



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF: |) | |
| |) | |
| SHERRIE PARROTT-HAMILTON, |) | |
| |) | CHARGE: 1998CF1296 |
| |) | |
| Complainant, |) | EEOC: 21B980505 |
| |) | ALS NO: 11182 |
| |) | |
| and |) | |
| BOARD OF EDUCATION, |) | |
| DISTRICT 104, |) | |

Respondent.

RECOMMENDED ORDER AND DECISION

This matter comes on to be heard pursuant to Respondent’s, Board of Education District 104’s, (The Board) Motion for Summary Decision, filed with affidavits and exhibits attached. Complainant, Sherrie Parrot-Hamilton, filed a Response and The Board filed a Reply. This matter is ready for decision.

Statement of the Case

On December 13, 1997, Complainant filed Charge No. 1998CF1296 with the Department of Human Rights (Department), alleging, *inter alia*, that Respondent gave Hamilton a letter regarding her alleged tardiness and refused to remove untrue statements from her 1997 evaluation and therefore discriminated against her on the basis of race. Also, Complainant alleged that that letter, and the failure to remove the statements in the evaluation were an effort to retaliate against her for filing a prior discrimination charge against the Board.

On February 8, 2000, the Department filed a complaint on Hamilton's behalf, making the same allegations as the abovementioned charge.

Contentions of the Parties

In her complaint, Complainant contends that her April 18, 1997 performance evaluation contained untrue statements that Respondent failed to remove. Hamilton states that The Board removed untrue statements from the performance evaluation of a similarly situated white employee, Joanne Staab. Complainant also contends that on October 6, 1997, The Board issued a letter to her regarding her tardiness. Hamilton states that a similarly situated white employee, Jennifer Miller, also reported late but did not receive a similar letter.

In its Motion for Summary Decision, Respondent contends that Complainant has failed to establish a *prima facie* case of discrimination. Specifically, The Board states that Hamilton failed to show that (1) she suffered an adverse action because of the reprimand or performance evaluation; (2) her performance met The Board's legitimate job expectations; or (3) similarly situated, non-black individuals were treated differently.

Further, Respondent states that even if this tribunal finds that Hamilton established her *prima facie* case, Hamilton cannot overcome The Board's legitimate, non-discriminatory reasons for its actions – namely, Hamilton's poor performance and habitual tardiness.

Next, regarding Hamilton's retaliation allegations, The Board again contends that Hamilton cannot establish her *prima facie* case. Respondent states that Hamilton has not shown that she suffered an adverse action or that a causal link exists between Hamilton's

filing the prior discrimination charge and the adverse action that she alleges was taken against her.

In her Response, regarding her discrimination claim, Hamilton argues that the October 6, 1997 letter and The Board's failure to remove inaccurate information from her performance evaluation adversely affect her work quality and the quality of her work assignments. Therefore, Hamilton argues, she has established that Respondent took an adverse action against her. Also, Hamilton again states that Jennifer Miller reported to work late and did not receive a letter regarding her tardiness and that The Board removed false statements from Joanne Staab's evaluation. Therefore, Hamilton argues, Miller and Staab are similarly situated white employees who were treated more favorably; Hamilton asserts that she has established her *prima facie* case.

Regarding her retaliation claim, Hamilton states that she has established her *prima facie* case. She engaged in protected activity – filing a discrimination charge, an adverse action was taken against her by The Board, and there is a causal connection between these two events. Also, Complainant states that she was singled out because of her race because she filed a previous charge against Respondent. Complainant contends that any problems that her particular school had with her should have been handled within that school and not with the Board of Education. Also, Complainant states that she was neither disloyal nor insubordinate.

In its Reply, regarding Hamilton's discrimination claim, Respondent again states that Hamilton failed to show that an adverse action was taken against her. Hamilton was rated "satisfactory" on the evaluation and she does not allege any adverse impact based upon it. Also, regarding the October 6, 1997 letter relating to Complainant's tardiness,

The Board states that Complainant failed to allege any adverse impact based upon it or to contest its accuracy.

Additionally, regarding Complainant's allegation that similarly situated white employees, Miller and Staab, were treated more favorably, Respondent states that these individuals are not similarly situated to Hamilton.

Finally, regarding Complainant's retaliation claim, Respondent states that Complainant's tardiness problem was handled by the Principal and the Superintendent within the school, as Complainant contended it should have been. Additionally, The Board states that Hamilton was insubordinate because she failed to report to school in a timely fashion. In sum, Respondent states that Complainant fails to provide any evidence to support her retaliation claim.

Findings of Fact

The following facts were derived from the complaint and Complainant's verified answers to propounded discovery. The facts are viewed in the light most favorable to the Complainant, the non-moving party.

1. Sherrie Parrot-Hamilton is an African American female.
2. She began working for The Chicago Board of Education at Graves Junior High School on January 6, 1975.
3. Hamilton was employed as a teacher at the time of the incidents complained of.

4. A letter dated October 27, 1986, authored by Superintendent of Schools Kevin C. Cronin, indicates that Hamilton had a tardiness problem and she was instructed to correct it.
5. Hamilton's 1986-87 evaluation indicates that she must continue to improve her punctuality when arriving to school in the morning.
6. Hamilton's 1996-97 evaluation noted that one of Hamilton's goals must be that she arrive at school by 8:00 a.m. on a daily basis and states that she signed in late thirteen times in a five month period.
7. On September 17, 1997, Respondent sent Complainant a letter indicating that she had signed in after 8:00 a.m. seven times between August 27, 1997 and September 17, 1997 and instructed her to be punctual in the future.
8. On October 6, 1997, Respondent issued a letter to Complainant indicating that she had been late five times between September 23, 1997 and October 6, 1997 and that because of this tardiness, she had missed courtyard duty on October 6, 1997 as well. The letter indicated that Complainant must correct her tardiness problem.
9. Hamilton's 1996-97 evaluation contained, *inter alia*, the following statements:

Mrs. Parrot-Hamilton should address these areas of concern/recommendations for the remainder of this year as well as next:

- (1) Sign in by 8:00 a.m. . . . This area was improved upon earlier in the year, but it again needs to be addressed. Mrs. Parrott-Hamilton has signed in later than 8:00 a.m. 13 times since January 1, 1997. She is also the last homeroom teacher to sign in (58% of the time / 28 of 48

days). I would like to have her signed in by 8:00 a.m. on a regular basis.

(2) Submit district/school requested forms/reports on time.

10. Joanne Staab's 1996-1997 evaluation contained a statement regarding her attendance at courtyard duty
11. Principal Dennis K. Lewis removed that statement after Staab told him that she did not miss her courtyard duty.
12. Jennifer Miller reports for courtyard duty at a different location than Complainant; Hamilton cannot see Miller at her courtyard duty post from Hamilton's own courtyard duty post.

Discussion

Complainant alleges that her April 18, 1997 performance evaluation contained untrue statements regarding her failure to submit paperwork on time. Respondent did not remove these statements, yet The Board removed untrue statements from the evaluation of a similarly situated white employee, Joanne Staab.

Complainant also alleges that on October 6, 1997, Respondent issued a letter to her regarding her alleged tardiness. At the same time, Hamilton alleges that Jennifer Miller, a similarly situated white employee, reported late as well, yet Respondent did not issue a similar letter to Miller. Based upon these incidents, Hamilton alleges that Respondent discriminated against her on the basis of race and retaliated against her for filing a prior discrimination charge against Respondent.

In order to establish a *prima facie* case of race discrimination, complainants must present facts establishing that (1) they are members of a protected class; (2) they suffered an adverse employment action by Respondent; and (3) similarly situated individuals were treated more favorably or a person outside of her protected classification, who engaged in similar activities, was not punished similarly.¹ Johnson and University of Illinois Medical Center, 1997 WL 575686 (Ill. Hum. Rts. Com.).

The method of proving a charge of discrimination through indirect means is well established. First, complainant must establish a *prima facie* showing of discrimination. If (s)he does so, respondent must articulate a legitimate, non-discriminatory reason for its actions. In order for complainant to prevail, (s)he must then prove that respondent's articulated reason is pretextual. Zaderaka v. Human Rights Commission, 131 Ill.2d 172, 545 N.E.2d 684 (1989).

Paragraph 8-106.1 of the Illinois Human Rights Act, 775 ILCS 5/101-1 *et seq.*, specifically provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. The Commission has adopted standards used by Illinois courts in considering motions for summary judgment for motions for summary orders, and the Illinois Appellate Court has affirmed this analogy.

¹ Respondent argues that the Complainant must show that she was performing her job satisfactorily at the time of her termination to establish her *prima facie* case. However, there is a question as to whether job performance is still a viable element of the *prima facie* case under the Act. See, In Re the Matter of David Byrd and R.R. Donnelly & Sons, 1999 ILLHUM LEXIS 297 (December 13, 1999). Where, as here, Respondent has essentially argued that the letter and the statements on Complainant's evaluation were due to Hamilton's job performance, and Complainant has argued that employees not in her protected class with similar performance issues were treated more favorably, such factual disputes are more aptly dealt with in the pretext phase of the case. *Id.* Accordingly, for the purposes of establishing a *prima facie* case of discrimination, I find that Complainant has created an inference that her performance was satisfactory.

Cano v. Village of Dolton, 250 Ill.App3d 130, 620 N.E.2d 1200, 189 Ill.Dec. 833 (1st District 1993).

Regarding Complainant's *prima facie* case, Respondent concedes that Hamilton is a member of a protected class. However, The Board argues that it neither took an adverse action against Hamilton nor is she similarly situated to her stated comparables. This tribunal agrees that Respondent took no adverse action against Hamilton. There was no disciplinary action threatened in the October 6, 1997 letter or the April 18, 1997 evaluation. In Rivers v. Baltimore Dept. of Recreation & Parks, 1990 U.S. Dist. LEXIS 4578, 51 FEP 1886, 1894 (D. Md. 1990), the court ruled that a letter regarding complainant's alleged tardiness that was placed in her personnel file which did not threaten complainant with any form of discipline did not constitute an adverse employment action. Similarly, in the case at bar, the October 6, 1997 letter simply stated that Hamilton's tardiness must be corrected. (*Complainant's Response Brief, Exhibit 9*). No disciplinary action was mentioned in the letter, so it cannot be said that an adverse action was taken against Hamilton. Even if the letter falsely accused Hamilton of being tardy, there was still no adverse action taken against her.

Further, Complainant received a satisfactory rating on her April 18, 1997 evaluation. (*Complainant's Response Brief, Exhibit 5*). So, even if the statements were untrue, Respondent took no adverse action against Complainant. Hamilton's arguments, that The Board's failure to remove inaccurate information from her performance evaluation and that the October 6, 1997 letter adversely affect her work quality and the quality of her work assignments, are unpersuasive.

Next, Complainant states that Respondent discriminated against her because “other teachers” were late and did not receive letters as she did (*Complainant’s Response to Respondent’s Motion for Summary Judgment, at pg. 9*). However, Complainant only names Jennifer Miller. Complainant contends that she is similarly situated to Jennifer Miller, a white employee, yet Miller was treated more favorably. Hamilton argues that on October 6, 1997, Miller reported to work late, yet did not receive a letter regarding her tardiness. Miller and Respondent deny that Miller was late on that date and Respondent further states that Miller is consistently punctual. (*Affidavit of Dennis K. Lewis, Respondent’s Motion for Summary Decision, Exhibit 8, Affidavit of Jennifer Miller, Respondent’s Motion for Summary Decision, Exhibit 11*). Hamilton provides no evidence to support her allegation that Miller was late and additionally fails to rebut Miller’s sworn statement that Hamilton could not know whether she was tardy because they report to different locations within the school building from which neither can see the other. Hamilton only offers her own assertion that Miller reported to work late. A material issue of fact cannot be created by making bald assertions, without supporting evidence. Turner v. City of Chicago, 47 Ill.Dec. 476, 91 Ill.App.3d 931, 415 N.E.2d 481 (1st District 1980). There is no evidence that Miller was tardy on October 6, 1997, therefore she cannot be said to be similarly situated to Complainant.

Hamilton also contends that she is similarly situated to Joann Staab, another white employee, yet Staab was treated more favorably. Complainant states that Respondent removed untrue statements from Staab’s evaluation, and did not remove untrue statements from Hamilton’s. Respondent admits that this is true. (*Affidavit of Dennis K. Lewis, par. 9-10*). However, while Complainant may have shown that she is similarly

situated to Staab and Staab was treated more favorably, Hamilton failed to establish that an adverse action was taken against her. Therefore, Complainant has failed to establish her *prima facie* case. Complainant has failed to establish her *prima facie* case, and therefore failed to prove her discrimination allegations. See, Zadareka, supra. We now turn to Complainant's retaliation allegation.

In order to establish a *prima facie* case of retaliation, complainants must present facts establishing that (1) the complainant engaged in a protected activity that was known by the alleged retaliator; (2) the respondent subsequently took an adverse action against complainant; (3) there was a causal connection between the protected activity and the adverse action. Jones and Commonwealth Edison Company, Ill.HRC Rep. (1987CF1778, 1988CF3261, 9/11/95), Donald Witty and Illinois Department of Public Health, 1995 ILHUM LEXIS 575, (September 26, 1995).

Respondent concedes that Hamilton engaged in a protected activity. However, The Board argues that an adverse action was not taken against Complainant and therefore there is no causal connection. There was no adverse action taken against Complainant for the reasons stated supra. Hence, there can be no causal connection as required by the third prong of the *prima facie* case for retaliation. Complainant has failed to establish her *prima facie* case and therefore failed to prove her retaliation allegations.

Conclusions of Law

On the basis of the controlling precedent, statutory authority, the findings of fact and the discussion, I conclude that no material issues fact exist and that Respondent. Board of Education, District 104, is entitled to a judgment as a matter of law.

Recommended Order

For the foregoing reasons, I recommend that Respondent's Motion for Summary Decision be GRANTED, and the complaint be DISMISSED in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:
WILLIAM H. HALL
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: December 6, 2001