

D.U.P. NO. 2017-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

NEW JERSEY TRANSIT,

Respondent,

-and-

Docket No. CI-2015-004

THEODORE WARFIELD,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Theodore Warfield against New Jersey Transit (NJT). Warfield alleged in the charge that NJT violated section 5.4a(1)(3),(4) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., by discharging him without imposing progressive discipline and in retaliation for filing past unfair practice charges and a complaint with the Equal Employment Opportunity Commission. Warfield also alleged he did not receive progressive discipline because of his race and that NJT's discharge violated his civil rights. Warfield's majority representative appealed his discharge and lost at arbitration. The Director dismissed Warfield's charge and held that the Commission lacked jurisdiction over Warfield's civil rights' claim and did not have jurisdiction over disciplinary disputes. The Director noted the proper venue for appealing an arbitration award was in court pursuant to N.J.S.A. 2A:24-7. The Director also held that Warfield's retaliation claim did not satisfy the pleading requirements for an unfair practice charge under N.J.A.C. 19:14-1.3(a)(3).

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Appearances:

For the Respondent,
Christopher S. Porrino, Acting Attorney General Of New
Jersey
(Michael J. Gonnella, Deputy Attorney General)

For the Charging Party,
(Theodore Warfield, Pro Se)

REFUSAL TO ISSUE COMPLAINT

On August 6 and September 3, 2014, Theodore Warfield
(Charging Party or Warfield) filed an unfair practice charge and
amended charge against New Jersey Transit (NJT or Respondent).
The charge, as amended, alleges that the Respondent violated
section 5.4a(1),(3),(4) and (5)^{1/} of the New Jersey Employer-

1/ These provisions prohibit employee organizations, their
representatives or agents from: "(1) Interfering with,
restraining or coercing employees in the exercise of the
rights guaranteed to them by this act; (3) Discriminating in
regard to hire or tenure of employment or any term or
condition of employment to encourage or discourage employees
in the exercise of the rights guaranteed to them by this
(continued...)

Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by discharging Warfield in violation of Warfield's civil rights and by not imposing progressive discipline.^{2/} Warfield, an African-American, alleges he was discharged because of his race.

Warfield also alleges his termination was in retaliation for filing an unfair practice charge and a complaint with the Equal Employment Opportunity Commission (EEOC) against NJT.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint.

N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER

1/ (...continued)

act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (5) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

2/ On September 30, 2014, Warfield filed a complaint with the New Jersey Division on Civil Rights (DCR) and a grievance challenging his termination. On December 11, 2014, the Respondent requested and Warfield consented to his unfair practice charge being held in abeyance pending the outcome of the grievance. A panel of arbitrators denied Warfield's grievance on April 21, 2015. On April 29, 2015, Warfield requested his unfair practice charge be held in abeyance pending the outcome of the DCR investigation. On May 10, 2016, the DCR dismissed Warfield's complaint.

93 (¶20 2011), aff'd at P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012). Based upon the following facts, I find that the complaint issuance standard has not been met.

Warfield was employed as a repairmen at NJT's Hamilton garage. The Amalgamated Transit Union, Local 540 (ATU) is the exclusive majority representative of a unit of drivers and garage employees at the Hamilton garage. Warfield was a ATU unit employee.

On or about March 4, 2014, NJT discharged Warfield for sleeping while on duty on a NJT bus and acting belligerently towards a NJT supervisor who found Warfield sleeping on the bus.^{3/} ATU grieved Warfield's termination and pursued arbitration. On April 21, 2015, a panel of arbitrators denied the grievance and sustained Warfield's discharge, finding NJT had just cause for terminating Warfield.

Warfield's charge challenges NJT's discipline and the arbitrator's finding that NJT had just cause for terminating him. He alleges that if progressive discipline had been imposed, he would not have been terminated. He contends that he did not

2 The facts about Warfield's discipline, discharge and ATU's appeal of Warfield's discharge are set forth in ATU Local 540(Warfield), D.U.P. No. 2016-3, 42 NJPER 376 (¶107 2015), aff'd at P.E.R.C. No. 2016-46, 42 NJPER 336 (¶96 2016). There, we dismissed Warfield's claim that the ATU breached its duty of fair representation in its advocacy for Warfield throughout the grievance process.

receive progressive discipline because of his race. He also alleges the discharge was in retaliation for filing an unfair practice charge with the Commission and for filing a complaint with the EEOC. Warfield alleges no specific facts establishing a nexus between the filing of either the unfair practice charge or the EEOC complaint and his eventual discharge.

ANALYSIS

The gravamen of Warfield's charge is that NJT lacked just cause to terminate his employment and terminated him because of his race. Since we do not adjudicate disciplinary disputes and lack jurisdiction over racial discrimination claims, I dismiss the charge. New Jersey Transit, D.U.P. No. 2008-5, 34 NJPER 53 (¶17 2008), aff'd, P.E.R.C. No. 2008-52, 34 NJPER 70 (¶28 2008)(Director dismissed charge filed by Warfield contesting his discipline and Commission holds that it "does not adjudicate disciplinary disputes"); Mercer Cty., et al., D.U.P. No. 2001-1, 27 NJPER 23,24 (¶32013 2000)(Director notes that "we have no jurisdiction over alleged violations of employees' civil rights, including race discrimination").

Warfield tangentially refers in his charge to retaliation by NJT for the filing of past unfair practice charges and EEOC complaints. This general statement does not satisfy the pleading requirements for an unfair practice charge. N.J.A.C. 19:14-1.3(a)(3); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269 (¶92

2011), aff'd at P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 2013)(Director dismisses (a)(3) charge for not pleading with specificity protected activity in relation to an adverse personnel action); Rockaway Tp. Bd. of Ed., D.U.P. No. 2014-6, 40 NJPER 293 (¶112 2013)(Director dismisses (a)(3) allegation for not pleading with specificity protected activity in relation to an adverse personnel action). Moreover, the bulk of Warfield's charge relates to claims that he did not commit the conduct he was disciplined for, and, even if he did, NJT's discipline did not conform with the principles governing progressive discipline. These claims are not unfair practices, but rather challenges to the arbitration decision sustaining his termination. The proper venue for such a challenge is in court. N.J.S.A. 2A:24-7.

I also dismiss Warfield's (a)(5) claim. Only a majority representative has standing to pursue such a claim. New Jersey Transit, 34 NJPER at 53 (Director dismisses Warfield's (a)(5) allegations for lack of standing and cites several cases in support thereof).

Accordingly, I find Warfield's allegations do not satisfy the complaint issuance standard.^{4/}

ORDER

The unfair practice charge is dismissed.

/s/Gayl R. Mazuco, Esq.
Director of Unfair Practices

DATED: August 1, 2016
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by August 12, 2016.

^{4/} N.J.A.C. 19:14-2.3.