

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

CARRIE DUBOSE,
Complainant

v.

DOCKET NO. 96-BEM-0644

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan dismissing Complainant Carrie Dubose’s complaint of race discrimination. Following an evidentiary hearing, the Hearing Officer concluded that Respondent Massachusetts Bay Transportation Authority was not liable for unlawful discrimination on the basis of race in violation of M.G.L. c. 151B, Section 4. Complainant filed an appeal to the Full Commission.

The responsibilities of the Full Commission are outlined by statute, the Commission’s Rules of Procedure (804 CMR 1.00 et. seq.), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, Section 5. The Hearing Officer’s findings of fact must be supported by substantial evidence, which is defined as “....such evidence as a reasonable mind might accept as adequate to support a finding....” Katz v. MCAD, 365 Mass. 357, 365 (1974); M.G.L. c. 30A.

It is the Hearing Officer’s responsibility to evaluate the credibility of witnesses and/or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361

Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.16(f).

COMPLAINANT'S PETITION FOR REVIEW

Complainant contends on appeal that the Hearing Officer erred as a matter of fact and law when she found that Respondent was not liable for discrimination on the basis of race toward Complainant and that Respondent was not liable for retaliation in this matter.

Complainant first contends that the Hearing Officer erred in finding that Complainant's claim that Respondent failed to promote her to Station Master in the spring of 1995 was time-barred. Specifically, Complainant argues that because she did not know until October 1, 1995 that the reason she was denied an interview was due to her absence for more than thirty days pursuant to Respondent's policy, the six-month tolling period did not begin to run until that date and her claim should not be time-barred. Complainant filed her claim on March 28, 1996. The Hearing Officer found that Complainant learned in May 1995 that she would not receive an interview for the position she sought, and that she learned in August 1995 of the identities and races of those who had been promoted. Thus, by August 1995, Complainant had unequivocal notice of Respondent's decision not to promote her and knew the identities of the successful applicants. That information alone was sufficient to put Complainant on notice for purposes of filing her race claim. See Wheatley v. American Tel. & Tel. Co., 418 Mass. 394, 398 (1994); Soriano v. City of Lawrence Police Department, 2000 WL 1584852 at *3 (Essex Super. Ct. Oct. 23, 2000). Therefore, we find

that there was substantial evidence to support the Hearing Officer's decision with respect to the timeliness of this claim.

Complainant also contends that the Hearing Officer erred when she found that Respondent did not discriminate against Complainant on the basis of race. All of Complainant's contentions underlying her request for review rest upon her challenge to the Hearing Officer's findings of fact and credibility determinations. We have carefully reviewed Complainant's Petition for Review and the full record on this issue, and have weighed all the objections to the decision in accordance with the standard of review herein. As a result, of that review, we find no material errors of fact or law. To the extent Complainant claimed the Hearing Officer erred in resolving witness credibility issues, we find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them.

In addition, Complainant contends that the Hearing Officer erred when she found that Respondent's choices for promotion and assignments for temporary work in 1995 and 1996 were not motivated by retaliation on the part of Respondent. Complainant claims that certain upper-level employees of Respondent were aware of her participation in the Advancement of Peoples of Color and that they retaliated against her for such participation. However, based upon the Hearing Officer's credibility determinations regarding witnesses who testified at the public hearing, along with all the evidence presented in this matter, the Hearing Officer found that, contrary to Complainant's contentions, Susan Olderman and Leroy Jenkins were the key decision makers. The Hearing Officer specifically found that Susan Olderman and Raymond Diggs decided which employees would be promoted to Station Master in 1995 and 1996, and Leroy Jenkins decided which employees would be assigned as spare station masters in 1995. Complainant does not claim on appeal that Olderman, Diggs and Jenkins knew of her involvement with Advancement of

Peoples of Color; she objects, however, to the finding that these individuals were in fact the decision makers. We find the Hearing Officer's conclusion regarding who the decision makers were was supported by substantial evidence in the record and we defer to it.

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision in its entirety.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact and conclusions of law of the Hearing Officer. Complainant's appeal to the Full Commission is hereby dismissed.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint seeking judicial review pursuant to M.G.L. c.30A in the Superior Court within thirty (30) days of receipt of this decision.

SO ORDERED this 17th day of September, 2003.

Walter J. Sullivan, Jr.
Commissioner

Cynthia A. Tucker
Commissioner