STATE OF NEW JERSEY
DEPT. OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. ET15RB-65550

Dennis Fenton ,)	
Complainant,)	Administrative Action FINDING OF PROBABLE CAUSE
v.)	
Hamilton Farm Golf Club,)	
Respondent.)	

On August 19, 2015, Dennis Fenton (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR), alleging that Hamilton Farm Golf Club (Respondent), discriminated against him based on his race, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied the allegations of discrimination in their entirety. DCR's investigation found as follows.

SUMMARY OF INVESTIGATION

Respondent is a country club with two golf courses located in Gladstone, N.J. After having worked for Respondent during the 2014 season through a temporary agency, Complainant was hired as a permanent Laborer for the 2015 season. In this position, he was responsible for maintaining the grounds of the club. On May 27, 2015, Respondent discharged Complainant.

In the verified complaint, Complainant, who is Black, alleged that he and only other Black Laborer on the Grounds Staff, were treated more harshly and held to a different standard than non-Black employees in the same position. According to Complainant, he and were, for example, assigned to clean the biggest bunkers (also known as golf course sand traps) alone, while non-black employees were always placed in work groups of more than two for larger jobs. Complainant further alleged that he and were terminated for engaging in the same conduct as non-Blacks, who were not terminated.

In its response to the complaint, Respondent denied that race played any part in its decision, and asserted that Complainant was discharged because he was caught multiple times not fully participating in his work, forcing other staff to pick up the slack for him. Respondent maintained that Complainant was also caught, on one occasion, sitting in his utility vehicle watching others work until a supervisor entered the area. Respondent alleged that, on May 27, 2015, Complainant and were assigned to rake bunkers with eight other employees but, on that day, they were caught multiple times standing around watching the other employees do the work. Respondent claimed that Complainant and were also terminated because they were insubordinate to their manager, Casey Utton, and cursed at him.

In an interview with DCR, Complainant said that he and were working on bunkers with about 10-12 other employees on the day they were terminated. As they were finishing up, Utton came by and told all of the Laborers, except for Complainant and that they were terminated and they could finish out the day or go home. According to Complainant, Utton said they were terminated because, during the previous two weeks, Utton had observed them sitting in their golf carts multiple times when they should have been working. Complainant said that he accused Utton of being racist.¹

Complainant told DCR that he was never given any warnings, verbally or in writing, about sitting in the golf cart or his alleged negative performance. Complainant told DCR that, if one Laborer finished his part of the work, it was common practice to sit in the golf cart while the other Laborer finished up. According to Complainant, all Laborers, including his white and Hispanic co-workers, would on occasion wait in the cart for their co-workers to finish a job.

Complainant alleged that about two weeks before he was terminated, he was given the task of picking up rocks near the front office. Complainant did not ask for help and said that it took him about two and a half days to complete the job. Complainant did not complain to management, but said that none of the Hispanic or white employees were given a similar assignment.

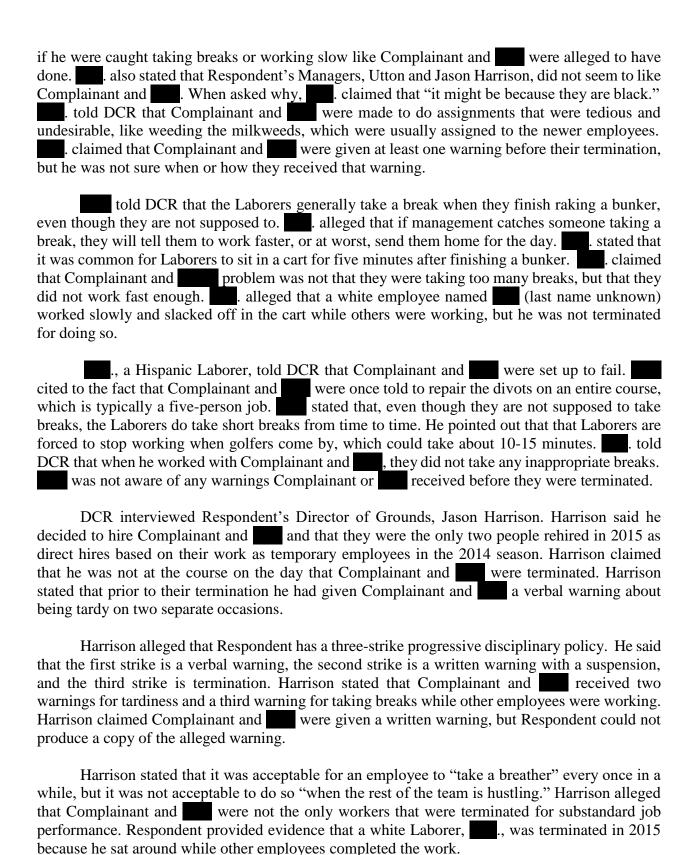
Complainant told DCR that during the first week of the 2015 season, one of the other Laborers, told Complainant, "Jamaican, we're going to get some guy to come here and take your job." Complainant said that he did not bring this comment to the attention of management.

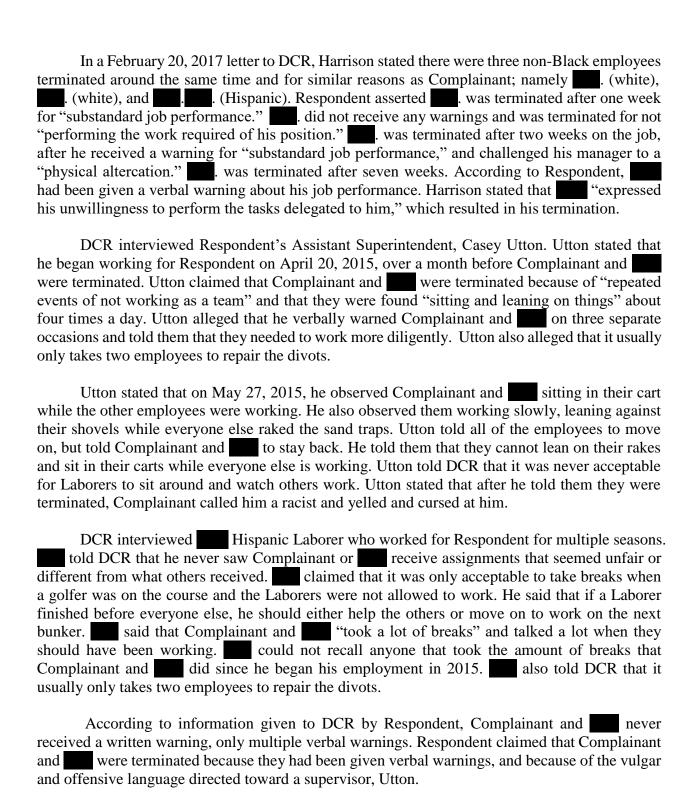
DCR interviewed , who told DCR that he worked for Respondent during the 2014 season through a temporary employment agency and was invited back by Respondent for the 2015 season, this time as a direct hire. corroborated Complainant's assertion that Blacks were treated more harshly that non-Blacks. told DCR that Respondent has two separate courses, "Island" and "Hickory" with Island being the larger, although both are 18 holes. claimed that on the day before they were terminated, he and Complainant were asked to complete a rake of the entire Island course by themselves. "A rake" is when Laborers rake all the bunkers on a course. said that this was normally a 15-20-person job because of the size of the course and the amount of bunkers they would have to rake. alleged that none of the Hispanic or white employees were ever assigned a similar task.

asserted that he and Complainant were the only Black Laborers at the Club. Information provided by Respondent confirmed assertion and also showed that, during the 2015 season, Respondent's regular Laborer workforce consisted of 7 Hispanics, 19 whites, and 12 Hispanics hired as temporary employees.

DCR interviewed ..., a white Laborer, who said Respondent is easier on white college kids who are "not pushed as hard as the minorities." ... said that he would not have been fired

¹ Complainant told DCR that he didn't think Utton had been hired during the prior two weeks, and therefore couldn't have observed them sitting while others worked but said he had no proof. Respondent's documents show that Utton was, in fact, employed by Respondent during the two weeks prior to Complainant's termination, and Utton confirmed this during his interview with DCR.





ANALYSIS

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a).

"Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

The LAD makes it unlawful to fire, refuse to hire, or otherwise discriminate in the "terms, conditions or privileges of employment" based on race. N.J.S.A. 10:5-12(a).

Here, the investigation found sufficient evidence to support a reasonable suspicion that Respondent discriminated against Complainant based on his race. Respondent acknowledged that Complainant was one of only two Black Laborers out of approximately 28 Laborers employed on a regular basis during the 2015 season, and of 40 employed on either a regular or temporary basis. The other Black Laborer was terminated at the same time as Complainant.

The evidence obtained during DCR's investigation supports Complainant's assertion that Respondent treated the two Black Laborers more harshly than non-Black Laborers. Witnesses support Complainant's allegations that he and his Black co-worker were repeatedly assigned the most tedious and arduous tasks. For example, Complainant and were required to repair all of the divots on the course without help from other Laborers, even though it is typically a five-person job, and that they were assigned to rake all of the bunkers on the "Island" course without help from other Laborers.

Similarly, the investigation found sufficient evidence to support a reasonable suspicion that Complainant and his Black co-worker were held to a harsher standard than non-Black Laborers and were disciplined when non-Black workers engaged in the same behavior were not disciplined. For example, Respondent told DCR that Complainant and were disciplined because they took too many breaks and sometimes sat in the golf cart while others were still working. Witnesses confirmed to DCR that white and Hispanic Laborers sometimes work slowly, rest occasionally, and even sit in the golf cart while resting, without being disciplined.

In addition, although supervisory employees told DCR that Complainant was issued disciplinary warnings for being tardy on two occasions, Respondent failed to provide evidence showing that Complainant's tardiness was a factor in his termination. And, although Respondent alleged that Complainant was issued a written warning, consistent with its progressive discipline policy, Respondent could not produce the alleged warning. Further, the insubordination, vulgar and offensive language allegedly directed at Utton could not have form the basis of Complainant's

termination since both parties agree that no vulgarities were spoken until after Utton told Complainant that he was terminated.

At this threshold stage in the process, there is sufficient basis to warrant "proceed[ing] to the next step on the road to an adjudication on the merits." <u>Frank, supra, 228 N.J. Super.</u> at 56. Therefore, the Director finds probable cause to support Complainant's allegations of race discrimination.

Date: January 31, 2020

Rachel Wainer Apter, Director NJ Division on Civil Rights

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