

**STATE OF NEW JERSEY
DEPT. OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. ET15RB-65550**

Dennis Fenton,)
)
Complainant,)
)
v.)
)
Hamilton Farm Golf Club,)
)
Respondent.)

**Administrative Action
FINDING OF PROBABLE CAUSE**

On August 19, 2015, Dennis Fenton (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR), alleging that Hamilton Farm Golf Club (Respondent), discriminated against him based on his race, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent is a country club with two golf courses located in Gladstone, N.J. After having worked for Respondent during the 2014 season through a temporary agency, Complainant was hired as a permanent Laborer for the 2015 season. In this position, he was responsible for maintaining the grounds of the club. On May 27, 2015, Respondent discharged Complainant.

In the verified complaint, Complainant, who is Black, alleged that he and [REDACTED], the only other Black Laborer on the Grounds Staff, were treated more harshly and held to a different standard than non-Black employees in the same position. According to Complainant, he and [REDACTED] were, for example, assigned to clean the biggest bunkers (also known as golf course sand traps) alone, while non-black employees were always placed in work groups of more than two for larger jobs. Complainant further alleged that he and [REDACTED] were terminated for engaging in the same conduct as non-Blacks, who were not terminated.

In its response to the complaint, Respondent denied that race played any part in its decision, and asserted that Complainant was discharged because he was caught multiple times not fully participating in his work, forcing other staff to pick up the slack for him. Respondent maintained that Complainant was also caught, on one occasion, sitting in his utility vehicle watching others work until a supervisor entered the area. Respondent alleged that, on May 27, 2015, Complainant and [REDACTED] were assigned to rake bunkers with eight other employees but, on that day, they were caught multiple times standing around watching the other employees do the work. Respondent claimed that Complainant and [REDACTED] were also terminated because they were insubordinate to their manager, Casey Utton, and cursed at him.

In an interview with DCR, Complainant said that he and [REDACTED] were working on bunkers with about 10-12 other employees on the day they were terminated. As they were finishing up, Utton came by and told all of the Laborers, except for Complainant and [REDACTED], to move on to the next bunker. Utton then told Complainant and [REDACTED] that they were terminated and they could finish out the day or go home. According to Complainant, Utton said they were terminated because, during the previous two weeks, Utton had observed them sitting in their golf carts multiple times when they should have been working. Complainant said that he accused Utton of being racist.¹

Complainant told DCR that he was never given any warnings, verbally or in writing, about sitting in the golf cart or his alleged negative performance. Complainant told DCR that, if one Laborer finished his part of the work, it was common practice to sit in the golf cart while the other Laborer finished up. According to Complainant, all Laborers, including his white and Hispanic co-workers, would on occasion wait in the cart for their co-workers to finish a job.

Complainant alleged that about two weeks before he was terminated, he was given the task of picking up rocks near the front office. Complainant did not ask for help and said that it took him about two and a half days to complete the job. Complainant did not complain to management, but said that none of the Hispanic or white employees were given a similar assignment.

Complainant told DCR that during the first week of the 2015 season, one of the other Laborers, [REDACTED], told Complainant, “Jamaican, we’re going to get some guy to come here and take your job.” Complainant said that he did not bring this comment to the attention of management.

DCR interviewed [REDACTED], who told DCR that he worked for Respondent during the 2014 season through a temporary employment agency and was invited back by Respondent for the 2015 season, this time as a direct hire. [REDACTED] corroborated Complainant’s assertion that Blacks were treated more harshly than non-Blacks. [REDACTED] told DCR that Respondent has two separate courses, “Island” and “Hickory” with Island being the larger, although both are 18 holes. [REDACTED] claimed that on the day before they were terminated, he and Complainant were asked to complete a rake of the entire Island course by themselves. “A rake” is when Laborers rake all the bunkers on a course. [REDACTED] said that this was normally a 15-20-person job because of the size of the course and the amount of bunkers they would have to rake. [REDACTED] alleged that none of the Hispanic or white employees were ever assigned a similar task.

[REDACTED] asserted that he and Complainant were the only Black Laborers at the Club. Information provided by Respondent confirmed [REDACTED] assertion and also showed that, during the 2015 season, Respondent’s regular Laborer workforce consisted of 7 Hispanics, 19 whites, and 12 Hispanics hired as temporary employees.

DCR interviewed [REDACTED], a white Laborer, who said Respondent is easier on white college kids who are “not pushed as hard as the minorities.” [REDACTED] said that he would not have been fired

¹ Complainant told DCR that he didn’t think Utton had been hired during the prior two weeks, and therefore couldn’t have observed them sitting while others worked but said he had no proof. Respondent’s documents show that Utton was, in fact, employed by Respondent during the two weeks prior to Complainant’s termination, and Utton confirmed this during his interview with DCR.

if he were caught taking breaks or working slow like Complainant and [REDACTED] were alleged to have done. [REDACTED]. also stated that Respondent's Managers, Utton and Jason Harrison, did not seem to like Complainant and [REDACTED]. When asked why, [REDACTED]. claimed that "it might be because they are black." [REDACTED]. told DCR that Complainant and [REDACTED] were made to do assignments that were tedious and undesirable, like weeding the milkweeds, which were usually assigned to the newer employees. [REDACTED]. claimed that Complainant and [REDACTED] were given at least one warning before their termination, but he was not sure when or how they received that warning.

[REDACTED] told DCR that the Laborers generally take a break when they finish raking a bunker, even though they are not supposed to. [REDACTED]. alleged that if management catches someone taking a break, they will tell them to work faster, or at worst, send them home for the day. [REDACTED]. stated that it was common for Laborers to sit in a cart for five minutes after finishing a bunker. [REDACTED]. claimed that Complainant and [REDACTED] problem was not that they were taking too many breaks, but that they did not work fast enough. [REDACTED]. alleged that a white employee named [REDACTED] (last name unknown) worked slowly and slacked off in the cart while others were working, but he was not terminated for doing so.

[REDACTED], a Hispanic Laborer, told DCR that Complainant and [REDACTED] were set up to fail. [REDACTED] cited to the fact that Complainant and [REDACTED] were once told to repair the divots on an entire course, which is typically a five-person job. [REDACTED] stated that, even though they are not supposed to take breaks, the Laborers do take short breaks from time to time. He pointed out that that Laborers are forced to stop working when golfers come by, which could take about 10-15 minutes. [REDACTED]. told DCR that when he worked with Complainant and [REDACTED], they did not take any inappropriate breaks. [REDACTED] was not aware of any warnings Complainant or [REDACTED] received before they were terminated.

DCR interviewed Respondent's Director of Grounds, Jason Harrison. Harrison said he decided to hire Complainant and [REDACTED] and that they were the only two people rehired in 2015 as direct hires based on their work as temporary employees in the 2014 season. Harrison claimed that he was not at the course on the day that Complainant and [REDACTED] were terminated. Harrison stated that prior to their termination he had given Complainant and [REDACTED] a verbal warning about being tardy on two separate occasions.

Harrison alleged that Respondent has a three-strike progressive disciplinary policy. He said that the first strike is a verbal warning, the second strike is a written warning with a suspension, and the third strike is termination. Harrison stated that Complainant and [REDACTED] received two warnings for tardiness and a third warning for taking breaks while other employees were working. Harrison claimed Complainant and [REDACTED] were given a written warning, but Respondent could not produce a copy of the alleged warning.

Harrison stated that it was acceptable for an employee to "take a breather" every once in a while, but it was not acceptable to do so "when the rest of the team is hustling." Harrison alleged that Complainant and [REDACTED] were not the only workers that were terminated for substandard job performance. Respondent provided evidence that a white Laborer, [REDACTED], was terminated in 2015 because he sat around while other employees completed the work.

In a February 20, 2017 letter to DCR, Harrison stated there were three non-Black employees terminated around the same time and for similar reasons as Complainant; namely [REDACTED] (white), [REDACTED] (white), and [REDACTED] (Hispanic). Respondent asserted [REDACTED] was terminated after one week for “substandard job performance.” [REDACTED] did not receive any warnings and was terminated for not “performing the work required of his position.” [REDACTED] was terminated after two weeks on the job, after he received a warning for “substandard job performance,” and challenged his manager to a “physical altercation.” [REDACTED] was terminated after seven weeks. According to Respondent, [REDACTED] had been given a verbal warning about his job performance. Harrison stated that [REDACTED] “expressed his unwillingness to perform the tasks delegated to him,” which resulted in his termination.

DCR interviewed Respondent’s Assistant Superintendent, Casey Utton. Utton stated that he began working for Respondent on April 20, 2015, over a month before Complainant and [REDACTED] were terminated. Utton claimed that Complainant and [REDACTED] were terminated because of “repeated events of not working as a team” and that they were found “sitting and leaning on things” about four times a day. Utton alleged that he verbally warned Complainant and [REDACTED] on three separate occasions and told them that they needed to work more diligently. Utton also alleged that it usually only takes two employees to repair the divots.

Utton stated that on May 27, 2015, he observed Complainant and [REDACTED] sitting in their cart while the other employees were working. He also observed them working slowly, leaning against their shovels while everyone else raked the sand traps. Utton told all of the employees to move on, but told Complainant and [REDACTED] to stay back. He told them that they cannot lean on their rakes and sit in their carts while everyone else is working. Utton told DCR that it was never acceptable for Laborers to sit around and watch others work. Utton stated that after he told them they were terminated, Complainant called him a racist and yelled and cursed at him.

DCR interviewed [REDACTED] Hispanic Laborer who worked for Respondent for multiple seasons. [REDACTED] told DCR that he never saw Complainant or [REDACTED] receive assignments that seemed unfair or different from what others received. [REDACTED] claimed that it was only acceptable to take breaks when a golfer was on the course and the Laborers were not allowed to work. He said that if a Laborer finished before everyone else, he should either help the others or move on to work on the next bunker. [REDACTED] said that Complainant and [REDACTED] “took a lot of breaks” and talked a lot when they should have been working. [REDACTED] could not recall anyone that took the amount of breaks that Complainant and [REDACTED] did since he began his employment in 2015. [REDACTED] also told DCR that it usually only takes two employees to repair the divots.

According to information given to DCR by Respondent, Complainant and [REDACTED] never received a written warning, only multiple verbal warnings. Respondent claimed that Complainant and [REDACTED] were terminated because they had been given verbal warnings, and because of the vulgar and offensive language directed toward a supervisor, Utton.

ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2(a).

“Probable cause” for purposes of this analysis means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which the Director makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits.” Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev’d on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” *Ibid.*

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the “terms, conditions or privileges of employment” based on race. N.J.S.A. 10:5-12(a).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant based on his race. Respondent acknowledged that Complainant was one of only two Black Laborers out of approximately 28 Laborers employed on a regular basis during the 2015 season, and of 40 employed on either a regular or temporary basis. The other Black Laborer was terminated at the same time as Complainant.

The evidence obtained during DCR’s investigation supports Complainant’s assertion that Respondent treated the two Black Laborers more harshly than non-Black Laborers. Witnesses support Complainant’s allegations that he and his Black co-worker were repeatedly assigned the most tedious and arduous tasks. For example, Complainant and [REDACTED] were required to repair all of the divots on the course without help from other Laborers, even though it is typically a five-person job, and that they were assigned to rake all of the bunkers on the “Island” course without help from other Laborers.

Similarly, the investigation found sufficient evidence to support a reasonable suspicion that Complainant and his Black co-worker were held to a harsher standard than non-Black Laborers and were disciplined when non-Black workers engaged in the same behavior were not disciplined. For example, Respondent told DCR that Complainant and [REDACTED] were disciplined because they took too many breaks and sometimes sat in the golf cart while others were still working. Witnesses confirmed to DCR that white and Hispanic Laborers sometimes work slowly, rest occasionally, and even sit in the golf cart while resting, without being disciplined.

In addition, although supervisory employees told DCR that Complainant was issued disciplinary warnings for being tardy on two occasions, Respondent failed to provide evidence showing that Complainant’s tardiness was a factor in his termination. And, although Respondent alleged that Complainant was issued a written warning, consistent with its progressive discipline policy, Respondent could not produce the alleged warning. Further, the insubordination, vulgar and offensive language allegedly directed at Utton could not have form the basis of Complainant’s

termination since both parties agree that no vulgarities were spoken until after Utton told Complainant that he was terminated.

At this threshold stage in the process, there is sufficient basis to warrant “proceed[ing] to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56. Therefore, the Director finds probable cause to support Complainant’s allegations of race discrimination.



Rachel Wainer Apter, Director
NJ Division on Civil Rights

Date: January 31, 2020