

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. &
STEPHEN DORSEY,
Complainants

v.

DOCKET NO. 09-BEM-01471

STARBUCKS CORP.,
Respondent

Appearances:

Caitlin A. Sheehan, Esq., Commission Counsel
James W. Bucking, Esq. and Kristyn Bunce DeFilipp, Esq. for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On June 16, 2009, Complainant Stephen W. Dorsey filed a complaint with this Commission charging Respondent Starbucks Corporation with discrimination in employment on the basis of age in violation of M.G.L. c.151B, sec. 4. The Investigating Commissioner issued a probable cause finding on January 13, 2012. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on October 21 & 22 and December 16, 2014. After careful consideration of the entire record in this matter, and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Respondent Starbucks Corporation owns and operates approximately 7,000 retail coffee stores throughout the United States and employs over 100,000 people.

2. Complainant Stephen W. Dorsey was born in 1945. He was 61 years old in 2006 when he was hired by store manager Joel Needel to work as a barista at Respondent's new location on Derby Street in Hingham, MA. T. I, 111,122-24. The barista position is an entry-level, hourly position. T. I, 125-126.

3. In addition to its corporate stores, Respondent also contracts with retailers who operate Starbucks locations within their stores. In these instances, the licensed store owns and operates all the equipment, the employees work for the licensed store and Respondent acts as consultants and compliance specialists to the business. T. III, 41-42. Licensed stores have fewer employees than corporate Starbucks stores, the business volume is much lower and the hours of operation are fewer. T. III, 44-5. At all times relevant to this matter, the Roche Brothers supermarket in Quincy, MA. was a licensed store.

4. When hired by Respondent, Complainant had no restaurant or retail services experience. He has worked as a mechanical engineer, worked for the New England Trade Adjustment Assistance Center and practiced law for several years. T. I, 114-119.

5. At the time of his hire, Complainant owned and operated a Curves franchise that he purchased in 2007. T. I, 117-119. Complainant applied for the barista job because he and his wife needed health insurance and Respondent allowed part-time employees to enroll in its health insurance plan. T. I, 119-120.

6. Complainant trained for the barista position at Respondent's Marshfield and Weymouth stores. T. I, 123-4; T. II, 126. He became a certified barista before the Derby Street store opened. T. II, p. 4-6. Baristas' duties generally include brewing coffee, taking customer orders operating the cash register, making espresso beverages and cleaning and maintenance of the store and services areas. Ex. 5; T. I, 125-126.

7. Terry Walker was hired by Needel as a shift supervisor at Derby Street when the store opened. Shift supervisors are baristas who also act as shift team leaders when no manager is present. They were responsible for ensuring that the shifts run smoothly and handle tasks such as assigning baristas to stations and securing the cash register at the close of a shift. They have no authority to hire and fire or discipline baristas, but can report problems to the assistant manager or the manager. T. I, p. 129-20,133, 164, T. III, 102-3.

8. Assistant Managers also run shifts, are responsible for other staff on the floor, and coaching of staff as needed. T. III, 29. Melissa Jackson has worked for Respondent since 2007. She was an assistant manager at the Derby Street store from October 1, 2007 until May 4, 2008. T. III, 18-21. She is currently a store manager for Respondent in Denver, CO.

9. Store Managers are responsible for the store performance, staff hiring and meeting goals and budget. T. II, 125. Store managers are expected to conduct written performance evaluations of their baristas and shift supervisors every six months. T. III, p. 88-90. Joel Needel was a store manager for Respondent from 1996 to 2013. He managed the Derby Street store from the time it opened in 2006 until 2013. T. II, 125-126.

10. District Managers develop managers, oversee sales, and ensure that all the stores in their district are up to standards. They conduct store visits and interviews. T. I, 230. Alice Wilkie was the District Manager for several stores including Derby Street at its opening in 2006

and for approximately one year thereafter. Linda Krol was the District Manager for 10 stores including Derby St. from 2007 to 2008. Krol subsequently changed districts and continued to work for Respondent until 2011. She was 50 years old when hired in 2007.

Complainant's tenure at the Derby Street store

11. Complainant began working at the Derby Street store in the summer of 2006. When the store opened, it employed approximately 10 baristas and five shift supervisors. T. I, 127-130. Complainant worked primarily in the mornings and spent the majority of his time working the cash register. T. I, p. 138-40. He was infrequently assigned to the espresso bar. T. I, 138-40. He worked at least 20 hours per week. Complainant reported directly to store manager Needel.

12. Complainant testified that he got along well with Needel. He stated that Needel never criticized his attitude. He enjoyed his job, his co-workers and his customers.

13. Complainant testified that some other baristas in the Derby Street store called him "Grandpa" and Needel asked him to play Santa Claus at Christmas time.

14. Complainant testified that he had trouble keeping up with the espresso bar but he was never disciplined for that reason. However, Needel took him off the espresso machine once or twice for being too slow. When Needel told him he was too slow on the espresso machine Complainant responded that was "bullshit." T. II, 91.

15. Complainant testified that his performances reviews were mostly positive.

16. In the fall of 2007, Needel promoted two new employees who were in their twenties to shift supervisor positions. Needel testified that in determining whom to promote, he considered baristas' performance and feedback from shift supervisors. T.II, 128 -130.

17. After selling his Curves franchise in November 2007, Complainant became interested in becoming a shift supervisor because there was more job security and the pay was

higher. He stated that he told Needel about his desire for a promotion, but Needel did not respond. T. II, 89-90.

18. Wilkie testified that she had limited contact with Complainant while she was district manager for Derby Street in 2006-2007, but, unlike other baristas, Complainant was not reticent about talking to her and told her about his Curves franchise and talked a lot about Starbucks' owner Howard Schultz.

19. Wilkie testified that during a "Management Business Development Day" she reviewed with Needel all aspects of the Derby Street store. In discussing each employee, she asked Needel which baristas he was considering developing for shift supervisor positions. During the course of this discussion, Needel told Wilkie that Complainant was not ready for promotion because of the rude manner in which he spoke to others. T. III, 61.

20. Krol testified that as district manager, she had several conversations with Complainant about his frustrations and his desire to become a shift supervisor, a position for which Needel said Complainant was not ready. T. I, 44.

21. Krol testified that Complainant did not react well to negative feedback. He once told her that she did not understand his background in law, which should have been considered in determining his qualifications for promotion. Krol told him that despite his impressive background, a legal job was very different from a position at Starbucks. T. I, 51-2.

22. Complainant told Needel in November 2007 that being a shift supervisor was not his life's ambition and he really wanted Needel's job. T. II, 94.

23. Complainant testified that he complained to Shift Supervisor Terry Walker and Assistant Manager Jackson that he was being passed over for promotion because of his age. Jackson testified that she did not recall Complainant complaining of age discrimination and that

she would have remembered such a complaint and would have referred it to Krol or "Partner Resources."¹ T. III, 26.

24. Terry Walker testified that Needel was easy-going and a good manager. T. III, 105-6. T. III, 109. Walker stated that she had a good working relationship with Complainant and they occasionally socialized after work. She stated that Complainant was a great worker who got along well with co-workers and was good with customers. T. III, 110-113.

25. In December, 2007 and January, 2008, Walker emailed and spoke with Krol about issues in the Derby Street store, including Needel's failure to promote Complainant which she told Krol was due to age discrimination. Krol was always responsive to Walker's emails and often came to Derby Street to discuss issues with Walker. Ex. 12; T. III, 133-4.

26. Needel testified that he was surprised to learn that Complainant was upset about the promotions of the baristas because Complainant had not previously expressed an interest in promotion. T. II, 129-131. When Walker recommended Complainant for promotion, Needel responded that Complainant had to work on some unspecified issues. T. II, 130-131; T. III, 124.

27. Assistant Store Manager Melissa Jackson testified that in January 2008, Respondent changed its methods for brewing coffee and operating the espresso bar and this changed the routine of all of the employees. T. III, 35-6. Jackson testified credibly that Complainant was resistant to the changes, did not take negative feedback well and made things difficult for the new shift supervisors. T. III, 23-24. She would not have chosen him for a shift supervisor position because he did not have the leadership qualities necessary for the position. T. III, 25.

¹ Starbucks refers to its employees as "partners."

Complainant's application and interview for a store manager position

28. In November 2007, Complainant referred himself through the Manager Referral Bonus Program to a recruiter for Respondent. On November 12, 2007, Complainant wrote to the recruiter and Krol that he had gone over Needel's head directly to them to seek a promotion to store manager because Needel had an "extreme aversion to any topic which would require him to work with [an employee] to develop [sic] a career/advancement plan." Ex. 7.

29. The negative tone of Complainant's email caused the recruiter to email Krol: "I am sure you are all over this but I am concerned about the way he is talking about Joel, whether it is true or not." Ex. 7.

30. Krol testified credibly that it was surprising that Complainant went directly to a recruiter instead of meeting with her and Needel regarding a promotion because Respondent's protocol was to give credence to the store manager's evaluation of his employees, as she had done with Needel. Krol described Needel as a kind, caring, family man and a competent manager who had mentored many workers and was concerned about people. She did not agree with Complainant's negative assessment of Needel. T. I, 34, 37.

31. Krol testified that while Complainant had not followed protocol by going over the store manager's head, it was decided by the recruiter and other managers to interview Complainant for a store manager position² because Complainant had made such a fuss.

32. On January 2008, Complainant emailed a resume and application to Krol, who advised him to seek assistance in preparing for a job interview. To that end, Melissa Jackson spent several hours helping Complainant prepare for the interview because she had recently been through the process. T. II, 133-4.

² Respondent interviews external candidates for managerial positions in order to have a "bench" ready to begin training, in anticipation of future job openings. Thus, Complainant was not interviewing for a particular store manager position.

33. From January 7 through February 18, 2008, Complainant took a six week leave of absence for surgery. T. II, 132-133. Krol testified that she did not communicate with Complainant during his leave of absence because it was inappropriate to do so. T. I, 62.

34. On February 19, 2008, his first day back from leave, Complainant sent Krol an email that mocked a recruiting pamphlet put out by Respondent and stated in part: "...Is there something else I'm supposed to be doing? Why does it continue to appear that to be in the system is to be excluded by it? Are people outside the company...kept waiting in the dark so long? Hope your week is going well, would love to hear from you, or anybody. P.S. Apologies if I'm a little testy..." Complainant went on to complain about conditions in the store. Ex. 13.

35. Krol testified that the tone of Complainant's email was sarcastic and very concerning to her. T. I, 198. Complainant admitted in testimony that the tone of his email was "obviously not" appropriate.

36. On Monday, February 25, 2008, Complainant sent Krol another email stating, "Yet another week passes. Trust that after tomorrow things may be arranged? Happy Monday." (Ex. 14) Krol found this email sarcastic, unprofessional and it caused her concern because it demonstrated Complainant's impatience and unwillingness to comply with the hiring process. T. I, 66-67.

37. On March 11, 2008, Complainant interviewed for a store manager position with Krol and Wilkie, in accordance with Respondent's practice of having two district managers interview potential managers. Krol testified that the qualities Respondent was seeking in a store manager, were friendliness, ability to develop others, ability to communicate and create a positive work environment, and ability to be a mentor and understand peoples' learning styles and motivations. T. I, 68-9. The interview consisted of Krol and Wilkie asking Complainant questions concerning

his actual experience, with Krol and Wilkie scoring the interview separately and then coming to a consensus. T. III, 55.

38. Complainant testified that the interview went well until he was asked how he had motivated employees and he responded that he used threat. He acknowledged that Krol and Wilkie were “aghast” at his response.

39. Krol testified that she was “flabbergasted” that Complainant used the word “threat” in dealing with employees, considering that he had time to prepare for the interview and worked for Respondent. Krol believed Complainant should have known that using threat to motivate employees was incompatible with Respondent’s work philosophy, which is about kindness, developing others and creating a positive work environment. T. I, 69- 70. She testified that the response disqualified Complainant for a store manager position and his otherwise lackluster performance during the interview did not compensate for the remark. I credit her testimony.

40. Wilkie testified that Complainant had difficulty answering questions and his use of the word “threat” as a way to deal with employees raised a “red flag,” contradicted Respondent’s value system and was a disqualifying answer. She and Krol did not recommend Complainant for a store manager position. T. III, 64. I credit her testimony.

41. Krol met with Complainant in the Hingham store to inform him that he was not being recommended for promotion. She stated that the meeting did not go well and Complainant did not take criticism well.

42. In emails to Krol and Wilkie after the interview, Complainant continued to employ a sarcastic and unprofessional tone. Krol stated that Complainant was relentless when he did not get what he wanted. He made excuses and attempted to justify his interview responses and

blamed his poor interview on having been poorly prepared by others. She described Complainant as possibly the rudest man she has ever met. T. I, 81.

43. Wilkie testified that in a “shocking” email that “went too far,” Complainant wrote that Wilkie and Krol were “underestimating” him because he was a “significant talent/resource...” and stated “After all, it’s only a cup of coffee. If it’s not perfect, dump it and do it again.” Wilkie testified that this email confirmed that their decision not to recommend Complainant for a store manager position was the right one. She stated that what Complainant referred to as “just a cup of coffee” is a billion dollar business employing a team of people whose well-being is a manager’s concern. T. III, 67.

44. Complainant testified that after he failed the interview, Krol told him he would be transferred to a new store opening in Hanover where he would be trained as a shift supervisor. The transfer was subject to the approval of Diane Bowser, the manager of the Hanover store. T. II, 107-8.

45. Krol did not remember offering Complainant a shift supervisor position and believed the plan was to transfer him to Hanover as a barista because tension was high in the Derby Street store. T. I, 83-4. She had no involvement in the transfer to Hanover because she had moved to a different district that no longer included that geographic area. T. I, 95.

46. Prior to the Hanover store opening, its employees were trained at Derby Street. On one occasion when Diane Bowser³ entered the Derby Street store to check on the trainees she was approached by Complainant who said to her, “Should we be talking?” T. III, 11-12. Bowser, who had never met Complainant, responded, “I don’t know. Who are you?” Complainant responded harshly, “Forget it, if you don’t know who I am or why I’m talking to

³ Bowser was hired by Respondent 11 years ago at the age of 49. She was promoted to store manager of Hanover seven years ago and continued to manage that store at the time of the public hearing.

you.” He then abruptly turned and walked away. Bowser was surprised and shocked at Complainant’s disrespectful manner and did not want him to work in her store because of his personality, which was not in keeping with Respondent’s values. T. III, 13-15.

47. Complainant never saw Bowser again and he did not transfer to the Hanover Store.

Complainant transfers to the Cohasset store

48. Sometime in Spring 2008, Needel cut the hours of some Derby Street baristas including Complainant. Complainant began to pick up hours at other Starbucks locations in order to reach 20 hours per week. T. II, 24-25. He began to work regularly at the Cohasset store.

49. Complainant remained at the Derby Street store until the summer of 2008 when he officially transferred to the Cohasset store, where his duties were primarily working the cash register and brewing coffee. He was not assigned to the espresso machine. He received no formal criticism and had a good relationship with Store Manager Kenneth Brown and the assistant manager. At some point Complainant told Brown and the assistant manager that he was interested in becoming a shift supervisor, but they told him he was too slow on the espresso machine. T. II, 35, 110.

50. Brown testified credibly that while Complainant was knowledgeable about all of his tasks and was available to work a variety of hours, he was “rough around the edges” and had poor customer services skills. In addition, his slowness in completing customer orders would sometimes cause a backup in customer lines, which required a supervisor to step in and assist the baristas in making drinks. T. II, 165.

51. After Complainant had been in Cohasset for a couple of months, Brown met with Complainant to review his strengths and weaknesses. T. II, 156-7. Complainant was visibly upset at Brown's assessment of his weaknesses and told Brown that Needel had given him the assessment, which was "bullshit." T. II, 157-8. Brown responded to Complainant that if two different store managers were giving him the same feedback, he should take their assessments into consideration and not dismiss them out of hand. T. II, 158. I credit his testimony.

52. Brown hired a woman in her 20s as a shift supervisor to fill a vacant position. Tr. II, 171-2. The woman worked for a short time and left without notice because, according to Brown, two other employees made the job difficult for her. T. II, 172. Brown testified credibly that he did not promote Complainant to shift supervisor because of his poor interpersonal skills and lack of speed. T. II, 158.

53. In the summer or fall of 2008, Walker was hired by Roche Brothers to manage a licensed Starbucks in Quincy and voluntarily left Starbucks. She subsequently called Complainant and offered him a position which he accepted. T. III, 141-142.

54. Complainant told Brown he was leaving in order to take a position in a licensed store. Brown asked Complainant if he would be willing to pick up shifts in Cohasset until he got someone to cover and Complainant agreed to do so. T. II, 159.

Complainant begins working at Roche Brothers

55. On September 22, 2008, Complainant began working full-time as a barista at Roche Brothers' licensed store in Quincy. His eligibility for Roche Brothers' health insurance did not become effective for 90 days.

56. Complainant testified that he told the assistant manager of the Cohasset store that he was going to cut back his hours at Cohasset, but that he would continue to work approximately

one day every week or two in Cohasset in order to remain eligible for Starbucks' health insurance. He told his managers that he would end his part-time employment when Roche Brothers' insurance coverage began. T. II, 118-119. For a period of time he continued to take shifts at the Cohasset store. T. II, 58.

57. Complainant testified that in early December 2008, he went to the Cohasset store to get his weekly free pound of coffee and was informed by a barista that he had been terminated and was no longer a Starbucks employee. T. II, 65. At that time, Complainant believed, incorrectly, that his health insurance was cut off. He later learned that Starbucks continued his health insurance until the end of December and there was no gap in his health insurance coverage. T. II, 119-120.

58. Brown testified that company policy would not permit employees to remain on the payroll if they consistently worked under the required number of hours per week. He stated that he processed Complainant's voluntary separation on December 5, 2008 because Complainant had taken the job at Roche Brothers and not been working regularly enough to remain employed by Respondent. T. II, 163-164.

59. Approximately six months later, Complainant was promoted to manager of the Roche Brothers license store. T. II, 60. At the time of the public hearing, Complainant had retired.

III. CONCLUSIONS OF LAW

M.G.L. c.151B §4(1B) prohibits employers in the private sector from discriminating against an employee on the basis of age. Complainant alleges that after hiring him for the position of barista at the age of 61, Respondent repeatedly failed to promote him to the position

of shift supervisor and store manager on the basis of his age, and favored younger employees. He also alleges that Respondent then terminated his employment on account of his age.

In order to establish a prima facie case of discriminatory failure to promote, Complainant must show that he is a member of a protected class who was qualified for the position, that he was denied the position and the position was awarded to someone not of his protected class. Alves v. Town of Freetown Police & Board of Selectmen, 18 MDLR 112 (1996); See Puckett v. Commercial Aviation Services, 24 MDLR 77 (2002) (finding evidence of race discrimination when persons outside of the Complainant's protected category were selected for promotional opportunities that were denied to the Complainant, a qualified candidate)

Complainant has satisfied the elements of a prima facie case in that he was age 61, he was performing his job at an acceptable level and Respondent did not promote him to position of shift supervisor and refused to hire him for the position of store manager. There was evidence that Respondent hired substantially younger employees into shift supervisor positions while Complainant was not promoted.

Once Complainant establishes a prima facie case of discrimination, Respondent must articulate a legitimate, non-discriminatory reason for his termination. Abramian vs. President & Fellows of Harvard College & others, 432 Mass. 107 (2000); Wheelock College v. MCAD, 371 Mass. 130 136 (1976); Blare v. Husky Injection Molding Systems Boston, Inc., 419 Mass 437 (1995). As part of its burden of production, Respondent must "produce credible evidence to show that the reason or reasons advanced were the real reasons." Lewis v. Area II Homecare, 397 Mass 761, 766-67 (1986). Respondent's articulated reasons for failing to promote Complainant were his abrasive personality and his slowness in operating the espresso machine. Respondent's articulated reasons are supported by the credible testimony of witnesses and

documentary evidence. Therefore, I conclude that Respondent has articulated and produced credible evidence to support the legitimate, nondiscriminatory reasons for its action.⁴

Once Respondent meets its burden, then Complainant must show by a preponderance of evidence that Respondent's articulated reason was not the real one but a cover-up for a discriminatory motive. See Knight v. Avon Products, 438 Mass. 413, 420, n. 4 (2003). Complainant must show that Respondent "acted with discriminatory intent, motive or state of mind." Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001). Complainant may meet this burden through circumstantial evidence including proof that "one or more of the reasons advanced by the employer for making the adverse decision is false." Lipchitz, 434 Mass. at 504. If the Complainant presents such evidence, the trier of fact may, but is not compelled, to infer discrimination. Complainant retains the ultimate burden of proving that Respondent's adverse actions were the result of discriminatory animus. See Lipchitz at 504; Abramian, 432 Mass. at 117.

As evidence of pretext, Complainant asserts that Respondent's own witnesses testified that Complainant had good coffee knowledge and good customer service and was able to perform all of his tasks. His store managers routinely assigned him to the cash register and Needel asked him to represent the store at the public event Taste of Hingham for two years and to play Santa Claus at the store. Needel also recommended Complainant to Brown for hire at the Cohasset store and Brown increased Complainant's hours at the Cohasset store. Complainant asserts that Respondent would not have continued to employ him and transfer him if he were not capable of performing his job and of being promoted.

⁴ In its post-hearing brief, Respondent challenges for the first time the Commission's jurisdiction over alleged discriminatory acts that occurred more than 300 days prior to Complainant's filing of his complaint on the grounds that they do not constitute a continuing violation. Because of my ruling in this matter, I do not reach this issue.

Complainant has not persuaded me that Respondent's reasons for failing to promote him were a pretext for discrimination. His own testimony corroborated Respondent's articulated reasons for failing to promote him. He acknowledged that he was slow on the espresso bar and was seldom assigned there and although both of his store managers told him so, he rejected their feedback as "bullshit."

When Complainant went over Needel's head and directly contacted a company recruiter to apply for a store manager position, Respondent broke with its protocol and granted him an interview. In his interview, he said that he used threats to motivate people, an answer that his interviewers, Krol and Wilkie deemed disqualifying. During the process, he wrote emails to Krol and Wilkie that by any standards were sarcastic and unprofessional. He blamed his poor interview on the assistant manager who had spent many hours preparing him for it.

After the interview he was offered a chance to transfer to a new store; however, he offended the store's manager by approaching her in an aggressive manner and walking away when she did not recognize him. At the Cohasset store, he rejected his manager's feedback in the same way he had rejected feedback at the Derby Street store.

While Respondent acknowledged that baristas were primarily in their 20s, there was evidence that Respondent hired employees and managers of all ages. Bowser began working for Starbucks at 49, and was promoted to store manager in her fifties. She was still managing the Hanover store at the time of the public hearing at age 60. Complainant asserts that other baristas calling him "Grandpa" and Needel asking him to play Santa Claus at Christmas time constitute evidence of discriminatory animus. However, Complainant was not offended by co-worker's nickname for him and agreed to play Santa. I conclude that only in retrospect did he claim to be offended by these matters in order to bolster his claim of discrimination. With respect to

Complainant's termination from employment, it is clear that Complainant voluntarily terminated his employment when he commenced working full-time at Roche Brothers, and gradually reduced his hours at Starbucks so significantly that he could no longer remain on the payroll.

Finally, while not entirely dispositive of the issue of discriminatory animus, it is difficult to conceive that Respondent would have hired Complainant at the age of 61, and then be subsequently motivated by discriminatory animus based on his age in declining to promote him in the two years that followed.


For the reasons stated above, I conclude that there is insufficient evidence that Respondent's articulated reasons were a pretext for unlawful discrimination or that Respondent was motivated by discriminatory intent, motive or state of mind. Lipchitz v. Raytheon Company, 434 Mass. 493, 503 (2001). Therefore, I conclude that Respondent did not engage in unlawful discrimination and I hereby order that this matter be dismissed.

IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this 18th day of August 2015


JUDITH E. KAPLAN
Hearing Officer