

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-775

FRAMINGHAM HOUSING AUTHORITY

vs.

IMRE SERFOZO & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

On February 22, 2019, the Framingham Housing Authority (FHA) terminated the employment of Imre Serfozo on the stated ground that he had "abandoned [his job] by failing to appear for work for a roughly six-week period, without explanation or excuse, despite the [FHA]'s repeated request for supporting medical information." He challenged his termination before the Civil Service Commission (CSC), which found that the FHA failed to meet its burden to prove "just cause." G. L. c. 31, § 41. On appeal, a judge of the Superior Court upheld the CSC's decision, finding that it was supported by substantial evidence. The FHA has now appealed.

We review solely to determine whether the decision of the CSC is supported by substantial evidence. See G. L. c. 30A,

¹ Massachusetts Civil Service Commission.

§ 14 (7). Our review is limited to the administrative record, G. L. c. 30A, § 14 (5). As the FHA recognizes, the CSC is entitled to make findings of fact based on the evidence. The findings in this case are as follows:

Serfozo was hired by the FHA in 2011 as a maintenance aide. In November 2018, he was out of work for a non-work injury, with his physician directing that he remain out of work until December 10, 2018. He returned to work on December 10 or 11. As he was punching out for the day, Christopher Patruno, an FHA mechanic, started shouting at him, making threatening comments, stating repeatedly in front of approximately seven other coworkers, "You piece of shit," using the word "kill," and stating, "If I didn't have kids, I would smash your face right now." Patruno approached and appeared ready to strike Serfozo until coworkers intervened, grabbed Patruno by the arm, and pulled him away.

Serfozo went to the Framingham police station to report the assault and, on December 12, 2018, provided the police report and incident report to the FHA and took a personal day. Later that day, he went to his doctor's office, where he received a prescription to relieve anxiety and a doctor's note, which stated: "Please excuse Imre Serfozo from work 12/12/18 through 12/16/18 due to medical reasons." He provided the note to his neighbor and FHA coworker, FHA housing manager Donald Casali,

for delivery to Serfozo's supervisor, David Camerato. Casali placed it in the mailbox that he understood to be assigned to Camerato.

On December 16, Serfozo sent a text message to Camerato which said, "Hello David I will call in sick tomorrow 12/17/2018[.] Thanks," to which Camerato texted the reply, "Ok." On December 17, he sent another text message to Camerato, informing him that he would be taking sick leave for the upcoming week and that he would provide a doctor's note, to which Camerato texted in reply, "Ok."

On December 18, Serfozo saw his doctor, who noted "[s]evere stress," "[h]igh pressure readings," "[h]eadaches," and prescribed an increase in medication. The doctor provided a note, which stated: "Imre Serfozo is my patient. He has a heart condition. There has been severe stress in the work place. This is affecting his health. Please excuse him from work from 12/17/18 until December 31, 2018."

Serfozo provided this updated note to Casali for delivery to Camerato. Casali again brought it to work and placed it in the same mailbox that he understood to be assigned to Camerato. Camerato denied ever receiving any of the notes sent through Casali.

The FHA personnel time records reflected twelve days of absence from December 13 through December 31, stating, "sick, no

doc," which indicates that there is no documentation on file. Executive Director Paul Landers from the FHA contacted Serfozo on December 27 and told him that his complaint about the mechanic who had threatened him was "all taken care of." Serfozo was not satisfied with the explanation, and contacted the FHA human resources office later that day to request that Camerato refrain from contacting him again directly because he was under a doctor's care.

On January 2, 2019, a private attorney retained by and representing Serfozo spoke by telephone with FHA counsel, and informed counsel that Serfozo was scheduled to see his doctor again the next day, and that he would request a medical note to provide to the FHA following that visit. A doctor's note from January 3, 2019, reads: "My understanding is that Imre Serfozo was attacked at work, his coworker attempted to strike him but was kept off by other coworkers. This is not a reasonable work situation. Imre Serfozo has a heart condition and no one should have to work alongside [a person] who has attempted to attack him. It is medically necessary for Imre Serfozo not to work with his attempted attacker." Serfozo again provided the note to Casali, who again delivered it to the mailbox he understood to belong to Camerato.

On January 8, 2019, counsel for the FHA wrote to the private attorney, stating that the FHA had not received the

promised medical documentation, and "is at a loss to understand Mr. Serfozo's absence, which is unsupported and undocumented." The letter further stated that, unless Serfozo produced "appropriate supporting medical documentation" by January 11, 2019, or appeared for work as scheduled on or before January 14, 2019, "the FHA will be forced to consider disciplinary action based on Mr. Serfozo's apparent decision to abandon his job." The record does not indicate that the private attorney ever responded.

On January 17, 2019, the FHA sent an email to Serfozo's counsel, stating that, since neither he nor the FHA had received a reply to the January 8 letter, Serfozo had "apparently abandoned his job" and "[i]f this [was] not the case, immediate communication and an explanation of events [was] essential." Again, the private attorney did not reply.

By letter dated January 22, 2019, the FHA deputy executive director informed Serfozo that the FHA "effective immediately has terminate[d] your employment, as evidenced by your job abandonment." Describing Serfozo as having failed to notify the FHA of an illness or other reason for his absence, the letter concluded that the FHA "is left with no option but to conclude you are no longer interested in working for the [FHA] and have abandoned your job."

It is clear that this letter violated the civil service laws, which require a full hearing concerning the reason or reasons for termination. See G. L. c. 31, § 41. On January 23, 2019, Serfozo, through his union, filed a grievance protesting the termination. This was rejected by Camerato. But on February 8, 2019, a level two hearing was held with the FHA executive director and, in light of the civil service law violation, the FHA granted the grievance and rescinded Serfozo's termination. According to the FHA, Serfozo delivered a copy of the January 3, 2019 letter at the February 8 hearing.

By letter dated February 13, 2019, the FHA proposed to terminate Serfozo's employment for just cause. On February 21, the FHA Board of Commissioners held a hearing where Serfozo appeared with union representatives. On February 22, 2019, the Board of Commissioners notified Serfozo that he was terminated from his position for just cause. Serfozo appealed to the CSC, which found no job abandonment, and therefore no just cause, and which ordered Serfozo restored to all compensation and benefits to which he is entitled.

Discussion. The FHA's appeal is insubstantial. On the date of the hearing on February 21, 2019, there could have been no question that Serfozo had not abandoned his job. By then, the FHA was in possession of the note from January 3, and was aware that Serfozo had not come to work due to a documented

medical concern arising from the presence of Patruno at his workplace. However one might choose to describe the circumstances, they do not amount to job abandonment. There is therefore substantial evidence supporting the CSC's determination that there was not just cause for the termination.

Even if it were appropriate to determine whether on January 17, 2019, Serfozo had abandoned his job, the facts support the CSC's conclusion he had not. The FHA argues that even legitimate absence from work is job abandonment if the employee fails to take reasonable steps to preserve his employment by properly notifying his employer of the absence. For this proposition, it cites an unpublished decision construing job abandonment in the unrelated area of unemployment benefits, where the question is whether under G. L. c. 151A, § 25 (e), the employee left work voluntarily without good cause attributable to her employer. See Flores v. Acting Director of the Div. of Unemployment Assistance, 70 Mass. App. Ct. 1102 (2007) (summary disposition issued pursuant to our prior rule 1:28).²

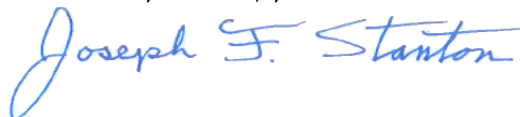
However even if this test were properly considered by the CSC in determining whether a job had been abandoned, and therefore whether there was "just cause" for termination,

² This decision is not binding precedent, and may be cited only as persuasive authority. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008). In order so to cite it, a party is required to include it in an addendum of the brief in which it is cited. Id. The FHA has failed to do so.

something we need not and do not decide, there is substantial evidence supporting the conclusion that Serfozo took reasonable steps to notify his employer by, as the hearing examiner found, sending his doctor's notes, including a note he obtained on January 3, to work with the FHA's housing manager for delivery to Camerato.

Judgment affirmed.

By the Court (Vuono, Rubin & Walsh, JJ.³),



Clerk

Entered: May 9, 2022.

³ The panelists are listed in order of seniority.