

PLYMOUTH, ss.

COMMONWEALTH OF MASSACHUSETTS

12
SUPERIOR COURT
CIVIL ACTION
NO. 2583CV00059

NICHOLAS P. VIOLA, JR.

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION
and BROCKTON PUBLIC SCHOOLS

MEMORANDUM OF DECISION AND ORDER ON PARTIES'
CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS

The plaintiff, Nicholas P. Viola, Jr. ("Viola"), was a custodian in the Brockton Public Schools system from September 26, 2005, until the defendant, Brockton Public Schools ("BPS"), terminated him on June 30, 2022. The defendant, the Civil Service Commission (the "Commission"), affirmed Viola's termination on appeal. Viola claims that decision violated G.L. c. 31, § 43 and G.L. c. 30A, § 14. Before the court are the parties' cross Motions for Judgment on the Pleadings. For the reasons discussed below, Viola's Motion for Judgment on the Pleadings is DENIED, the Defendants' Motion for Judgment on the Pleadings is ALLOWED, and the Commission's decision is AFFIRMED.

BACKGROUND

I. Prior Discipline

BPS hired Viola as a custodian on September 26, 2005. Throughout the years, BPS has had several issues with Viola.

On September 11, 2013, BPS met with Viola regarding his work performance and failure to follow instructions from his supervisor.

On December 5, 2014, BPS issued a letter of reprimand to Viola after he twice violated

BPS procedures. First, on October 8, 2014, upon delivery of frozen items to the Ashland Middle School cafeteria, Viola did not leave them outside the freezer door as required, but instead haphazardly threw the items into the freezer. When told about the issue, Viola threw his hands up, said "I'm out of here," and left the building. Administrative Record ("AR"), p. 347. Second, on November 3, 2014, Viola did not report an absence from work. BPS informed Viola that any further violations of its policies and procedures "will result in additional discipline up to and including suspension and/or termination." *Id.* at 348.

In March 2015, after a food cart that Viola was loading onto a truck at Brockton High School tipped over, Viola "engaged in an obscenity-filled tirade and began jumping up and down on the spilled boxes of food." *Id.* at 360. Viola then "attempted to enter [Brockton High School], ... pounding on the locked door and screaming obscenities." *Id.* After he gained entrance into the building, Viola "burst into [the food service director's] office in an enraged state, yelling and swearing at him and frightening several employees in the process." *Id.* BPS suspended Viola without pay for three days and reassigned him as a custodian in BPS's central office.

On October 22, 2015, BPS met with Viola regarding attendance issues. On November 5, 2015, BPS met with Viola regarding concerns with his work performance.

In January 2016, Viola made violent and threatening statements to a group of his co-workers at a union meeting. Specifically, Viola confronted a group of his co-workers about his belief that someone had been "ratting on" him to BPS administration. Viola told these co-workers that if he discovered who was "ratting on" him, he would go to that person's house and attack them and their spouse. Viola also threatened to kill anyone "ratting on" him and reported that he was not afraid of going to jail for killing someone. *Id.* at 359. Several of Viola's co-

workers reported to BPS that Viola's comments put them "in fear for themselves and their families." *Id.* BPS suspended Viola without pay for five days and required him to complete an anger management course.

II. Incident Leading to Termination

On January 24, 2022, Viola made threatening statements about his supervisor Michael Clark ("Clark") to another employee, James Curran ("Curran"). Viola told Curran that he did not like Clark and that he was "not afraid to go to [Clark's] house and kick in the door and kick his ass" and that if Clark's wife came out "he would kick her ass too, in front of their kids." AR, p. 292. Viola also stated that "he had no problem sticking up for himself" and "would have no problem going to someone's house and kicking [their] ass if they did anything to [affect Viola's] pay and his job." *Id.* at 291-292. Viola said he "knew people that had murdered people in the past and got away with it" and knew police officers who could be paid to move dead bodies and plant guns on them. *Id.* at 292. Curran reported these remarks to Clark, who reported them to BPS, indicating that he did not feel safe working with Viola. BPS put Viola on administrative leave and investigated the incident.

On January 25, 2022, Viola notified BPS of his "disabilities ... as [he] required special education" when he attended Brockton High School in the late 80s and early 90s. AR, p. 295. Viola referred BPS to a letter dated September 14, 2009, from Robert Kelley, a former BPS special education teacher, who had taught Viola when he was a student prior to 1993. In the letter, Kelley stated that, during high school, Viola was a student in a "Moderate Special Needs classroom." *Id.* at 17. Further, "[w]hen Nick became a Brockton custodian, the Special Need[s] staff was pleased to think that our efforts to help Nick normalize in the community was successful. I thought he was given a wonderful opportunity. It now appears that Nick is having

problems.” *Id.* Kelley then offered some generalized strategies about assisting workers with special needs and stated “[w]ith some modifications most workers will improve productivity as well as improve their attitude and keep their jobs.” *Id.*

Thereafter, BPS sent Viola for an independent medical evaluation, including a violence screening, to determine his fitness for duty. The independent medical examiner found that Viola was fit for duty with no modifications, had no psychiatric or neurocognitive impairment that would prevent Viola from performing the essential functions of his job, and presented a low risk of violence to himself and others.

On June 14, 2022, BPS notified Viola that it would terminate Viola’s employment effective June 30, 2022:

It appears undisputed that you made threatening statements on January 25, 2022. While your position is that you were repeating statements that you made in 2016, as opposed to making new directed threats at another colleague, that is not how it was contemporaneously reported by the person who heard the threats. Testimony from the person you made the threatening comments about was heard and he was clear that he would feel unsafe working with you. We reviewed your prior discipline, which is extensive, and shows that the District has offered progressive discipline. You have continued to display poor judgment despite the District’s efforts to remediate your behavior and I can no longer trust you to work in [BPS].

Id. at 6.

III. Viola’s Appeal

On June 22, 2022, Viola appealed to the Commission. On October 15, 2024, an Administrative Magistrate issued a Tentative Decision, denying Viola’s appeal. The Magistrate concluded that BPS had just cause to terminate Viola because of the threatening comments he made to Clark, the seriousness of the threats, the effect his comments had on Clark and Curran, and Viola’s prior disciplinary history, including progressive disciplinary action, for threatening language and behavior. The Magistrate found that Viola’s claim that his termination was

discriminatory, and that BPS failed to consider a disability accommodation was not supported by credible evidence on the issue. Specifically, the Magistrate stated:

There is no indication that Viola requested an accommodation for any disability. And while there is mention in a 2009 letter from a former teacher that Viola had a learning disability as a student in high school, there is no evidence of any correlation between such disability and threatening remarks for which he was disciplined.

Id. at 219.

On December 19, 2024, the Commission adopted the Tentative Decision and stated that the Magistrate,

duly considered evidence related to [Viola's] putative disability but properly concluded ... that notwithstanding the scant evidence of such limiting disability (largely overruled by an independent medical examination in any event ...), [BPS] had just cause to terminate [Viola's] employment due to his threatening comments to a coworker and other past serious workplace misconduct.

Id. at 236.

DISCUSSION

As a tenured civil service employee, Viola could only have been terminated for "just cause." G.L. c. 31, § 41. "Just cause" exists "where the employee has committed substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service." *Brookline v. Alston*, 487 Mass. 278, 292 (2021) (quotations and citations omitted).

The Commission's role is to determine whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing authority. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006). "Reasonable justification in this context means done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." *Id.* (citations omitted).

Under G.L. c. 31, § 44, the court reviews the Commission's decision to determine if it violates any of the standards set forth in G.L. c. 30A, § 14(7). *Id.* at 242. In this respect, the court may set aside the Commission's decision only if the substantial rights of any party may have been prejudiced because the decision is based on an error of law, unsupported by substantial evidence, or otherwise not in accordance with the law. *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 689 (2012). The party appealing a decision of the Commission bears a heavy burden because the court gives due weight to the experience, technical competence, and specialized knowledge of the Commission in deciding these matters. *Id.* Further, the court's review "is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom." *Brackett*, 447 Mass. at 242.

I. Reasonable Accommodation

Viola claims that because he has an intellectual disability, BPS was required to consider whether he could perform his job with a reasonable accommodation before terminating him and the Commission committed an error of law by not overturning BPS's decision. The court disagrees.

Viola has not brought an employment discrimination claim under G.L. c. 151; rather, he contests whether BPS had just cause to terminate him from his position. Nothing in the civil service law requires the Commission to consider whether BPS should have provided Viola with a reasonable accommodation; it only requires the Commission determine if BPS had just cause to terminate him. While the Commission is not precluded from considering conduct related to discrimination when reviewing whether BPS had just cause to terminate Viola, see *Brookline*, 487 Mass. 295, nothing requires the Commission to do so.

Regardless, the Magistrate considered Viola's intellectual disability and found that Viola had not supported his claim that BPS failed to consider a disability accommodation with credible evidence. The Commission agreed with the Magistrate that BPS had just cause to terminate Viola regardless of any disability. Viola has presented no basis upon which to overturn these findings. Indeed, as noted by the Commission, BPS sent Viola for an independent medical examination before it terminated him, and the medical examiner concluded that Viola was fit for duty with no modifications.

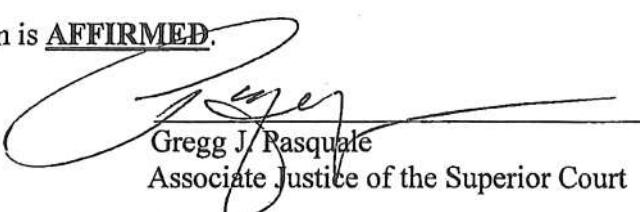
II. Substantial Evidence

The Magistrate concluded that BPS had just cause to terminate Viola because of the threatening comments he made to Clark, the seriousness of those threats, and Viola's prior disciplinary history, including progressive disciplinary action, for threatening language and behavior. There was substantial evidence in the record supporting this determination and it was not arbitrary nor capricious. Viola's history of lashing out and threatening his co-workers, especially considering that BPS has disciplined him for the same conduct in the past, gave BPS reasonable justification to terminate Viola.

As Viola has not met his heavy burden of establishing that the Commission's decision is invalid, the court affirms the decision.

ORDER

For the foregoing reasons, it is hereby ORDERED that Viola's Motion for Judgment on the Pleadings is DENIED, the Defendants' Motion for Judgment on the Pleadings is ALLOWED, and the Commission's decision is AFFIRMED.


Gregg J. Rasquale
Associate Justice of the Superior Court

DATED: November 21, 2025