COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & MARK WETHERBEE,
Complainants

V. DOCKET NO.17-WEM-00384

IBA, INC.,
Respondent

Appearances:
Ryan Avery, Esq. for Complainant, Mark Wetherbee
Howard E. Stempler, Esq. for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about February 22, 2017, Complainant Mark Wetherbee filed a complaint with this Commission charging Respondent IBA, Inc. with discrimination, specifically sexual harassment and retaliatory termination. The Investigating Commissioner issued a probable cause finding. Attempts to conciliate the matter failed, and a public hearing was held before me on January 6, 7, and 9, 2020. After careful consideration of the record before me and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law, and order.

II. FINDINGS OF FACT

1. Complainant Mark Wetherbee resides in Putnam, CT. He holds a Class A CDL license which allows him to drive several different types of commercial trucks and tractor trailers. He has been a truck driver for 19 years. T. 17-20.

2. Respondent IBA is a family-owned agricultural pharmaceutical and dairy farm supply company located in Millbury, MA. Robert Belsito is Respondent's vice president and second in charge. His father, Daniel Belsito, is Respondent's president. T. 394-396.

3. Terrence Bernard has worked for Respondent for 33 years. For the past 30 years he has been Respondent's Operations Manager. T. 272-274. Bernard hires and supervises warehouse personnel and truck drivers, is in charge of inventory control, building maintenance, some purchasing, customer service and managing freight. Bernard reports to Robert Belsito. T. 275-276

4. Scott Olsen is Respondent's dispatcher and reports to Bernard, with whom he shares an office. Olson reviews customer orders, ensures that trucks are within DOT's weight limits, schedules pickups from Respondent vendors, monitors drivers by GPS and distributes cash for meals to drivers each week. T. 256- 262, 278. Olson occasionally sits in on job interviews with Bernard, in order to provide candidates with details about the run for which they have applied. He is

not a member of management and has no authority to hire and fire. T. 263-265; 268; 280-282.

5. Complainant began working for Respondent in June 2010 as a warehouse worker and driver. After a year in that position, Complainant became a full-time long-haul driver. His route took him to upstate New York, Vermont and sometimes Pennsylvania. In this position, Complainant loaded his truck on Mondays, went on the road Tuesdays, returned on Wednesdays, went on the road on Thursdays and returned home on Friday mornings and worked in Respondent's warehouse. He reported to Bernard. T. 20-23.

6. Webco Chemical Company, located in Dudley, MA, is also a family-owned company with close ties to Respondent going back to the 1960's. Webco manufactures bottles and labels and is the largest supplier of Respondent's private label goods. Respondent's drivers travel the 17 miles from Respondent to Webco at least once a week in order to load their trucks with Webco's products. T. 340-341; 397-398.

7. Respondent leases tractors and trailers from Ryder Truck Rentals. Under the terms of the lease, Ryder services breakdowns occurring on the road and its Auburn, MA location provides fuel and services for the trucks rented by Respondent. T. 342-344.

8. Drivers for Respondent were required to stop along the way back from their runs for "back-hauls," whereby they would pick up pallets and other materials from distributors and deliver them to companies who would then pay Respondent for the service. T. 23-24. Drivers were encouraged to find their own back-hauls and were paid a percentage of Respondent's proceeds from each back-haul. T. 454-455. If drivers could not find back-hauls they were to pick up empty 275-gallon totes or 55-gallon drums for re-use by Respondent. Anyone whose trailer came back empty was reprimanded. T. 456 Pursuant to an unwritten rule, drivers would occasionally be allowed, with Respondent's approval, to bring back a small amount personal items from their runs, provided that there was room in their trailers and if doing so did not interfere with their pick-ups or back-hauls and was of no cost to Respondent. T. 365-366; 456.

9. Respondent employed a driver K.W., with whom Complainant would interact at Respondent's warehouse or at Webco. Complainant stated that K.W. "thought he was better than anyone else," and was protected by Respondent. T. 30-32.

10. Bernard testified that Complainant was in some ways an excellent employee. He got along well with customers, faithfully performed his duties and had a good attendance record. Bernard testified, however, that Complainant had "another side," and that during Complainant's tenure Bernard received many

complaints from other drivers about Complainant's boisterous and disrespectful behavior toward them and Webco employees.

11. Bernard testified credibly that in 2014, Complainant was having problems with a new tractor and became so belligerent and bullying to Ryder employees about the matter that Ryder's regional manager called Bernard to complain about Complainant's behavior. T. 351-354. Belsito also learned about the incident at Ryder from Bernard and from meeting with Ryder managers. T. 399-400.

12. Bernard testified that when not on the road, Complainant was an instigator and trouble maker whose behavior was long tolerated only because of his reliability as a driver. He disrupted the work of warehouse personnel by roaming the warehouse, showing them images on his phone, many of them of a sexual nature. T. 353-355. Bernard cautioned Complainant on many occasions that by his poor behavior he was placing his job in jeopardy but his words seemed to have no effect on Complainant. T. 356-357. I credit his testimony.

13. Webco's owner complained to Bernard and Belsito several times between 2014 and 2017 about Complainant entering its yard. T. 399-400. Belsito had seen Complainant "hard braking" - braking at a high speed- in Respondent's parking lot and warned him that he was going to write him up. I credit his

testimony. Complainant testified that hard braking was impossible at Respondent's parking lot because of its size. I do not credit his testimony.

14. Tom Landry, a truck driver for Respondent since September 2007, testified credibly that drivers and dock workers at Respondent and Webco constantly swore and used crude sexual language in conversation with one another and stated that Complainant never appeared insulted or offended by such language, would respond in kind and was in fact one of the most foul-mouthed of all the employees. T. 462-468.

15. Landry testified credibly that Complainant once showed him and others a pornographic video on his cell phone. T. 467-468. On another occasion, Complainant described to Landry in graphic detail a sexual encounter he had. T. 467-470.

16. Tim Lamica, a long-time order picker and shipper for Webco, testified that Respondent's drivers and Webco employees regularly use crude language. He described Complainant as immature, an instigator and a bully who has made comments to him such as, "You're not my little f-g" or "You're not my little p---y." T. 480-481. I credit his testimony. Former Webco employee Jason Irwin testified that everyone at the Webco loading dock, including Complainant, would frequently joke around and call one another "f-g" or "bitch." T. 243-245. I credit his testimony.

Incident of 2014

17. In late June or early July, 2014, while Complainant was unloading empty barrels at Webco, Tim Lamica came onto his trailer to help him unload. Complainant commented to Lamica that the t-shirt Lamica was wearing was a "gay pride thing" that Complainant wouldn't wear. Overhearing this exchange, K.W. said to Complainant, "You want your gay? Your gay is right here," as he grabbed himself in the crotch. Complainant responded, "I'm sorry. I don't go that way." According to Complainant, K.W. responded, "When you do, I got a piece of meat in between my legs for ya." T. 32-35.

18. Complainant complained to Bernard about this incident as sexual harassment by K.W. Bernard referred the matter to Belsito, who spoke separately with Complainant and K.W. K.W. denied making the sexual gesture and said that Complainant had instigated the altercation. T. 306; 368-370; 405-407; 490-491. Belsito asked Webco to interview the three Webco employees, J.W., Lamica and Jason Irwin. After speaking with the witnesses, the Webco manager reported to Belsito that J.W. did not witness the incident, Lamica did not see the gesture and Irwin no longer worked for Webco. T. 403-408; Ex.14.

19. Lamica testified that he did not see K.W. grab his crotch but recalled hearing Complainant say to K.W., "You got something to say now, f-g, say it now," and proceed to taunt K.W. T. 487-489.

20. Irwin testified that he observed Complainant and K.W. arguing at Webco from 50 feet away but did not recall any non-verbal gestures by K.W. until he was shown his affidavit in which he stated that K.W. grabbed his crotch. T. 226-237, 240; 246-247.

21. On July 28, 2014, Belsito gave Complainant a memorandum with the subject line: "Sexual Harassment Claim and Warning Letter" stating that he had investigated the sexual harassment complaint and found it to be invalid but advised Complainant to report instances of retaliation. In addition, he warned Complainant against "hard acceleration and hard stops," abuse of equipment, operating equipment not assigned to him, and inappropriate verbal or written communication with co-workers, customers or vendors. T. 408-412; Ex. R-2.

22. One Monday in October 2015, Complainant arrived at Webco where his orders for his next day's run were picked and ready to load.[1] When another driver, C.P., arrived at Webco at his scheduled loading time, the orders for his run that same day had not been picked. C.P. was angry about the resulting delay and complained to Bernard that his load should have been ready before Complainant's

[1] Complainant was supposed to work the entire day every Monday in Respondent's warehouse. Instead he was allowed to leave the warehouse at noon for Webco to load his trailer for his next day's run.

as leaving late made it difficult to comply with DOT's driving time limits. T. 44-45; 356-359.

23. The following Monday, Bernard took Complainant into his office and explained that he could not load his orders before C.P. and warned him that when he went to Webco that day he was not to instigate an altercation with C.P. about the issue.

24. Despite Bernard's admonition, Complainant immediately confronted C.P. about the loading issue upon his arrival at Webco. T. 259-361.

25. On October 29, 2015, as a result of Complainant's confrontation with C.P., Bernard gave Complainant a formal written warning in which he stated, "I have spoken to you many times since your employment began...Your abrasive comments and constant lack of respect for authority...will not be tolerated. You need to improve on your self-control and focus on your job only." Ex. R-1. Complainant testified that Bernard discussed these issues with him but denied ever receiving a formal written warning in October 2015. T. 48-50. I do not credit his testimony.

26. On June 16, 2016, Bernard gave Complainant a memorandum stating that he was not receiving the usual yearly increase in his mileage rate because of the many issues raised addressed in the formal written warning of October 2015. T. 364-365; Ex. 12. Complainant testified that he asked Bernard to provide him

with the written warning of October 2015, but Bernard did not do so. T. 134-137. I do not credit his testimony.

27. In late November and December 2016, Bernard and Belsito heard rumors about Complainant's arranging for purchase of wood stove pellets in exchange for cash. When Bernard confronted Complainant about the matter, he denied having made such an agreement. T. 453-454; 366-367. Complainant testified that once or twice a year he would ask drivers whose runs went to Wisconsin to pick up pellets for his wood stove on their way home. T. 49-51.

28. Belsito contacted the company that sold the pellets and confirmed that a huge load of pellets weighing 30,000 to 40,000 lbs. was sold to Respondent's drivers. Belsito was upset that Complainant had lied to Bernard about the matter and because the load of pellets would have nearly filled a trailer with materials intended for Complainant's personal use, resulting in lost back-haul revenue to Respondent and its other drivers. Belsito confronted two drivers who admitted to picking up the pellets for Complainant and who apologized to Belsito. Those drivers were not disciplined because they told the truth and had clean records. T. 420-422; T-450.

29. Belsito discussed the matter of the pellets with his father Daniel Belsito, who agreed that when the time was right Complainant would be terminated for this reason and others. T. 422-423 32. Bernard testified that he began planning the

termination of Complainant in December 2016. He testified that he had received numerous complaints about confrontations that Complainant engaged in at Webco with Webco and Respondent's employees. He testified that Ryder managers had complained about Complainant as well. T. 308-311; 372.

30. Bernard testified that he and Belsito had contacted a former employee, D. M., to ask if he wanted to return to work for Respondent. After meeting with Bernard and Belsito and submitting a job application, D. M. was hired the week before Complainant's termination and the Maine run, a one-day run, was added to his route. T. 372-375; 388. Bernard testified that after Complainant was fired, Landry came back from light duty and took over Complainant's run (when someone quits or is fired the run goes out to bid) and D. M. remained on the Maine run. T.442-453.

Incident of February 10, 2017

31. In the early morning of Friday, February 10, 2017, a driver pulling in to Respondent sideswiped K.W.'s parked tractor. Complainant testified that Olsen wanted him to bring the tractor to the body shop but was unable to get in touch with K.W. and asked Complainant to text K.W. to inform him about the truck. Olson denied asking Complainant to contact K.W. and was unaware that Complainant had begun texting him. Olson testified he left work from 8:00 a.m. to 9:30 a.m. to drive his wife to work. He returned between 9:00 a.m. and 9:30 a.m.

and learned that K.W.'s truck had been damaged. After assessing the damage and calling Ryder to request a replacement, he got in touch with K.W. at about 10:00 a.m., by which time K.W. had already learned about the damage to his trailer from Complainant. T. 330-333.

32. On that day, Landry arrived at Respondent at 7:00 a.m. He was on light duty due to an injury and was seated at a table performing sedentary tasks when Complainant came in and showed him a picture of K.W.'s damaged truck. Knowing that Complainant and K.W. did not get along, Landry jokingly told Complainant to send the picture to K.W. T. 470-471. Complainant began a text exchange with K.W. from 9:15 a.m. to 12:15 p.m. which discussed damage to K.W.'s truck, but mostly included running insults and extremely crude sexual and homophobic references, with both Complainant and K.W. insulting each other's sexual practices and purported preferences. It is clear from the context of the texts that this exchange was hostile and not light-hearted. Ex.2; T.56-68.

33. Complainant testified that while texting with K.W., he shared the texts with several other drivers who were laughing and spurring them on. T.171-172. According to Landry, later that day Complainant gleefully showed him the text message chain and was clearly pleased to have gotten under K.W.'s skin. I credit Landry's testimony. T. 471-472

34. Complainant testified that no one had ever directed such crude language at him as K.W. had in the texts. He stated that the texts made him feel uncomfortable and stressed. Complainant's testimony in this regard strains credulity. Not only does it contradict the credible testimony of virtually every other witness, it also contradicts Complainant's own testimony that he gleefully shared the texts with co-workers, and continued to trade crude insults with K.W. In addition, Complainant's demeanor and the lack of hesitation in testifying to the contents of these texts and other incidents of crude and homophobic language being used belied his claim that he was uncomfortable with the use of such language.

35. Complainant testified that after the exchange he walked into Olsen's office and handed him the phone. He testified that Olsen looked through the messages and handed the phone back to Complainant and said he did not want to get involved. T. 174-176. Olson denied looking through the text messages, but admitted telling Complainant he did not want to look at them and did not want to be involved. T. 333-334.

36. On Monday, February 13, 2017, K.W. stormed into the office shared by Olson and Bernard as they sat at their desks. He told them he felt threatened by Complainant and had filed for a restraining order against him. He was also angry at Olson because he believed Olson hadn't kept him informed over the weekend

about the status of his replacement tractor. He threatened to throw Olson through the office wall. T. 286-287; 335-337. Belsito was called into the office and K.W. repeated that he was getting a restraining order against Complainant. Belsito told K.W. to bring him the order and he would then determine how to deal with the long-standing animosity between Complainant and K.W. T. 416-419.

37. On Tuesday, February 14, 2017, Bernard issued a "final warning" to K.W. stating that any further confrontations with any employee will lead to immediate termination. T. 285-288; 300-303; Ex-3.

38. Complainant testified that on Wednesday February 15, 2017, Bernard told him that K.W. had taken out a restraining order against him, that he had received the text messages and that Belsito would deal with matter. Complainant testified that he tried to show Bernard the texts on that day but Bernard did not want to see them. Bernard denied that Complainant showed him the texts on February 15 and testified that if Complainant had shown them he would have notified Belsito. T. 304 -306. I credit his testimony.

39. On Friday, February 17, 2017, when Complainant returned from his run at 3:30 p.m., Bernard handed him an envelope and told him that, although he did not want to do it, he was terminating Complainant's employment. T. 38-39. Belsito was in California on business at this time, but was aware of the termination.

40. The termination lists six separate violations of Respondent's standard of conduct: Fighting or threatening violence in the workplace, boisterous or disruptive activity in the workplace, excessive conversation between individuals that affects productivity, insubordination or other disrespectful conduct, using company equipment for purposes other than business, unsatisfactory performance or conduct. Ex. 4; T. 76-77.

41. Bernard testified that he did not see the text exchange between Complainant and K.W. until February 17, 2017, when they were emailed to him by Complainant. He forwarded the email and texts to Bob Belsito, who did not see them until February 20, 2017 when he read through them. T. 30; 419.

42. In the email, which was somewhat muddled, Complainant tried to explain that Olson had given permission to have drivers to pick up pellets for him. T. 200-203; 428-31. He also wrote that at on February 10, 2017, when Olsen couldn't reach K.W., Olson had asked him to send a photo of the damaged tractor to K.W., who responded with sexually charged comments. Ex. 18.

43. Belsito asked K.W. to produce the texts on his phone but he had deleted them. Belsito testified that he did not realize Complainant was making a complaint of sexual harassment until he received notice of Complainant's MCAD complaint, after which he placed K.W. on probation on or about March 16, 2017. Ex. 5.

44. In January or February, 2017, Landry was on light duty recovering from a knee injury. Belsito and Bernard decided that D. M., who did not want a longer run, could do either Landry's Maine and New York run or Complainant's run. T. 415-417. The following Monday February 13, 2017, Landry re-injured his knee at Ryder and was out again until September 2017. T. 475-477. Complainant filed his MCAD complaint on or about February 22, 2017. T. 81-83.

45. On March 16, 2017, Bernard placed K.W. on probation for the texting incident of February. T. 288-293: Ex.6. Respondent decided not to terminate K.W. because he had long endured Complainant's troubling conduct and was justified in venting his frustrations, albeit by offensive language. Bernard further stated that K.W. is an excellent driver, was Respondent's best performer with respect to compliance with DOT regulations, and had no complaints against him that would justify disciplining him beyond the letter. T. 319-321.

46. Bernard noted that Complainant began the text message exchange and that both Complainant and K.W. used similar language in the texts. T. 303-304.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

Complainant alleges that K.W. subjected him to sexual harassment on February 10, 2017.[2] M.G.L. c. 151B. Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when ...such advances requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment." G.L. c. 151Bs.1(18); College-Town Division of Interco v. MCAD, 400 Mass. 156, 165 (1987). See Massachusetts Commission Against Discrimination, Sexual Harassment in the Workplace Guidelines (2002) at II(C).

In determining whether speech or conduct creates a hostile work environment, the standard is whether a reasonable person in the complainant's position would interpret the behavior "as offensive and an interference with full participation in the workplace." Baldelli v. Town of Southborough Police Dept., 17

[2] M.G.L. c. 151B, sec.5 requires that complaints alleging unlawful conduct must be filed within 300 days of last act of discrimination. An exception to this rule exists where the Complainant proves that the conduct constitutes a continuing violation. Cuddyer v. The Stop & Shop Supermarket Company, 434 Mass. 521 (2001); Couture v. Central Oil Company, 12 MDLR 1401, 1419(1990). For actions that occur 300 days prior to the filing of a complaint to be actionable, there must be at least one incident of discriminatory conduct within the statute of limitations period which substantially relates to, or arises from, earlier discriminatory conduct and anchors the related incidents, thereby rendering the entirety of the claim timely. See Cuddyer, supra. at, 531-532; 804 C. M.R. 1.10(2). For these reasons it was ruled prior to the public hearing that the 2014 incident was untimely and evidence concerning that incident was admitted only as background information. Thus, only the incident occurring on February 10, 2017 is before me.

MDLR 1541, 1547 (1995); Harris v. International Paper Co., 765 F.Supp. at 1512-16 and notes 11 and 12.

The unwelcome conduct must be both subjectively and objectively offensive. College-Town at 162; Ramsdell v. Western Mass. Bus Lines, Inc., 415 Mass. 673, 678 (1993). The objective standard of sexually unwelcome conduct considers the evidence from the perspective of a reasonable person in the plaintiff's position. The reasonable person inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker's performance, and what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) citing Harris v. Forklift Systems, Inc., 510 U.S.17 (1993); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000). The subjective standard of sexual harassment requires that the employee to whom the conduct is directed personally experiences the behavior to be unwelcome. See Couture v. Central Oil Co., 12 MDLR 1401, 1421 (1990) (characterizing subjective component of sexual harassment as "in the eye of the beholder.")

Complainant alleges that K.W.'s conduct created a hostile work environment for him. The overwhelming credible evidence in this matter demonstrates that Complainant actively encouraged and often initiated and invited the type of

conduct about which he now complains. Several witnesses testified credibly about Complainant's active participation in the sexually charged atmosphere at Respondent's warehouse and Webco's dock. I did not find credible Complainant's assertion that he was upset or offended by K.W.'s behavior. By all accounts, Complainant was a willing participant in vulgar and homophobic workplace conduct. It is quite clear that Complainant could simply have stopped texting with K.W., who was not even present in the workplace, had he been so offended by K.W.'s language, but instead he goaded K.W. by continuing to text him over a three-hour period, exchanging similarly offensive insults. Even by his own testimony Complainant shared the texts with other drivers for their mutual entertainment.

All of this leads me to conclude that Complainant was not subjectively offended by K.W.'s words. Respondent's work atmosphere was permeated with inappropriate and offensive language. While the conduct at issue in this case is certainly not appropriate in the workplace, is objectively offensive and should not be encouraged or condoned, I conclude that in these circumstances, it was not unwelcome and did not interfere with Complainant's full participation in the workplace. I do not believe that Complainant was offended or threatened by the conduct, but found it amusing. He has not established a prima facie case of a

sexually hostile work environment and his evidence does not support a claim of unlawful sexual harassment.

B. Retaliatory Discharge

Although Complainant's underlying claim of sexual harassment has not been established, such a finding is not fatal to Complainant's retaliation charge as long as the retaliation charge is supported by a reasonable and good faith belief that the conduct being opposed constitutes unlawful discrimination. See MCAD Sexual Harassment in the Workplace Guidelines, Part IX - Retaliation, p. 26 (2002); Abramian v. President and Fellows of Harvard College, 432 Mass. 107, 121 (2000) (recognizing that jury may find retaliation even in absence of discrimination); Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass.382,405 (2016)

In order to establish a prima facie case of retaliation, Complainant must show that he engaged in a protected activity, that Respondent was aware of the protected activity, that Respondent subjected him to an adverse action, and that a causal connection existed between the protected activity and the adverse action. Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003). In the absence of any direct evidence of retaliatory motive, as in this case, the

Commission follows the three-part burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 972 (1973); Abramian at 116; Wynn & Wynn v. MCAD, 431 Mass 655, 665-666 (2000).

To establish that his internal complaint constitutes a protected activity, Complainant must demonstrate that he had a reasonable and good faith belief that the actions he was protesting were discriminatory. Abramian, at 121 (2000)

I conclude that Complainant has failed to establish a prima facie case of retaliatory termination. I conclude that the text message exchange between Complainant and K.W. and Complainant's own behavior belies that he had a reasonable or good faith belief that he was subjected to hostile work environment sexual harassment. The conduct was clearly not threatening, intimidating or subjectively offensive to Complainant due to its sexual content. Complainant's exchange with K.W. and his reaction with co-workers demonstrates that he was a willing participant in the conduct and fails to support that he had a reasonable belief that the conduct constituted unlawful sexual harassment. His complaint to management after his termination about the text exchange with K.W. was more likely motivated by his extreme dislike of K.W. and the fact that K.W. had referenced Complainant being fired, which came to pass after K.W. informed Respondent that he had sought a restraining order against Complainant. Moreover, the credible evidence demonstrates that Complainant did not notify

Respondent's managers about the offensive text messages from K.W. until after his termination, thus its decision to terminate Complainant could not have been motivated by his after-the-fact internal complaint of sexual harassment.

However, even assuming that Complainant has established a prima facie case of retaliation based on the timing of his termination, the burden of production would shift to Respondent to articulate and produce credible evidence of a legitimate, nondiscriminatory reason for its actions. Abramian, at 122.

Respondent met this burden. It produced ample evidence of its concerns about Complainant's unauthorized use of Respondent's equipment in arranging for huge amounts of wood stove pellets to be transported to him for his personal use, frequently instigating arguments with co-workers and dock workers and ignoring the rules prohibiting fast braking, all of which Bernard repeatedly discussed with him, and as evidenced by the numerous oral and written warnings he received.

Once Respondent has articulated legitimate non-discriminatory reasons for its conduct, in the absence of direct evidence of retaliatory motive, Complainant may establish causation by proving that Respondent's proffered reasons for his termination were a pretext for retaliation. Abramian, at 116-117.

Other than Complainant's self-serving assertions, there is insufficient credible evidence to support a conclusion that the reasons Respondent articulated for the termination were not the real reasons or that Respondent was motivated by

the intent to retaliate for a complaint of sexual harassment. Lipchitz v. Raytheon Co., 434 Mass. 493, 503 (2001). I conclude that Complainant has failed to establish the Respondent's reasons for terminating his employment are a pretext for unlawful retaliation. Respondent is therefore not liable for unlawful sexual harassment or retaliation.

IV. ORDER

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

Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this 24th day of June, 2020

Judith E. Kaplan

JUDITH E. KAPLAN,
Hearing Officer