated after he engaged in protected activity under the Maine Whistleblowers' Protection Act. Mr. ██████████ alleged that Respondent ██████████ ("██████████") retaliated against him for reporting for jury duty and protesting ██████████ demand that he refuse to do so.

II. Respondent's Answer:

██████████ denied any wrongdoing, and stated that Mr. ██████████ abandoned his position at Meineke Car Care Center by failing to report to work the day following his scheduled jury service.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: August 15, 2011.
- 2) Date complaint filed with the Maine Human Rights Commission: May 24, 2012.
- 3) Respondent employs four employees and is subject to the Maine Human Rights Act ("MHRA") and the Whistleblowers' Protection Act ("WPA"), as well as state employment regulations.
- 4) Respondent represents itself. Complainant is represented by ██████████
- 5) Investigative methods used: A thorough review of the written materials provided by the parties and an Issues and Resolution Conference. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

¹ Complainant originally filed suit against ██████████ and against its owner, ██████████ ("Owner"), individually. The lawsuit against Owner, MHRC #E12-0236, was administratively dismissed on February 14, 2013 pursuant to *Fuhrmann v. Staples the Office Superstore East, Inc., et al.*, 2012 ME 135.

IV. Development of Facts:

- 1) The parties and issues in this case are as follows:
 - a) Complainant [REDACTED] worked at [REDACTED] from May 2010 through August 15, 2011.
 - b) [REDACTED] does business as a Meineke Car Care Center, which provides automobile repair services.
- 2) The following is a summary of Mr. [REDACTED] complaint:
 - a) On or about June 11, 2011, Complainant was notified that he would be called to jury duty in the York County Superior Court beginning in July 2011. He informed Owner that he was required to go report for jury duty on July 11, 2011. Owner did not object.
 - b) On July 11, 2011, Mr. [REDACTED] reported for jury duty and was placed in a pool of potential jurors. He was instructed to call the court after 6 p.m. every weekday to learn if his number had been chosen for the following day's jury service. On Friday, July 23, 2011, he called the Court and learned that he had been called to report for jury duty on Monday, July 25, 2011. At that time, he sent Owner a text message informing him that he would not be at work on Monday, July 25, 2011, because of his responsibility to appear and serve on the Superior Court jury. He received no response to this text message.
 - c) Approximately one week after his jury duty of July 25, 2011, Complainant told Owner that he might have jury duty on another Monday, Owner responded, "You better not." Mr. [REDACTED] objected to Owner's statement, explaining that he had no choice in the matter and that he was required by law to appear and serve on jury duty until the end of August.
 - d) Owner informed Mr. [REDACTED] that he wanted notice prior to Friday if Mr. [REDACTED] was going to be required to serve on the jury on the following Monday. Mr. [REDACTED] objected, explaining to Owner that it was not possible to give that much advance notice because he could not know any earlier than 6 p.m. on Friday if he was called to report for jury duty on the following Monday. Owner told Mr. [REDACTED] that he didn't care, he wanted prior notice, and if he didn't get it Mr. [REDACTED] would lose his job.
 - e) On Saturday, August 13, 2011, Mr. [REDACTED] called the court and learned that he had been called to jury duty on Monday, August 15, 2011. Mr. [REDACTED] then sent a text message to Mr. [REDACTED] informing him that he had jury duty on Monday.
 - f) The next day, Owner responded by text message saying that "this is the third time on a Monday with no advance notice. If ur not @ wk Monday, you will lose ur job. I already told u this. You choose!"
 - g) Mr. [REDACTED] called Owner on Sunday, August 14, 2011 and left a message asking to talk with him about his ultimatum that he break the law by not appearing for jury duty or lose his job. Owner did not return the phone call.
 - h) On August 15, 2011, Mr. [REDACTED] reported for jury duty as required by law.
 - i) That same day, Owner terminated Mr. [REDACTED]'s employment because he objected to and did not comply with his employer's illegal directive that he fail to appear for jury duty.

- 3) [REDACTED] provided the following in response to Mr. [REDACTED] allegations:
- a) Complainant abandoned his position at Meineke Car Care Center by failing to report to work as scheduled at 8:00 a.m. on August 16, 2011. He did show up in the afternoon with his son and without saying anything to a manager or Owner. Complainant loaded his tools into his car and left the premises.
 - b) Two days later, Complainant went to Meineke and dropped off his uniforms so that he could receive his pay check. At that point, he told Owner that he shouldn't have fired him and that he had no cause.
 - c) Owner told Mr. [REDACTED] that he was not fired, that he never spoke to Owner about leaving, and that he had simply abandoned his position.
 - d) Owner stated that he is as fair as possible to all of his employees. He points out that he provided a fair reference for Complainant despite the fact that he abandoned his position as proof that he treats his employees fairly.
 - e) Owner further stated that [REDACTED] is not responsible for Complainant's "not being able to hold a job for long term."
- 4) Mr. [REDACTED] responded to [REDACTED] in the following manner:
- a) Complainant did not abandon his job, and did not leave voluntarily. Owner's text message sent to Mr. [REDACTED] on Sunday, August 14, 2011, made clear that if Complainant complied with his legal obligation to serve on the jury on August 15, 2011, his employment was terminated, stating "[i]f ur not @ wk Monday, you will lose ur job! I already told u this. You choose!"
 - b) Complainant tried to reach Owner by telephone to discuss his obligation to report for jury duty, but Owner did not respond.
 - c) The juror summons explicitly states that a juror must call the court's information phone number after 6:00 p.m. each day to find out whether they need to report the following day. The notice further states that it is criminal contempt for an employer to deprive an employee of employment or threaten or coerce that employee with respect to the loss of employment because of prospective jury service. The jury service notices confirm that Mr. [REDACTED] served jury duty on multiple dates in 2011, including August 15, 2011.
 - d) The Clerk of Court confirmed that a juror is not able to obtain information on jury duty until after 6 p.m. on the preceding work day.
- 5) The Notice of Issues and Resolution Conference was sent to both parties on January 8, 2014. Complainant appeared with his attorney for the IRC on January 21, 2014. Respondent neither called nor appeared; he later explained via letter that he had thought that this complaint was administratively dismissed when he received notice that the companion case against him individually was dismissed.

V. Analysis:

1. The Maine Human Rights Act 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.

2. The Maine Whistleblowers' Protection Act (“WPA”) prohibits discharging, threatening, or otherwise discriminating against an employee because the employee, acting in good faith, reports to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, and when an employee refuses to carry out a directive to engage in activity that violates such a law or rule. 26 M.R.S. §§ 833 (1)(A) & (D).
3. 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; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). One method of proving the causal link is if the adverse job action happens in “close proximity” to the protected conduct. *See DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 514-515.
4. The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA-protected activity. *See Wytrwal 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.*
5. Under Maine law, it is illegal to terminate an employee – or to threaten to terminate an employee – for failing to report for jury duty. 14 M.R.S. § 1218. In addition, an individual who fails to comply with a summons for jury service is guilty of contempt, and is subject to potential fines and imprisonment. 14 M.R.S. § 1217.
6. Here, Mr. ██████ claims that his employment was terminated after he engaged in protected activity when he repeatedly told his employer that he needed to appear for jury duty as ordered, and when he refused to follow Owner’s directive to violate the law by working on Monday, August 15, instead of reporting for jury duty. Evidence indicates that Mr. ██████ did engage in protected activity and that his employer threatened to terminate his employment for fulfilling his duty to serve on the jury. Respondent ultimately followed through with the threat, establishing the causal connection.
7. While Respondent has set forth a nondiscriminatory reason for Complainant’s employment coming to an end – namely, that Complainant failed to show up for work the day after his scheduled jury service, and therefore abandoned his position – that reason is not found to be credible. The last communication Complainant received from Owner was that if he served jury duty on Monday, August 15, his employment was terminated. Complainant attempted to reach Owner to discuss the issue, and Owner did not respond. Any reasonable person in Complainant’s position would conclude that unless he followed Owner’s directive to break the law by failing to report for jury duty, his employment was terminated. Owner provided no explanation for his text message. He also did not attempt to reach Complainant on August 16 to find out why he was not at work.
8. Owner’s text message dated Sunday, August 14, 2011, clearly establishes the fact that he terminated Mr. ██████ employment in retaliation for engaging in protected activity.

9. Retaliation in violation of the WPA is found.

VI. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Respondent [REDACTED] retaliated against Complainant [REDACTED] for engaging in protected whistleblower activity; and
2. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Michèle Dion, Investigator