

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

KEVIN JOHNSON,
Appellant

v.

D-10-184

WORCESTER HOUSING AUTHORITY,
Respondent

Appellant's Representative:

Sal Romano
Mass. Laborers' District Council
7 Laborers' Way
Hopkinton, MA 01748

Respondent's Representative:

Antonia C. Peabody, Esq.
Worcester Housing Authority
40 Belmont Street
Worcester, MA 01605

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, Kevin Johnson (hereinafter "Johnson" or "Appellant"), pursuant to G.L. c. 31, § 43 and G.L. c. 121B, § 29, filed an appeal with the Civil Service Commission (hereinafter "Commission") on July 26, 2010 claiming that he was aggrieved by a decision of the Worcester Housing Authority (hereinafter "Housing Authority") to suspend him for one (1) day.

A pre-hearing conference was held at the offices of the Commission on August 24, 2010 at which time the Housing Authority filed a Motion to Dismiss. I heard oral argument from the parties' representatives.¹

The following facts appear to be undisputed:

1. The Appellant began working for the Housing Authority on March 22, 2004 as a custodian / refuse trash driver.
2. On May 18, 2010, the Appellant was issued a one (1) day suspension for taking an extended break and /or lunch hour.
3. The Appellant filed a Step One (1), Step Two (2) and Step Three (3) grievance as prescribed by his collective bargaining agreement (CBA).
4. The Respondent denied the Appellant's grievance on July 20, 2010.
5. The Appellant filed an appeal with the Commission on July 26, 2010.

Respondent's Argument

The Respondent argues that the Commission does not have jurisdiction to hear the instant appeal as the Appellant's suspension does not give rise to a cause of action under G.L. c. 121B, § 29.

Appellant's Argument

The Appellant argues that notwithstanding the plain language of Section 29, the Commission should conduct a full evidentiary hearing and determine if the Respondent had just cause to suspend him for one (1) day.

¹ The Appellant did not appear at the pre-hearing conference.

Conclusion

Pursuant to the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 (7)(g)(3), “The Presiding Officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter...”

G.L. c. 121B, § 29 states in relevant part:

“No employee of any housing authority, except an employee occupying the position of executive director, who has held his office or position, including any promotion or reallocation therefrom within the authority for a total period of five years of uninterrupted service, shall be involuntarily separated therefrom except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.”

(emphasis added)

Here, the Appellant was not involuntarily separated within the meaning of Section 29. Rather, he was suspended for one (1) day, a disciplinary action that does not give rise to a cause of action under Section 29. See McGilvray v. Boston Housing Authority, 6 MCSR 117 (1993); Randazza v. Gloucester Housing Authority, 13 MCSR 3 (2000); Mahoney v. Boston Housing Authority, 6 MCSR 249 (1999); Jeraud v. Waltham Housing Authority, 21 MCSR 573 (2008).

The Commission does not have jurisdiction to hear the instant appeal. For this reason, the Appellant’s appeal under Docket No. D-10-184 is hereby ***dismissed***.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and McDowell, Commissioners) on September 23, 2010.

A true Copy. Attest:

Commissioner
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of this decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:
Sal Romano (for Appellant)
Antonia Peabody, Esq. (for Respondent)