COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION and DARRY HENDERSON, Complainants, v. MASSACHUSETTS BAY TRANSPORTATION AUTHORITY and JOSEPH CHEEVER, Respondents.	DOCKET NO. 19BEM00126

Appearances: Justin M. Murphy, Esq. for Complainants
John Tocci, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On January 10, 2019, Complainant Darry Henderson filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD" or "Commission") charging Respondents Massachusetts Bay Transportation Authority and Joseph Cheever ("Respondents")[1] with race and color discrimination and retaliation. On June 10, 2025, the MCAD amended the certification order as follows:

1. Did Respondent Massachusetts Bay Transportation Association discriminate against Complainant Darry Henderson on the basis of his race by subjecting him to disparate treatment in violation of M.G.L. c. 151B, § 4(1)?

[1] Mr. Henderson also named William Melchionda in his complaint. On November 4, 2022, a suggestion of death was filed for Mr. Melchionda. On April 2, 2025, Mr. Melchionda was removed as a respondent from this case.

2. Did one or both Respondents unlawfully retaliate against Complainant Darry Henderson in violation of M.G.L. c. 151B, § 4(4) when Respondents allegedly suspended Complainant Darry Henderson in response to his protected activity?

3. Did Respondent Joseph Cheever coerce, intimidate, threaten, or interfere with Complainant Darry Henderson in his right to employment free from discrimination on the basis of race, making him individually liable under M.G.L. c. 151B, § 4(4A)?

4. If it is determined that Complainant Darry Henderson was subjected to discrimination and/or retaliation, to what extent did he suffer damages as a result of that discrimination and/or retaliation?

On January 27, 28, and 29, 2026, I conducted a public hearing ("hearing"). Darry Henderson, Christine Hong, Ayako Lawrence, Gerald Morris, John Graham, James Sweeney, Joseph Cheever, and John Gauthier testified, and 37 exhibits were entered into evidence. At the conclusion of the hearing, I asked Respondents' counsel to file information about the race of the individuals whose names appear on Exhibit 14, and on February 6, 2026, Respondents' Counsel filed a document titled, "Requested Demographic Information of Exhibit 14 MBTA Tradespeople" ("Requested Demographic Information"). On March 13, 2026, counsel filed post-hearing briefs. Unless stated otherwise, where testimony is cited, I find the testimony credible and reliable, and where an exhibit is cited, I find it reliable to the extent it is cited.

II. FINDINGS OF FACT

1. Complainant Darry Henderson ("Mr. Henderson") is a Black male. In 2019, Mr. Henderson lived in Stoughton, Massachusetts. Tr. 30, 38 (Henderson); Exhibit 22.

2. Respondent Massachusetts Bay Transportation Authority ("MBTA") is a subdivision of the Commonwealth, which provides mass transportation services. M.G.L. c. 161A.

3. In 1991, Mr. Henderson started working as a laborer at the MBTA and in 1995, Mr. Henderson was promoted to the position of foreperson. On January 1, 2022, Mr. Henderson retired with a "full pension." Tr. 30-31, 121 (Henderson).

4. While employed at the MBTA, Mr. Henderson filed three claims of discrimination against the MBTA: (1) a case filed in 1996–1997, alleging that Mr. Henderson's coworkers or managers were acting in a discriminatory manner; (2) a case filed in 2013, alleging that the MBTA discriminated against Mr. Henderson by passing him over for a supervisor position awarded to William Melchionda and another individual, which was subsequently removed to federal court ("the federal lawsuit"); and (3) the above-captioned claim. Tr. 133-34 (Henderson).

5. Throughout his employment at the MBTA, Mr. Henderson worked in the Transit Facilities and Maintenance Department ("TFM"), headquartered in Charlestown, Massachusetts. Tr. 33, 36, 123 (Henderson). The TFM is responsible for the operation of facilities including the MBTA subway system, buses, bus garages, rail garages, transit stations, buildings, and offices. The TFM has approximately 180 employees; 90% of those employees work at the Charlestown location. Tr. 434-39 (Cheever).

6. From June 2017 to February 2019, Respondent Joseph Cheever ("Mr. Cheever") was Director of TFM with responsibility for budget and operations, managing employees, and working on contracts and procurement. Tr. 431–32, 440–41, 538 (Cheever).

7. From mid–2017 to February 2019, John Gauthier ("Mr. Gauthier") was Deputy Director of TFM and reported to the Director of TFM. Tr. 434 (Cheever); Tr. 124 (Henderson); Tr. 625–27 (Gauthier). Mr. Gauthier's responsibilities included overseeing all trades except for the electricians. Tr. 628–29. (Gauthier). In February 2019, Mr. Gauthier became Acting Director of the TFM. Tr. 432-444 (Cheever).

8. Supervisors of specific trade groups in the TFM reported to Mr. Cheever and Mr. Gauthier, and forepersons reported to trade group supervisors. Tr. 128 (Henderson); Tr. 434–35

(Cheever). There were between 20 and 25 forepersons at the Charlestown facility. Tr. 35–36 (Henderson); Exhibit 23.

9. Several supervisors reported to Mr. Cheever and Mr. Gauthier, including but not limited to, Tim Avelino (carpenters, painters, sign shop and roofers),[2] William Melchionda (laborers, sheet metal workers, cement finishers, and bricklayers), Coleman Feeney (mechanical), Wes Feltheim (ironworkers), Matt Quilty (ironworkers), and Bubba Maddox (night supervisor: carpenters, laborers and ironworkers). Tr. 124–28 (Henderson); Tr. 435–39 (Cheever).[3]

10. William Melchionda ("Mr. Melchionda") was the supervisor of a division in TFM called Building and Station Maintenance. Exhibit 1.

11. At material times, five forepersons reported to Mr. Melchionda: Mr. Henderson, James Sweeney (White), Michael Raso (White), John McGee (White), and Tommy Kelley.[4] Tr. 203–04 (Henderson); Tr. 467–68 (Cheever).

12. From 2018 to 2019, Mr. Henderson was the only Black foreperson in the TFM. Exhibit.

13. As foreperson, Mr. Henderson supervised six laborers who did repair work. Tr. 118–19 (Henderson). One of these laborers was Gerald Morris, who was assigned to Charlestown, and reported to Mr. Henderson and Mr. Melchionda. Tr. 130 (Henderson); Tr. 326–30 (Morris).

14. A foreperson is a supervisory management position with more responsibility and authority than the laborer position. A foreperson sets an example for the employees the foreperson supervises through work ethic, knowledge base, and compliance with the rules. Tr.

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[2] The parentheses contain the trade groups for whom these supervisors were respectively responsible.

[3] Exhibit 12 indicates that there was an additional supervisor named Brandon Savage.

[4] Mr. Kelley's race was not identified in the record but based on Mr. Henderson's uncontested testimony that he was the only Black foreperson in the TFM, I infer that Mr. Kelley was not Black.

118–20 (Henderson). I do not credit Mr. Henderson's testimony that he did not consider his position as foreperson to be a part of management. Tr. 32 (Henderson).

15. Laborers who reported to Mr. Melchionda viewed their foreperson as their "boss" and responsible for making sure that their crew was following the MBTA's rules. Tr. 355 (Morris); Tr. 382–83 (Graham). In addition, the laborers viewed their foreperson as a role model in terms of following MBTA rules, including the hand scan policy (discussed at length below). Tr. 387 (Graham) (in response to the question, "did you have a sense that if a foreman is scanning out in Braintree, why can't I?," Mr. Graham stated: "Absolutely.").

16. Based on the findings in paragraphs 14 & 15, I do not credit Mr. Henderson's testimony that he was not responsible for ensuring that the laborers who reported to him complied with MBTA rules such as the hand scan policy, nor do I credit the testimony of foreperson James Sweeney, who testified that as foreperson, he did not have heightened responsibility to ensure his subordinates followed his lead as far as compliance with the hand scan policy. Tr. 156 (Henderson); Tr. 413 (Sweeney).

17. Mr. Cheever believed that holding management employees accountable is an effective means of obtaining compliance from frontline workers. Both Mr. Cheever and Mr. Gauthier held forepersons to a higher standard than the laborers because forepersons are in leadership positions and have the responsibility to ensure that laborers do their work properly. Tr. 449–50, 616–17 (Cheever); Tr. 637–39 (Gauthier).

18. Prior to December 10, 2018, Mr. Cheever communicated to Mr. Gauthier that employees in leadership positions have a higher level of responsibility. Tr. 651–52 (Gauthier).

Hand Scan Policy

19. On April 16, 2008, the MBTA issued a "hand scan policy" ("HSP"), revising it several times, including on July 7, 2017. The HSP requires all non-exempt employees to use designated hand scanners to clock in and out of work at the beginning and end of their shifts. Hand scanners are electronic/biometric time clocks tied to the payroll system. An employee slides a hand into a hand scanner to track time and location. Tr. 37 (Henderson); Exhibit 5.

20. Pursuant to the HSP, all employees (except those who have received written authorization from their supervisor) were required to scan in and scan out at their designated reporting locations. If an individual works out of Charlestown, that individual is required to scan in and out of Charlestown. Tr. 149–55 (Henderson); Tr. 451–52 (Cheever); Exhibit 5.

21. Supervisors are required to ensure that all employees are instructed on the proper methods of scanning. Tr. 453–54 (Cheever); Exhibit 5.

22. Mr. Henderson did not obtain written authorization from his supervisor to scan in or out of a location other than Charlestown. Tr. 156 (Henderson).

23. For years, Mr. Henderson scanned out of Braintree in violation of the HSP to alleviate traffic on his commute home as he lived in Stoughton. Tr. 38, 156 (Henderson). Mr. Henderson completed his work at Charlestown, got in his car which was parked in Charlestown, drove to Braintree and scanned out at Braintree. Tr. 167–170 (Henderson). Mr. Henderson acknowledged that when he scanned out of Braintree, he was being paid by the MBTA for 35-45 minutes of work that he did not actually perform. Tr. 170 (Henderson). Mr. Henderson did not feel it was important for MBTA employees to work a full day at their assigned location even if they were paid for a full day of work. Tr. 164 (Henderson).

24. While Mr. Henderson does not recall reviewing the HSP, he used the hand scanner each shift and understood that he was required to scan in and out of the Charlestown facility. Tr. 37-38, 153 (Henderson).

Mr. Henderson's Discipline History

25. Prior to January 3, 2019, Mr. Henderson was disciplined in 2002, 2007 and 2017.[5]

26. On April 4, 2017, the MBTA issued a written warning to Mr. Henderson after conducting a department-wide audit and finding that Mr. Henderson failed to utilize the hand scanner at the end of his shift. At the time, Mr. Melchionda "reiterated the Scanning Policy" but Mr. Henderson subsequently "refused to utilize the hands-scanner, despite repeated warnings and instructions to do so." Exhibit 8. In accordance with the Attendance Policy and the progressive discipline policy set forth therein, Mr. Henderson received a written warning, which was a Step 1 in the five steps of progressive discipline. Exhibit 4, p. 7.

27. Mr. Henderson did not file a grievance or an MCAD complaint regarding the April 4, 2017 discipline ("2017 discipline"). Tr. 110–113 (Henderson). At the time of the 2017 discipline, Mr. Henderson understood that the reason why he was disciplined was that he had violated an MBTA rule and was being paid for commuting time. Tr. 166–67 (Henderson).

28. Between April 4, 2017 and December 11, 2018, Mr. Henderson scanned out of Braintree "at least a few times a week." He understood that in so doing, he was violating the MBTA's HSP. Tr. 38, 180 (Henderson).

29. Between April 4, 2017 and January 3, 2019, Mr. Henderson was not disciplined. Tr. 181 (Henderson).

[5] On April 4, 2002, Mr. Henderson was disciplined for allowing his crew members to leave early, after Mr. Henderson's supervisor ordered him to have crewmembers leave no earlier than the end of their shift. Tr. 114-15 (Henderson); Exhibit 6. On August 7, 2007, Mr. Henderson received a written warning for excessive absences. Exhibit 7.

Mr. Cheever's Focus on HSP Compliance

30. In his first year on the job (2017-2018), Mr. Cheever focused on getting TFM crews out as quickly as possible to increase efficiency. Tr. 459–60 (Cheever).

31. In 2018, Mr. Cheever determined that there was a problem with TFM employees violating the HSP. Tr. 461–62 (Cheever). When an employee stationed in Charlestown scanned out at a location other than Charlestown and nearer to their home, they were, in effect, getting paid for commuting time, which is not permitted by the MBTA. Tr. 452–53 (Cheever).

32. Mr. Cheever expected supervisors to comply with the HSP and expected forepersons to report if one of their laborers was violating the HSP. In 2018, Mr. Cheever noted that Mr. Melchionda's group had "a predominant amount of issues" with employees violating the HSP by scanning out of locations other than Charlestown. Tr. 452–53, 465 (Cheever).

33. Mr. Cheever did not issue a report or memorandum on HSP compliance but documented his efforts to obtain compliance with the HSP in emails. Before he left the TFM in February 2019, Mr. Cheever did not "make any determinations on improved efficiency as a result of [his HSP] compliance efforts." Tr. 533–36 (Cheever).

July 2018 Audits

34. In July 2018, Mr. Cheever conducted an audit of hand scan data to determine the extent of departmental non-compliance with the HSP. Tr. 538–39 (Cheever). Mr. Cheever's audit process was to find individuals who were scanning in or out at an improper location, take a screenshot of the sign in or sign out sheets and attach them to emails. Tr. 465–466 (Cheever); Exhibit 10.

35. On July 19, 2018, Mr. Cheever sent four emails to himself, Mr. Gauthier, and Mr. Melchionda, with attached screenshots of time records, each of which identified a foreperson,

supervised by Mr. Melchionda, who was scanning out of locations other than Charlestown. These individuals were: (1) Thomas Kelley, (2) James Sweeney, (3) John McGee and (4) Mr. Henderson ("the four forepersons"). Tr. 467–68, 545 (Cheever); Exhibit 10.

36. In addition, Mr. Cheever spoke with TFM supervisors about compliance with the HSP to help the supervisors manage their employees by providing them with data showing employee non-compliance. Tr. 475 (Cheever).

37. Mr. Cheever spoke at staff meetings with TFM supervisors about the need to obtain compliance with the HSP. In addition, he spoke specifically to Mr. Melchionda about the need to "get … eight hours of work out of each team." Tr. 474 (Cheever).

38. During this time, Mr. Gauthier spoke with all supervisors and told them that their employees needed to stop violating the HSP. Tr. 652–53 (Gauthier).

39. In July 2018, Mr. Cheever took no disciplinary action against the four forepersons because that was "not the tone [he] wanted to set" and wanted to help people understand that the MBTA wanted a full day's work and to "get on with it." Tr. 473 (Cheever).

October/November 2018 Audits

40. In October and November 2018, Mr. Cheever found that the following people were in violation of the HSP: Mr. Henderson, Mr. Sweeney, Mr. McGee, John Graham ("Mr. Graham") and Gerald Morris ("Mr. Morris"). Tr. 475–78 (Cheever). These individuals were never disciplined for that non-compliance.

41. On December 10, 2018, Mr. Cheever sent an email to Mr. Gauthier, Mr. Maddox, Mr. Melchionda, Mr. Feeney, Mr. Avelino, Mr. Savage and Mr. Quilty[6] with the subject line: Disturbing list of employees scanning out at remote locations. The email stated:

> In July, we did some minor audits of scanning habits of employees. I sent some screen shots to Supervisors and some Foremen (who don't have Supervisors) in order to send some warning that we won't be tolerating this violation. At about the same time we looked at vehicle usage and found some issues which were addressed.
>
> I am discouraged to see that another audit in November is showing the same failures. I will be rolling the list to you all, and we will discuss at tomorrow's staff meeting. **My personality and style is that we leaders are to be held to the highest standard and that the middle managers after that and so on to the front-line employee. We cannot expect the best work from our employees until we are making sure they are led by the most accountable group of managers.**
>
> I expect formal discipline of all managers who have violated the scanning procedures in November.

Exhibit 12 ("12/10/18 email") (emphasis added). When Mr. Cheever stated that he expected formal discipline "of all managers," he was referring to forepersons. Tr. 557 (Cheever). Mr. Cheever's reference to "tomorrow's staff meeting" in this email was to a senior staff meeting scheduled for December 11, 2018. Tr. 551–553 (Cheever). The record does not contain the list that Mr. Cheever stated he would be "rolling." Tr. 551 (Cheever).

42. Mr. Cheever did not issue discipline when he found Mr. Henderson, Mr. Sweeney, Mr. McGee, Mr. Graham and Mr. Morris in violation of the HSP because he believed that the "team would be able to get everyone to give us… a full eight-hour shift." Tr. 479 (Cheever).

43. After Mr. Gauthier received the 12/10/18 email, Mr. Gauthier had conversations with each supervisor listed on the email about compliance with the HSP. Mr. Gauthier told Mr.

[6] Mr. Maddox was the night supervisor; Mr. Savage was the manager of the cleaning contract. Tr. 438 (Cheever).

Melchionda that the majority of these hand scan violations were in Mr. Melchionda's "realm of responsibility." Tr. 656–57 (Gauthier).

44. Later, on December 10, 2018, Mr. Cheever sent an email to Mr. Melchionda stating that Mr. Henderson scanned out at Braintree every day last week. Exhibit 13.

45. I credit Mr. Cheever's testimony that he sent separate emails for individual violators of the HSP. Tr. 567–69 (Cheever).

46. At around this time, supervisors were "generally starting to understand [Mr. Cheever's] frustrations" and Mr. Melchionda expressed to Mr. Cheever that he did not know what to do next. Mr. Cheever told him that he should have a meeting and "document this." Tr. 483 (Cheever). Mr. Cheever felt that Mr. Melchionda "was struggling … to get good response, and I think that's what precipitated the meeting…." Tr. 481 (Cheever).

December 11, 2018 Meeting

47. On December 11, 2018, Mr. Melchionda held a meeting at the Charlestown facility attended by 21 people whom Mr. Melchionda supervised ("12/11/2018 meeting"), including Mr. Henderson, three other forepersons[7] and 17 laborers.[8] Tr. 68 (Henderson); Exhibit 14.

48. At the 12/11/2018 meeting, Mr. Melchionda stated: "We are going to be enforcing the HSP. You have got to scan out in Charlestown." Tr. 181 (Henderson). He told the attendees that they would be disciplined if they violated this policy. Tr. 62–63 (Henderson); Tr. 360–61 (Morris). No one at the meeting said that forepersons would be disciplined before subordinates.

[7] The sign-in sheet from the 12/11/2018 meeting identifies two forepersons. Exhibit 14. However, it was clarified that there were four forepersons who attended the 12/11/2018 meeting: Mr. Henderson, Mr. Sweeney, Mr. Raso and Mr. McGee. Two forepersons who signed the sign-in sheet (Mr. Raso and Mr. McGee) did not identify themselves as such. Exhibit 14; Tr. 58-59 (Henderson); Tr. 635 (Gauthier).

[8] Of the laborers who attended the 12/11/2018 meeting, 14 were White; one was Black/African-American, one was Hispanic/Latino, one was Asian. Requested Demographic Information.

Tr. 64 (Henderson). At the time of the 12/11/2018 meeting, the MBTA presented as "pretty serious" about enforcing the HSP. Tr. 421–22 (Sweeney).

49. The attendees at the 12/11/2018 meeting signed a sign-in sheet, which stated: "You must scan out in Charlestown, Mass., unless previously authorized by your supervisor. Anyone breaking this policy will be written up and travel time will be docked ("the sign-in sheet")." Tr. 63-64 (Henderson); Exhibit 14.

50. Mr. Henderson understood the sign-in sheet to mean that anyone violating the HSP would be disciplined. Tr. 70 (Henderson). Despite this, Mr. Henderson testified that he did not believe that after the 12/11/2018 meeting, he would be disciplined by the MBTA for scanning out in Braintree because "everybody else was doing it" and they "had been doing it for so long." Tr. 69–70 (Henderson).

51. Based on the findings in paragraphs 48-49, I do not credit Mr. Henderson's testimony that he did not recall his supervisor or anyone else in management ever directly telling him to stop scanning out in Braintree. Tr. 40 (Henderson).

Federal Lawsuit

52. In 2018, counsel were conducting discovery in the federal lawsuit. On December 6, 2018, Mr. Henderson's attorney deposed Mr. Melchionda. Tr. 56–57 (Henderson). Mr. Cheever knew Mr. Melchionda was deposed but does not recall when he first learned this. Tr. 507 (Cheever).

53. There was no evidence that anyone at the MBTA such as Mr. Melchionda, Mr. Cheever and Mr. Gauthier expressed a negative view about the federal lawsuit.

Discipline after the 12/11/2018 Meeting

54. After the 12/11/2018 meeting, Mr. Henderson scanned out at Braintree six separate times: December 19, 20, 21, 26, 27, and 28, 2018. Tr. 65, 182, 212–15 (Henderson); Tr. 498-99 (Cheever); Exhibits 9 & 15.

55. On December 28, 2018, Mr. Cheever wrote an email to Mr. Melchionda, copy to Mr. Gauthier, telling Mr. Melchionda to formally discipline Mr. Henderson and stating that he "went through every foreman in the Department and only found one other isolated, violation (single day of scan in Quincy Bus versus Cabot), which we'll address as well. Darry, by far, is the worst abuser in the Department. this is pretty blatant abuse… and plenty of backup to prove. we are looking across the board at this issue." Exhibit 16. Mr. Cheever was referring to the entire TFM when he wrote that he "went through every foreman in the department." Tr. 503 (Cheever).

56. The individual Mr. Cheever was referring to when he said that he "found one other isolated violation, single day of scan in Quincy Bus versus Cabot" was an individual who worked either as a mechanic or in the key room at Cabot station ("the Unidentified Foreperson").

57. On January 3, 2019, the MBTA issued a one-day paid administrative suspension to Mr. Henderson for violating the HSP ("1/3/2019 suspension"), which was an entry recorded in Mr. Henderson's service/discipline record, and was a Step 2 in the MBTA's progressive discipline. Tr. 65 (Henderson); Exhibit 4.

58. On January 3, 2019, Mr. Melchionda asked Mr. Henderson to go to Mr. Cheever's office. Tr. 65–66 (Henderson). Mr. Cheever, John Keady (union representative) and Mr. Melchionda were present and the meeting lasted approximately 25–30 minutes. Tr. 67–68 (Henderson). At the meeting, Mr. Cheever told Mr. Henderson that the MBTA was disciplining him for scanning out at the Braintree location. Mr. Henderson asked Mr. Cheever if he was aware that other

employees were scanning out at Braintree. Mr. Cheever responded, "We are focusing on you right now, the foremans (sic)." Tr. 66 (Henderson). They did not discuss Mr. Morris or Mr. Graham, nor did they talk about disciplining subordinates after Mr. Henderson. Tr. 67 (Henderson).

59. The MBTA issued Mr. Henderson a discipline slip, signed by Mr. Cheever, Mr. Melchionda and Mr. Keady; Mr. Henderson refused to sign. Exhibit 17; Tr. 509 (Cheever). It was common when issuing an interview slip for two managers to sign. Tr. 671 (Gauthier).

60. A foreperson's discipline would ordinarily be handled by the supervisor. Mr. Cheever did not remember why he personally conducted Mr. Henderson's disciplinary meeting. Tr. 587–88 (Cheever).

61. Mr. Henderson believed that the 1/3/2019 suspension was racially discriminatory and retaliatory. Tr. 57 (Henderson); Exhibit 19.

62. I do not credit Mr. Henderson's testimony that before the January 3, 2019 meeting, Mr. Henderson did not understand that he had to scan in and scan out of his designated location. Tr. 153–54 (Henderson). I base this on Mr. Henderson's long tenure at the MBTA, his receipt of the 2017 discipline, his attendance at the 12/11/2018 meeting, and his understanding that the sign-in sheet from the 12/11/2018 meeting meant that violators of the HSP would be disciplined.

63. On January 5, 2019, Mr. Henderson wrote a complaint, with copies to his attorneys in the federal lawsuit and the MBTA Office of Diversity and Civil Rights ("OCR"). Tr. 141 (Henderson); Exhibit 19. Mr. Henderson wrote that when he was disciplined, he informed Mr. Cheever that many MBTA employees who work out of Charlestown have been scanning out at Braintree for years and questioned why he was being disciplined. He further wrote that he told Mr. Cheever that White managers, forepersons, and rank and file employees scan out of

Braintree. Mr. Henderson alleged that Mr. Cheever knew of Mr. Henderson's federal lawsuit and that Mr. Melchionda had recently been deposed. Mr. Henderson also wrote that the day after his discipline, coworkers knew about his discipline and questioned him about it and that two White forepersons stated to Mr. Henderson that they had private meetings with Mr. Cheever about the HSP.[9] Exhibit 19.

64. On January 7, 2019, Mr. Henderson was interviewed by the OCR and alleged race discrimination and retaliation. Mr. Henderson stated in this interview that: (1) Mr. Melchionda had been recently deposed and that Mr. Cheever was aware of the federal lawsuit; (2) Mr. Henderson is the only Black foreperson and one of a few Black employees of "roughly 100 employees" working for Mr. Cheever; (3) five people were missing from the attendance list at the 12/11/2018 meeting, and (4) other MBTA employees scan out in Braintree. Specifically, Mr. Henderson alleged that Mr. Morris, Mr. Graham, Mr. Sweeney and Derek Gaines "routinely" scanned out at Braintree before the 12/11/2018 meeting and that after the meeting, "Sweeney and Gaines stopped scanning out at Braintree because they are the 'teachers' pets' … and were warned by Cheever behind closed doors." Exhibit 21.

65. In his January 7, 2019 interview, Mr. Henderson argued that MBTA policies "are supposed to apply to everyone" and identified Mr. Kelley and John Lally as individuals who violated the HSP "in the past."[10] Mr. Henderson stated that since the 12/11/2018 meeting, he

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[9] Other than Mr. Sweeney's testimony that at some unknown point, Mr. Cheever stated to him that he had to "crack down on the hand scans and that we were foremen and we were front line," the assertion that two White forepersons stated to Mr. Henderson that they had private meetings with Mr. Cheever about the HSP was not explored at hearing. Tr. 424 (Sweeney).

[10] Mr. Henderson identified "Other people who scan out not at their 'home base'" as well. These individuals were Brian Carpenter (steward), Mark Curran (steward), Paul Limone (laborer), Anthony Clemente (laborer), Johnny McGee (Labor Foreman), Joyce (l/n/u) (Ironworker Foreperson). The only "Joyce" identified at hearing was Joyce Hittinger. A fair reading of Exhibits 21 and 23 is that the only two people who Mr. Henderson observed violating the HSP *after the 12/11/2018 meeting* were Mr. Morris

scanned out at Braintree with Mr. Morris and Mr. Graham and that the last time he, Mr. Morris and Mr. Graham used the hand scan in Braintree was on December 26th or 27th. Exhibit 21.

66. Mr. Henderson filed an internal civil rights complaint dated January 10, 2019 which identified two individuals who Mr. Henderson alleged "constantly" violated the HSP, and who were not disciplined: Mr. Sweeney and Ms. Hittinger. Tr. 81–84 (Henderson); Exhibit 26.

67. In February 2019, Mr. Cheever was promoted to Senior Director of Engineering and Maintenance. Tr. 513–16 (Cheever). Mr. Cheever was part of the interview and hiring process for the next TFM Director, Andrew Hall, who is Black. Tr. 174 (Henderson); Tr. 516–17 (Cheever).

68. The time records reflecting time and location of scanning submitted at hearing provided limited information. For Mr. Henderson, time records from December 19, 2018 to January 1, 2019 were provided. Exhibit 15. For Mr. Sweeney, Mr. Graham and Mr. Morris, time records reflecting time and location of scanning were provided from November 1, 2018 to March 1, 2019. Exhibits 35, 36 & 37. There were no other records submitted regarding hand scanning for any other individual in the TFM, and no documents reflecting compliance or non-compliance with the HSP of anyone in the TFM after March 1, 2019.

HSP Violators after the 12/11/2018 meeting until March 1, 2019

69. Morris: Mr. Morris was a laborer, not a foreman, who was stationed in Charlestown. Mr. Henderson was Mr. Morris' foreperson and Mr. Melchionda was his supervisor. Tr. 326–27, 330 (Morris).

70. Mr. Morris attended the 12/11/2018 meeting and signed the sign-in statement. Exhibit 14.

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and Mr. Graham. This is buttressed by the failure by Mr. Henderson at hearing to offer evidence relative to potential comparators other than Mr. Morris and Mr. Graham.

71. From December 11, 2018 to March 1, 2019, Mr. Morris scanned out at Braintree on December 19, 21, 26, 28 and 31, 2018. Exhibit 37.

72. On December 31, 2018, Mr. Melchionda told Mr. Morris that he would be disciplined later that week for violation of the HSP. Tr. 348–49 (Morris); Exhibit 34. From January 1, 2019 to March 1, 2019, Mr. Morris only scanned out of Charlestown. Exhibit 37.

73. On February 25, 2019, Mr. Morris was issued a paid, one-day administrative suspension for violating the HSP on December 28, 2018. Tr. 332–34 (Morris); Exhibits 33 & 34. The discipline slip has a typewritten date of January 30, 2019, which is crossed out and a handwritten date of February 22, 2019 is written. Mr. Morris attended a meeting in Mr. Gauthier's office with Mark Curran (union steward), Mr. Melchionda and Mr. Gauthier during which he received the discipline. Tr. 337 (Morris); Exhibits 32 & 33.

74. Mr. Morris refused to sign the disciplinary documents because he felt the discipline was unjust and that writing him up more than 30 days after the infraction was a breach of the collective bargaining agreement, which required that discipline issue within 30 days of an infraction. Tr. 332–39, 358 (Morris); Exhibit 34.

75. Mr. Morris filed a grievance which identified Mr. Gauthier as the "Director." Exhibit 34.

76. Mr. Morris believed that the MBTA disciplined him was because it had disciplined Mr. Henderson, and "needed a couple more people to be written up as well…." Tr. 339 (Morris). Mr. Morris grieved the discipline, because he felt he was "being harassed" and "used as an excuse" for Mr. Henderson's prior discipline. Exhibit 34; Tr. 76–79 (Henderson); Tr. 347 (Morris).

77. As a result of Mr. Morris' union grievance, Mr. Morris' one-day paid administrative suspension was vacated. Tr. 596–97 (Cheever).

78. Graham: Mr. Graham was a non-foreman, bricklayer stationed in Charlestown. Mr. Raso was Mr. Graham's foreman and Mr. Melchionda was his supervisor. Tr. 370–73 (Graham).

79. In 2017 and 2018, Mr. Graham scanned out of Braintree and felt that there was "always" a threat of disciplinary action for violating the HSP, but that it was "never really followed through with." Tr. 370–72 (Graham).

80. Mr. Graham attended the 12/11/2018 meeting and signed the sign-in statement. Exhibit 14. Mr. Graham did not consider the sign-in statement to be a serious threat that discipline would follow for violation of the HSP. Tr. 375–76 (Graham).

81. From December 11, 2018 to March 1, 2019, Mr. Graham scanned out at Braintree on December 14, 17, 18, 19, 20, 21, and 24, 2018, January 4, 2019 and February 21, 2019. Exhibit.

82. Mr. Graham was issued a one-day, paid administrative suspension for violating the HSP. Exhibit 2. The date of the discipline and documentation related to the discipline were not in the hearing record. Mr. Graham was called into Mr. Gauthier's office with Mr. Melchionda present and issued this discipline.[11] At the disciplinary meeting, Mr. Graham was not told that the MBTA was disciplining forepersons first and that subordinates would be disciplined second. Tr. 378 (Graham). I do not credit Mr. Graham's testimony that he was told that the discipline "didn't mean anything. It wasn't a big deal" and "[d]on't worry about it, it's nothing." Tr. 377, 384 (Graham). I base this on Mr. Graham's vague testimony when describing this meeting and his lack of precision when testifying. Tr. 371–95 (Graham).

83. Mr. Graham signed the disciplinary action and subsequently, wrote "a formal letter" contesting the disciplinary action, but has never heard anything further regarding this. Tr. 377–

[11] I do not credit Mr. Graham's initial testimony that he was called into Mr. Gauthier's office with Mr. Morris (Tr. 377 (Graham)), based on Mr. Graham's subsequent testimony that the individuals present were Mr. Gauthier, Mr. Melchionda and Mr. Graham. Tr. 377 (Graham). In addition, Mr. Morris did not testify that Mr. Graham was present during Mr. Morris' disciplinary meeting.

80 (Graham). The "formal letter" was not part of the hearing record, nor was there evidence as to the contents of the "formal letter."

84. Unidentified Foreperson. Based on Mr. Henderson's January 7, 2019 statement to the OCR that Mr. Henderson was the only Black foreperson in the TFM, I infer that the Unidentified Foreperson was not Black. Exhibit 21. The Unidentified Foreperson was not supervised by Mr. Melchionda based on Mr. Gauthier's testimony, which I credit, that the tradespeople assigned to Cabot were machinists and key room personnel. Tr. 666-67 (Gauthier); Exhibit 16 (Cheever's email stating that he "went through every foreman in the Department" and only "found one other, isolated violation (single day of scan at Quincy Bus versus Cabot), which we'll address as well.") As Mr. Melchionda was not the supervisor of mechanics and employees in the key room at Cabot station, I infer that the Unidentified Foreman did not attend the 12/11/2018 meeting, which was attended only by Mr. Melchionda's supervisees.

85. As of December 28, 2018, the Unidentified Foreperson had violated the HSP on a single occasion. Exhibit 16.

86. In his December 28, 2018 email, Mr. Cheever stated that he intended to discipline both Mr. Henderson and the Unidentified Foreperson. Exhibit 16. Mr. Cheever did not remember whether he disciplined the Unidentified Foreperson. Tr. 504 (Cheever).

Individuals who did Not Violate the HSP from 12/11/2018 to 3/1/2019[12]

87. Sweeney. Mr. Sweeney was a White foreperson who reported to Mr. Melchionda and who attended the 12/11/2018 meeting. Exhibit 14.

[12] At hearing, the focus was on Mr. Morris and Mr. Graham as potential comparators. Complainant's Post Hearing Brief identifies three alleged comparators (Mr. Morris, Mr. Graham and Mr. Lally). The additional potential comparators, raised internally when Mr. Henderson filed complaints with the MBTA's OCR, are addressed herein for completeness.

88. From December 11, 2018 to March 1, 2019, Mr. Sweeney did not scan out of Braintree. Tr. 498 (Cheever); Exhibit 35.

89. When Mr. Sweeney attended the 12/11/2018 meeting and signed the sign-in-sheet, he understood that he would be disciplined if he continued to scan out of Braintree, stopped doing so, and "eventually" resumed that practice. Tr. 411 (Sweeney). The record does not allow for a finding of when, including what year, Mr. Sweeney resumed non-compliance with the HSP.

90. Hittinger: Ms. Hittinger was a foreperson who reported to Matty Quilty and was authorized by Mr. Cheever to scan out at the Lynn bus garage due to a family member's illness. Tr. 84–88 (Henderson).

Individuals with insufficient evidence to determine whether they violated the HSP from 12/11/2018 to 3/1/2019

91. Mr. Henderson complained internally to the MBTA OCR that various individuals violated the HSP without being disciplined: (1) Mr. McGee, (2) Mr. Kelley, (3) Brian Carpenter, (4) Mr. Limone, (5) Mr. Clemente and (6) Mr. Curran. There was no documentary evidence regarding compliance or non-compliance with the HSP for any time for these individuals. There is insufficient evidence in the record to determine whether any of these individuals violated the HSP from December 11, 2018 to March 1, 2019. See, infra, n.10.

92. John Lally. John Lally was a roofer whose race was not identified in the record. For the following reasons, I do not credit Mr. Henderson's testimony that Mr. Lally reported to Mr. Melchionda, Tr. 187, 209 (Henderson): (1) Mr. Lally did not attend the 12/11/2018 meeting; (2) two witnesses testified that Mr. Lally did not work under Mr. Melchionda, and (3) Tim Avelino managed trades including roofers like Mr. Lally. Tr. 435–37 (Cheever); Tr. 127–28 (Henderson); Tr. 398 (Graham); Tr. 414 (Sweeney); Exhibit 14.

93. Mr. Lally was not a foreperson, and I do not credit Mr. Henderson's contrary testimony because: (1) Mr. Henderson did not identify Mr. Lally as a foreperson in his 1/7/2019 internal complaint to the MBTA (whereas, he did specify that other individuals who scanned out of Braintree after the 12/11/2018 meeting were forepersons); and (2) initially, Mr. Henderson testified that Mr. Lally was not a foreperson. Exhibit 21; Tr. 48–49 (Henderson).

94. Mr. Henderson testified that between December 11 and 31, 2018, he saw Mr. Lally scanning out in Braintree on multiple occasions. Tr. 186-188 (Henderson). It is unlikely that Mr. Henderson would remember specifically when he saw Lally scanning out in Braintree. I do not credit Mr. Henderson's testimony on this point, as I find it self-serving and unreliable. There was no documentary evidence regarding Mr. Lally's compliance or non-compliance with the HSP for any period. There is insufficient evidence in the record to determine whether Mr. Lally violated the HSP from December 11, 2018 to March 1, 2019.

95. I also find the record insufficient to find that Billy Dineen violated the HSP from December 11, 2018 to March 1, 2019. There was no documentary evidence regarding Mr. Dineen's compliance or non-compliance with the HSP for any period. Mr. Graham testified that he saw Billy Dineen scanning out of Braintree between 2017 and 2019 but did not testify to whether he saw Dineen scanning out of Braintree between December 11, 2018 and March 1, 2019. Tr. 398–400 (Graham).[13]

[13] Mr. Henderson did not mention Mr. Dineen as a comparator in his MCAD complaint, his internal complaint to the OCR, his interview with the MBTA or in Complainant's Post-Hearing Brief. Exhibits 1, 19 & 21.

Post March 1, 2019 HSP Enforcement

96. There was no evidence in the record as to Mr. Henderson's compliance with the HSP after the 1/3/2019 suspension. Between January 3, 2019 and his retirement, Mr. Henderson received no further discipline from the MBTA. Tr. 122 (Henderson).

97. The record was inconsistent as to whether the MBTA enforced the HSP since January 2019. Mr. Graham testified that since he was disciplined, he has scanned out in Braintree and has not been disciplined. Tr. 381 (Graham). Mr. Gauthier testified that the MBTA continued to issue discipline to TFM employees who violated the HSP, including 12 laborers. Tr. 668-69 (Gauthier).

III. CONCLUSIONS OF LAW

A. The MBTA did not discriminate against Mr. Henderson Based on Race

To prevail on his claim of disparate treatment based on race under M.G.L. c. 151B, Mr. Henderson must show that: (1) he is a member of a protected class;[14] (2) he was subject to an adverse employment action; (3) Respondents bore discriminatory animus in taking that action; and (4) discriminatory animus was the determinative cause for the action. Adams v. Schneider Elec. USA, 492 Mass. 271, 280 (2023); Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016); Lipchitz v. Raytheon Co., 434 Mass. 493, 502, 504-06, n. 19 (2001).

1. Mr. Henderson's paid one-day suspension was an adverse employment action

An action by an employer is an "adverse employment action" when it is "substantial enough to have materially disadvantaged an employee." Yee v. Massachusetts State Police, 481 Mass. 290, 296 (2019) citing Psy-Ed Corp. v. Klein, 459 Mass. 697, 707-708 (2011). Material

[14] Mr. Henderson is a member of a protected class (Black).

disadvantage arises when objective aspects of the work environment are affected. Yee, 459 Mass. at 296-297. The disadvantage must be objectively apparent to a reasonable person in the employee's position; "subjective feelings of disappointment and disillusionment" will not suffice. Id. at 297.[15]

The 1/3/2019 suspension moved Mr. Henderson from a Step 1 on the progressive disciplinary track to a Step 2 and recorded an entry in his service/discipline record. The altering of an employee's service/disciplinary record to reflect an administrative suspension affects an objective aspect of the work environment. Further, Mr. Henderson and Mr. Morris' grievances, and Mr. Graham's "formal letter" objecting to their respective paid one-day administrative suspensions, support the conclusion that it would be objectively apparent to a reasonable person in Mr. Henderson's position that the discipline the MBTA imposed on Mr. Henderson was materially disadvantageous. As such, the 1/3/2019 paid one-day administrative suspension constitutes an adverse employment action.[16]

2. Mr. Henderson failed to prove discriminatory animus

The next question is whether the MBTA bore discriminatory animus when it issued Mr. Henderson a one-day paid administrative suspension. In this case, Mr. Henderson acknowledges that he signed the sign-in sheet, attended the 12/11/2019 meeting and violated the HSP six times

[15] In Muldrow v. City of St. Louis, Mo., 601 U.S. 346, 355 (2024), the United States Supreme Court held that in a Title VII case, a transferee does not have to show that the harm incurred in the transfer was significant, serious or substantial. The effect of the Muldrow decision on Chapter 151B disparate-treatment claims remains to be seen. O'Horo v. Boston Medical Center Corp., 131 F.4th 1, 18 n.7 (2025).

[16] In making this determination, I am aware of the following cases but am not persuaded to rule differently: Brodbeck v. Massachusetts Dep't of Corrections, 2021 WL 3131601, at *6 (D. Mass. July 23, 2021) (one-day suspension not deemed materially adverse employment action) and Williams v. Kennedy, 38 F.Supp.3d 186, 196, n.5 (D. Mass 2014) (initial suspension *with* pay and rescinded termination did not impact Plaintiff's pay, benefits, or other objective term of employment, and thus, are not adverse).

thereafter in December 2018. There was no evidence that the MBTA's reasons for disciplining him were false or implausible. Nor is there any evidence that, in issuing the 1/3/2019 suspension, the MBTA failed to follow its written policies and procedures. There is no allegation or evidence that a disproportionate number of Black employees were targeted for discipline under the HSP or any other MBTA policy. Mr. Henderson's sole argument in support of a finding of racial animus is that he was treated differently from allegedly similarly situated, non-Black comparators.

It is the complainant's burden to prove by a preponderance of the evidence that Respondents "acted with discriminatory intent, motive or state of mind." Lipchitz, 434 Mass. at 501-504; Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 117 (2000). An employee may demonstrate discriminatory intent by showing that similarly situated employees of a different race, known as comparators, were treated differently. Trustees of Health and Hospitals of the City of Boston v. MCAD, 449 Mass. 675, 682–86 (2007) ("Trustees"); Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 122–23, 129–35 (1997) ("Matthews"). The complainant must identify and relate specific instances of other individuals who are similarly situated "in all relevant aspects" and show they were treated differently than the complainant. Trustees at 684-685; Matthews at 122–23, 129–35. The comparator's circumstances need not be identical to those of the complainant. Trustees at 682. "The test is whether a prudent person, looking objectively at the incidents, would think them roughly equivalent and the protagonists similarly situated.... Exact correlation is neither likely nor necessary, but the cases must be fair congeners. In other words, apples should be compared to apples." Trustees at 682, quoting Dartmouth Review v. Dartmouth College, 889 F.2d 13, 19 (1st Cir. 1989).

The party seeking to prove discrimination bears the burden of showing that there is a similarly situated employee who is not a member of his/her protected class who engaged in similar conduct in the relevant period and was treated differently. Goldstein v. Brigham and Women's Faulkner Hospital, Inc., 80 F.Supp.3d 317, 329-330 (D. Mass. 2015) (plaintiff bears the burden of presenting similarly situated employees as comparators, and where the defendant has challenged that comparison with credible facts, plaintiff must demonstrate that "[her] case and the comparison cases ... closely resemble one another in relevant facts and circumstances."). To satisfy this burden, the party seeking to prove discrimination must provide more than "sketchy evidence lacking a sufficient foundation for a legally relevant comparison." Matthews, 426 Mass. at 131 n. 6 (1997), quoting Smith v. Stratus Computer, Inc., 40 F.3d 11, 17 (1st Cir. 1994).

a. Relevant Period of Comparison

At the outset, it is necessary to identify the relevant period of comparison. As for a starting date, it makes little sense to begin during the period of the MBTA's forbearance from July 2018 to December 11, 2018, when Mr. Cheever and Mr. Gauthier sought to obtain compliance through cajoling, persuasion and repeated efforts to communicate the importance of HSP compliance but did not take any disciplinary steps against any employee for an HSP violation. On December 11, 2018, when Mr. Melchionda formally informed his supervisees that failure to comply with the HSP would result in discipline, the relevant period begins. As for the proper ending point for comparing discipline issued by the TFM, there is scant record evidence of compliance or lack of compliance with the HSP after March 1, 2019, leaving little option but to end the relevant window of comparison on March 1, 2019. The relevant period to compare how the MBTA enforced the HSP for its TFM employees, therefore, is December 11, 2018 to March 1, 2019.

b. Mr. Henderson's arguments

Before addressing Mr. Henderson's arguments, the background from which this dispute arose is worth review. It is undisputed that in summer 2018, Mr. Henderson and other employees including White forepersons in the TFM were scanning out of Braintree in violation of the HSP without repercussion. Also, in summer 2018, Mr. Cheever began to focus on HSP compliance and Mr. Cheever's attention to this issue intensified between July and December 2018. In that period, Mr. Cheever conducted two HSP compliance audits, notified supervisors of the individuals who were in violation of the HSP, spoke directly with supervisors about HSP compliance, and based on Mr. Melchionda's challenges in obtaining HSP compliance from his group, instructed Mr. Melchionda to schedule a meeting to "document this." It is these two forces – the noncompliance with the HSP of employees in Mr. Melchionda's group which historically went unchecked, and Mr. Cheever's increasing expectation that the TFM department would comply with the HSP – that collided on December 11, 2018 with an unequivocal message: violate the HSP and you will be disciplined.

In his Post-Hearing Brief, Mr. Henderson raises two examples of purportedly similarly situated White employees, Mr. Morris and Mr. Graham, who engaged in the same or similar activity in violation of the HSP in the relevant period and were allegedly treated differently. Complainant's Proposed Findings of Fact and Conclusions of Law ("Complainant's Brief"), pp. 12–16. After attending the 12/11/2018 meeting, Mr. Morris and Mr. Graham, like Mr. Henderson, scanned out of Braintree numerous times in violation of the HSP. The MBTA disciplined Mr. Morris and Mr. Graham with the same one-day paid suspension it issued to Mr. Henderson. Mr. Henderson contends that the difference in "timing, decisionmaker, and outcome" regarding the discipline of these two White employees, in comparison to Mr.

Henderson, showed that Mr. Henderson's discipline was motivated by racial bias. Complainant's Brief, p. 13.

Mr. Henderson argues: (1) While Mr. Henderson was disciplined on January 3, 2019, Mr. Morris was not disciplined until February 22, 2019;[17] (2) While Mr. Henderson was disciplined by Mr. Cheever, Mr. Gauthier and Mr. Melchionda, Mr. Morris and Mr. Graham were disciplined by Mr. Gauthier and Mr. Melchionda without Mr. Cheever present; (3) While Mr. Henderson's union grievance did not result in a lifting of the administrative suspension, Mr. Morris filed a union grievance, resulting in the lifting of the discipline;[18] and (4) The MBTA issued discipline to Mr. Morris and Mr. Graham to conceal its racial motivation for disciplining Mr. Henderson.

i. Mr. Henderson is Not Similarly Situated to Non-Forepersons

Neither Mr. Morris nor Mr. Graham were forepersons.[19] While Mr. Henderson's circumstances and those of any proposed comparators need not be identical, a reasonable, prudent person would not view non-forepersons and forepersons as similarly situated in this case. First, there is good reason for a manager to hold forepersons to a higher standard than non-foreperson subordinates, as forepersons give direction, both by express order and by their behavior. A foreperson's refusal to comply with an employer's policy sets a bad example for the

[17] The record did not establish the date of Mr. Graham's discipline.

[18] Mr. Graham testified that he filed a "formal letter" in response to the discipline he received for violating the HSP and "never heard anything further regarding this."

[19] After the hearing, Respondents' counsel filed a Motion to Strike Proposed Findings of Fact ("motion to strike"), seeking to strike: (1) that portion of Complainant's Brief that stated that Mr. Morris and Mr. Graham "were forepersons in the same department as Henderson;" and (2) Complainant's proposed findings of fact 174 and 176 on the grounds that they cite the treating therapists' testimony to improperly "associate Henderson's symptoms with his work experiences at the MBTA." Given that I have found Mr. Morris and Mr. Graham not to be forepersons, and the conclusion that the Respondents are not liable, there is no need to rule on the motion to strike.

rank and file, more than would be the case where a lower-level employee does not comply with a policy.[20] Secondly, in this case, Mr. Cheever held his forepersons to a higher standard in obtaining compliance with the HSP. Exhibit 12 ("we leaders are to be held to the highest standard and … the middle managers after that and so on to the front-line employee.") Before Mr. Henderson attended the 12/11/2018 meeting in which the attendees were told in writing and verbally that they would be disciplined if they violated the HSP, Mr. Cheever made crystal clear his expectation that higher ranking employees were held to higher standards than lower ranking employees. While he wanted full departmental compliance with the HSP, Mr. Cheever particularly valued the compliance of higher-level employees, such as forepersons. The fact that laborers who reported to Mr. Melchionda viewed their foreperson as their "boss," as responsible for making sure that their crew was following the MBTA's rules, and as a role model in terms of following MBTA rules, including the HSP[21] makes it all the more reasonable and appropriate that Mr. Cheever would view forepersons and non-forepersons differently. Based on these reasons, I find that a prudent person, looking objectively at the circumstances would not view Mr. Morris and Mr. Graham as similarly situated comparators to Mr. Henderson.[22]

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[20] De Veiga v. Santander Bank, 786 F.Supp.3d 305, 312 (D. Mass. 2025) (lower level employee not similarly situated); Breiterman v. United States Capitol Police, 15 F.4th 1166, 1174 (D.C. Cir. 2021) (non-supervisory officers with different ranks, titles and job duties were not similarly situated because supervisors are entrusted with greater authority than officers, held to a higher standard, and disciplined more severely than officers for similar violations); King v. Blinken, 2024 WL 4345843, at *8 (D.D.C. 2024) (although plaintiff and proposed comparator shared a supervisor, their job duties were fundamentally different as plaintiff was a manager and comparator was an assistant); Harris v. Winter, 2007 WL 2900168 at *15, 16 (E.D. Cal. 2007).

[21] Tr. 387 (Graham) (in response to the question, "did you have a sense that if a foreman is scanning out in Braintree, why can't I?," Mr. Graham stated: "Absolutely.").

[22] As for the argument that the MBTA's failure to include in the HSP policy itself a statement that forepersons would be disciplined first equates to a concession that forepersons and laborers are similarly-situated comparators for purpose of HSP compliance analysis, I am unpersuaded. To hold otherwise would usurp the MBTA's right to adopt a managerial style which requires leaders, such as forepersons, to be at the forefront of compliance with the MBTA's policies without explicitly stating so in its policies.

Even if one were to assume *arguendo* that Mr. Morris and Mr. Graham were similarly situated comparators to Mr. Henderson, despite their non-foreperson roles, I am not persuaded by Mr. Henderson's argument that although Mr. Morris and Mr. Graham were disciplined with the very same level of discipline which Mr. Henderson received, there were differences in the "timing, decisionmaker, and outcome" of the imposed discipline. First, as to the "timing" argument, while Mr. Morris was not disciplined until February 25, 2019, he was informed that he would be disciplined on December 31, 2018, shortly after his December 28, 2018 infraction and just a few days before the date that Mr. Henderson was disciplined.[23] It also appeared that there was an intention to discipline Mr. Morris on January 30, 2019. Exhibit 33. Between January 3, 2019 and February 25, 2019, when Mr. Morris was disciplined, Mr. Cheever had vacated his position as TFM Director, and Mr. Gauthier stepped into this role. Given the departmental flux, it is not surprising that there was a delay in issuing discipline to Mr. Morris. Second, as to the "decision maker" argument, I am aware that a foreperson's discipline would ordinarily be handled by the supervisor; nevertheless, the attendance by Mr. Cheever in Mr. Henderson's discipline meeting but not in Mr. Morris' is easily explained. Mr. Morris' disciplinary action took place on February 25, 2019, when Mr. Gauthier, who attended the disciplinary action, was the Acting Director and Mr. Cheever was no longer the TFM Director.[24] Third, as to the

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Morrison v. Weyerhaeuser Co., 119 Fed. App'x 581, 585, n.5 (5th Cir. 2004) (rejecting lower court's conclusion that lower-level employee was a proper comparator because disciplining supervisor staff was not explicitly called for in disciplinary policies). Where, as here, a manager states unequivocally that he holds his supervisory staff to a higher standard, the fact that the policy itself does not distinguish forepersons from non-forepersons does not, in and of itself, require the employer to uniformly discipline all employees, regardless of rank.

[23] Mr. Henderson's failure to establish the date that Mr. Graham was disciplined or notified that he would be disciplined negates any "timing" argument comparison between Mr. Graham and Mr. Henderson's discipline.

[24] Again, Mr. Henderson failed to demonstrate when Mr. Graham's discipline was imposed.

"outcome" argument, there appears to be a fundamental difference in the grievances filed by Mr. Henderson and Mr. Morris relative to the imposition of discipline for violation of the HSP. Mr. Morris' grievance was made on procedural grounds – that it was too late (more than 30 days from infraction) to impose discipline. Nothing suggests that Mr. Henderson's grievance had a similar dispositive procedural component.[25]

The MBTA's decision to discipline its employees for non-compliance with the HSP was not a precipitous one. Mr. Henderson was given ample warning that disciplinary action would follow a violation of the HSP. The MBTA's decision to issue discipline first to its forepersons, and then to its rank and file employees was based on the director's view that forepersons should be held to the highest standards, as they model compliant workplace conduct for their subordinates. This is not differential treatment based on race, but instead, a predictable outcome for refusing to comply with the HSP.

The argument that the MBTA decided to discipline Mr. Graham and Mr. Morris to conceal its previous racially motivated discipline of Mr. Henderson is flawed. The intention to discipline Mr. Morris was communicated to Mr. Morris on December 31, 2018 which was *before* the MBTA disciplined Mr. Henderson.[26] While I recognize the delay between the notification and actual imposition of discipline upon Mr. Morris, the record does not support a determination that the discipline issued to Mr. Morris and Mr. Graham was designed to camouflage a racially motivated decision relative to Mr. Henderson.

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[25] As to Mr. Graham's objection to the discipline, there is no indication that it was successful. Mr. Graham testified that he filed a "formal letter" and "never heard anything further regarding this."

[26] Mr. Henderson's failure to establish the date that Mr. Graham was disciplined or notified that he would be disciplined undermines his concealment argument.

ii. Mr. Henderson did not prove that the MBTA Treated the Unidentified Foreperson Differently

Although Mr. Henderson did not reference the Unidentified Foreperson in his Post-Hearing Brief, I address whether the Unidentified Foreperson was treated differently than Mr. Henderson. There was evidence that the Unidentified Foreperson was not a member of Mr. Henderson's protected class, held a foreperson position in the TFM department, and violated the HSP in the relevant period, albeit, on one occasion. The question is whether Mr. Henderson sustained his burden to show that the Unidentified Foreperson was treated differently than Mr. Henderson. He has not. Mr. Henderson has failed to prove that the Unidentified Foreperson was not disciplined for violation of the HSP.[27] Pierson v. Stembridge, 80 Mass. App. Ct. 1116 at *1 (2011) (M.A.C. Rule 23.0 Decision) (allegations that plaintiff was disciplined and terminated while younger minority teachers were not "miss[es] the mark," in part, because "nothing in the record indicates that the other tardy teachers were not disciplined."). Without proof that the Unidentified Foreperson was not disciplined or treated differently than Mr. Henderson, a necessary component of proving differential treatment, Mr. Henderson fails to sustain his burden.

For the above reasons, Mr. Henderson has failed to prove racial animus. Thus, I dismiss the racial discrimination claim.

B. The MBTA and Mr. Cheever did not unlawfully retaliate against Mr. Henderson

M.G.L. c. 151B, § 4(4) prohibits persons, employers, labor organizations and employment agencies from discharging, expelling or otherwise discriminating against any person "because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified or assisted in any proceeding under section five." M.G.L. c. 151B, § 4(4).

[27] I recognize that this was likely due to the unknown identity of this potential comparator, an issue that is generally resolved in discovery. The failure to obtain the identity of this individual, his personnel records, and to assess whether he was treated differently, is fatal here.

To succeed on a M.G.L. c. 151B, § 4(4) claim, a person must prove that: (1) he reasonably and in good faith believed that the respondent was engaged in wrongful discrimination (reasonable and good faith belief); (2) he acted reasonably in response to that belief through acts meant to protest or oppose such discrimination (protected conduct); (3) an employer or other person took adverse action against him (adverse action); and (4) the adverse action was a response to the protected conduct (causation). Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405–06 (2016); Ambroise v. Law Office of Howard Kahalas & Howard Kahalas, 45 MDLR 67, n.13 (2023); MCAD Harassment Guidelines, VIII.A.

Mr. Henderson reasonably and in good faith believed that the MBTA discriminated against him based on his race when he was passed over for a supervisor position in favor of Mr. Melchionda.[28] The reasonableness of Mr. Henderson's belief is buttressed by the vigorous partial concurrence and partial dissent in the underlying case of Henderson v. Massachusetts Bay Transportation Authority, 977 F.3d 20, 40–56 (1st Cir. 2020); Exhibit 28.

When Mr. Henderson's attorneys deposed Mr. Melchionda in support of his claim of race discrimination in the federal lawsuit, he was (through counsel) acting reasonably in response to his belief that he had been subjected to race discrimination – in other words, engaging in protected conduct. MCAD Harassment Guidelines, VIII.A (protected activity includes filing a complaint at MCAD or in court against an employer).

Mr. Henderson has also established that he suffered an adverse action. As discussed above, the administrative suspension had a negative impact on Mr. Henderson's employment record and thus "well might have 'dissuaded a reasonable worker from making or supporting a

[28] Mr. Henderson's lack of success in proving his underlying claims of race discrimination does not impede his retaliation claim from going forward. Town of Brookline v. Alston, 487 Mass. 278, 294 (2021).

charge of discrimination.'" Burlington Northern & Santa Fe Railway v. White, 548 U.S. 53, 68 (2006); Stratton v. Bentley Univ., 113 F.4th 25, 42-44 (1st Cir. 2024).

The dispositive question is whether Mr. Henderson has established a causal connection between the protected conduct and the adverse employment action. Verdrager, 474 Mass. at 406. The protected conduct must be the "determinative factor" in an employer taking an adverse action. Downey v. Johnson, 104 Mass. App. Ct. 361, 381 (2024) citing Psy-Ed Corp. v. Klein, 459 Mass. 697, 707 (2011) (Psy-Ed).[29] A cause is the determinative factor if it was the active efficient cause in bringing about an adverse employment action. Lipchitz v. Raytheon Co., 434 Mass. 493, 506, n.19 (2001). Timing and sequencing of events may, depending on the facts of a case, be sufficient to raise an inference of causation, and although that inference may be overcome by the respondent's contrary evidence, see Mole v. University of Massachusetts, 442 Mass. 582, 591–93 (2004), it also may become the basis of the complainant's proof that retaliation was, in fact, determinative. Psy-Ed, 459 at 711, n.31.

Mr. Henderson asserts that the active efficient cause of the 1/3/2019 administrative suspension was Mr. Melchionda's December 6, 2018 deposition in the federal lawsuit. While the time between these two events is short, the surrounding circumstances undermine Mr. Henderson's claim that the deposition caused the MBTA to issue the 1/3/19 administrative suspension. First, there was no evidence that Mr. Cheever, Mr. Gauthier or Mr. Melchionda discussed Mr. Melchionda's deposition, or that ill will was expressed toward Mr. Henderson (either in his presence, or outside of it) regarding the federal lawsuit. Second, the larger context and sequence of events was that Mr. Henderson continued to violate the HSP while the TFM

[29] Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 121 (2000); Chadwick v. Duxbury Public Schools, 97 Mass. App. Ct. 1106 at *6 (2020) (M.A.C. Rule 23.0 Decision); MCAD and Lauria v. Robert W. Sullivan, Inc., 41 MDLR 101, 101 (2019).

Director was growing increasingly frustrated by TFM employees' noncompliance with the HSP and taking steps to enforce the policy. This was not a sudden, unexpected enforcement effort; it was preceded by several months of encouraging employees to comply with the HSP, culminating in the unambiguous warning issued at the 12/11/2018 meeting. Third, the 1/3/2019 administrative suspension was consistent with the steps set forth in the progressive discipline policy. Exhibit 4. In the 24-month look-back period prior to the 1/3/2019 administrative suspension, Mr. Henderson received a Step 1 Written Warning for violating the HSP. Proceeding to a Step 2 One-Day Administrative Suspension was consistent with the MBTA's policies. On this record, Mr. Henderson was administratively suspended pursuant to the normal application of the progressive disciplinary system.

Where the record supports the conclusion that what motivated the employer was a longstanding desire to improve an employee's behavior, retaliation is not proved. Puopolo v. Massachusetts Port Authority, 106 Mass. App. Ct. 1111 (2025) (M.A.C. Rule 23.0 Decision) (anti-retaliation statutes do not "clothe the complainant with immunity for past and present inadequacies [and] unsatisfactory performance….") (citation omitted). The evidence does not support a causal nexus between Mr. Henderson's protected conduct and the 1/3/19 administrative suspension. Based on the above, I conclude that the respondents did not retaliate against Mr. Henderson and dismiss the claim of retaliation against the respondents.

C. Mr. Cheever is not Individually Liable Under M.G.L. c. 151B, § 4(4A)

For the reasons set forth above, Mr. Henderson was not discriminated against on the basis of his race, nor did he suffer retaliation. There is no basis for holding Mr. Cheever liable pursuant to M.G.L. c. 151B, § 4(4A), and I dismiss this claim against Mr. Cheever.

IV. ORDER

For the reasons detailed above, and pursuant to the authority granted me under Section 5 of Chapter 151B, I dismiss this Complaint in its entirety.

V. NOTICE OF APPEAL

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23(1) (2026). If a party files a Petition for Review, the other parties have the right to file a Notice of Intervention within ten days of receipt of the Petition for Review and shall file a brief, in reply to the Petition for Review within 30 days of receipt of the Petition for Review. 804 CMR 1.23(2) (2026). All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other parties.

SO ORDERED this 11th day of August 2026.

Simone R. Liebman

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Simone R. Liebman
Hearing Officer