Division of
Human Rights

**NEW YORK STATE**
**DIVISION OF HUMAN RIGHTS**

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| **NEW YORK STATE DIVISION OF HUMAN RIGHTS**<br>on the Complaint of<br><br>**ROLAND WILLIAMS,**<br>Complainant,<br>v.<br><br>**CITY OF NEW YORK, OFFICE OF SCHOOL SUPPORT SERVICES, CITY OF NEW YORK, DEPARTMENT OF EDUCATION, THOMAS ROM, NEW YORK CITY SCHOOL SUPPORT SERVICES, INC., JAMES BOND,**<br>Respondents. | **NOTICE AND FINAL ORDER**<br><br>Case No. 10198491 |

Federal Charge No. 16GB901082

**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order"), issued on March 30, 2021, by Alexander Linzer, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE JOHNATHAN J. SMITH, INTERIM COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER")**. In accordance with the

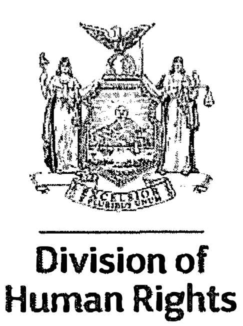
Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED**.

DATED: **June 15, 2021**
Bronx, New York

JOHNATHAN J. SMITH
INTERIM COMMISSIONER



**Division of Human Rights**

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**NEW YORK STATE DIVISION OF HUMAN RIGHTS**
on the Complaint of

**ROLAND WILLIAMS,**
Complainant,
v.

**CITY OF NEW YORK, OFFICE OF SCHOOL SUPPORT SERVICES, CITY OF NEW YORK, DEPARTMENT OF EDUCATION, THOMAS ROM, NEW YORK CITY SCHOOL SUPPORT SERVICES, INC., JAMES BOND,**
Respondents.

**RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER**

Case No. **10198491**

Federal Charge No. 16GB901082

## SUMMARY

Complainant alleged that Respondents discriminated against him on the basis of race, sex, and disability, and retaliated against him for complaining about unlawful discrimination. Complainant has failed to meet his burden of proof, and this case is dismissed.

## PROCEEDINGS IN THE CASE

On October 31, 2018, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondents City of New York, Office of School Support Services, City of New York, Department of Education, Thomas Rom, and

"John" Barnes (True First Name Unknown) with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law"). On April 8, 2019, the Division amended the complaint to add Respondent New York City School Support Services, Inc., and to correctly name "John" Barnes (True First Name Unknown) as James Bond. (ALJ's Exhibits 4, 5).

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Alexander Linzer, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held virtually on November 4, 2020, November 5, 2020, and November 20, 2020.

Complainant and Respondents appeared at the hearing. Complainant was represented by Autumn M. Shoemaker, Esq. Respondents were represented by Michael Hilton, Esq., and Sari Goldmeer Rella, Esq., Agency Attorneys.

Permission to file post-hearing briefs was granted. None were filed.

## FINDINGS OF FACT

1. Complainant is male and Black. (Tr. 58, 66; ALJ's Exhibit 5)

2. Respondent City of New York, Department of Education ("DOE") operates the Erasmus Hall Campus: High School for Humanities and The Performing Arts ("Erasmus") located at 911 Flatbush Avenue, Brooklyn, New York. (Tr. 164, 192; Complainant's Exhibits 12 13; Respondents' Exhibit 5)

3. In or around 1997, Complainant was hired as a school aide to work at Erasmus. (Tr. 27; Complainant's Exhibit 13)

4. In 2006, Complainant's position was changed to part-time custodian cleaner. (Tr. 27)

5. During the period relevant to the complaint, Respondent New York City School Support Services, Inc. employed Complainant as a custodian cleaner at Erasmus. (Complainant's Exhibits 8, 9; ALJ's Exhibit 5)

6. As a custodian cleaner, Complainant was responsible for cleaning Erasmus. (Tr. 58)

7. Respondent Thomas Rom is a custodian engineer employed by Respondent DOE and assigned to Erasmus. (Tr. 164)

8. Respondent Rom was Complainant's supervisor during the relevant period. (Tr. 164-65; Respondents' Exhibits 8, 9)

9. Respondent James Bond is a custodian engineer and is Rom's supervisor. (Tr. 51; Respondents' Exhibit 5)

10. In or around 2010, Complainant's position was changed from part-time to full-time. (Tr. 119)

11. On May 9, 2012, Complainant stipulated to a 13-day suspension for failing to follow Respondent Rom's orders in connection with cleaning the Erasmus gym. (Respondents' Exhibit 3)

12. On October 26, 2012, Complainant stipulated to a 20-day suspension for washing his personal car while on duty. (Respondents' Exhibit 5)

13. On October 22, 2013, Complainant stipulated to a 57-day suspension because he did not call his foreman or a coworker to cover his shift when he was going to be out sick. (Respondents' Exhibit 6)

14. On February 19, 2014, Complainant stipulated to a five-day suspension because he failed to report to work for a snow emergency. (Tr. 122, 176; Respondents' Exhibit 7)

15. Complainant's coworkers on the night crew sometimes played a "kind of wrestling game" and slapped each other on the buttocks. (Tr. 69-72)

16. In or around 2015, Complainant was touched on his buttocks by a coworker on the night crew. (Tr. 31-33, 36, 73; Respondents' Exhibit 8)

17. Complainant reported the incident to the foreman, who Complainant knew as "Ziggy." (Tr. 34-37) Ziggy did not do anything to address Complainant's complaint and the coworker was not suspended. (Tr. 31-32, 36-37)

18. On December 4, 2015, Complainant was driving and scraped his vehicle against a gate at Erasmus. (Tr. 53-55; Respondents' Exhibit 8)

19. On December 7, 2015, Complainant accused a coworker of pushing his vehicle into the gate on December 4, and told the coworker, "You don't know how crazy I'm going to get," if he did not pay for damage caused to Complainant's vehicle. (Tr. 176-77; Respondents' Exhibit 8)

20. On February 17, 2016, Complainant stipulated to an 81-day suspension for threatening his coworker. (Tr. 54-55; Respondents' Exhibit 8)

21. The incident on December 4, 2015, occurred after Complainant was inappropriately touched by a coworker. (Tr. 36)

22. In 2015 or 2016, Complainant's coworkers received their W-2 statements and Complainant did not. (Tr. 62-64) When Complainant asked Respondent Rom about his W-2 statement, Respondent Rom told Complainant to leave his office. (Tr. 62-64)

23. Complainant did not show up for work on December 26, 2017, through December 29, 2017. (Tr. 121, 124, 128, 179-80, 184-85, 197-98; Respondents' Exhibits 1, 9)

24. On each day from December 26, 2017, through December 29, 2017, Complainant called Respondents' office and left a message stating that he was going to be out. Complainant did not state that he was sick during these calls. (Tr. 121, 127-28, 179-80, 184-86, 197-98; Respondents' Exhibit 9)

25. On December 30, 2017, Respondents had a snow emergency and Complainant was required to report to work. (Tr. 122-24, 176, 179-80; Respondents' Exhibit 9)

26. Complainant did not report for emergency snow removal on December 30, 2017, and did not call Respondents to advise he was unable to work. (Tr. 124, 179-80; Respondents' Exhibit 9)

27. Complainant returned to work on January 2, 2018. (Tr. 185; Respondents' Exhibit 1)

28. When Complainant returned to work on January 2, 2018, Respondent Rom issued him a "Disciplinary Action Form" seeking Complainant's termination for failing to show up to work on December 26 through December 29, and for failing to show up for the snow emergency on December 30. Complainant refused to sign the form. (Tr. 179-80; Respondents' Exhibit 9)

29. Respondent New York City School Support Services, Inc. provided Complainant with a letter informing him that his employment was terminated effective January 24, 2018. (Tr. 104-05; Complainant's Exhibit 8)

30. Complainant, who is a union member, grieved the termination of his employment. (Tr. 182-83)

31. A union grievance hearing was scheduled for January 16, 2018, in connection with the termination of Complainant's employment, but Complainant did not appear. (Tr. 182-83; Respondents' Exhibit 10)

32. On or about January 24, 2018, Respondents terminated Complainant's employment. (Tr. 132; ALJ's Exhibit 5; Respondents' Exhibit 9)

33. Complainant did not inform Respondents that he was absent from work from December 26 through December 30 because he was sick. (Tr. 120-21, 128, 184-86, 195-97; Respondents' Exhibit 9)

34. At the hearing, Complainant testified that he provided Sheila Carey, Respondent Rom's custodial secretary, with one or two letters from Antonio Garcia, M.D., stating that Complainant was absent from work from December 26 through December 30 because he was sick with chills and a fever. (Tr. 95-96, 193; Complainant's Exhibits 3, 4) I do not credit Complainant's testimony that he provided either Dr. Garcia's letter dated December 27, 2017, or Dr. Garcia's letter dated January 6, 2017, to Carey. (Tr. 95-96, 125-29; Complainant's Exhibits 3, 4)

35. Complainant's testimony concerning whether and when he provided the two letters from Dr. Garcia to Carey was vague, confusing, and contradictory. (Tr. 125-29) Complainant first testified that he gave Carey a letter from Dr. Garcia on January 6, 2018. (Tr. 125) When told that January 6, 2018, was a Saturday, Complainant testified that he actually provided a doctor's letter to Carey on January 1, 2018. (Tr. 125) When told that January 1, 2018, was a holiday, Complainant testified that he provided a doctor's letter to Carey on January 2, 2018. (Tr. 125-26)

36. Complainant also provided contradictory testimony concerning whether he gave Carey one doctor's letter or two doctor's letters. (Tr. 126-27; Complainant's Exhibits 3, 4)

37. Accordingly, I credit the testimony of Carey and Respondent Rom that Complainant did not provide any doctor's letters in connection with his absence from work from December 26, 2017, through December 30, 2017. (Tr. 184-86, 195-96; Respondent's Exhibit 12)

## OPINION AND DECISION

N.Y. Exec. Law, art. 15 ("Human Rights Law") § 297.5 provides, "Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice." This provision acts as a mandatory statute of limitations in these proceedings. *Murphy v. Kirkland*, 88 A.D.3d 267, 273, 928 N.Y.S.2d 333, 337 (2d Dept. 2011). Complainant filed this complaint on October 31, 2018. Accordingly, unless Complainant establishes that the continuing violation doctrine applies, claims arising out of events which occurred before October 31, 2017, are time-barred.

"[A] continuing violation may be found where there is proof of specific ongoing discriminatory policies or practices, or where specific and related instances of discrimination are permitted by the employer to continue unremedied for so long as to amount to a discriminatory policy or practice." *Clark v. State of New York*, 302 A.D.2d 942, 945, 754 N.Y.S.2d 814, 817 (4th Dept. 2003) (citation omitted).

Complainant's allegations outside the statutory period include that he was inappropriately touched by a coworker in or around 2015, and that Respondents retaliated against him after he reported the incident by suspending him on or about February 16, 2016, for threatening a coworker. The only unlawful discriminatory act alleged by Complainant to have occurred within the statutory period is the termination of his employment on or about January 24, 2018, after he failed to report to work. This claim is not "sufficiently similar to the conduct without the limitations period to justify the conclusion that both were part of a single discriminatory practice. . . ." *Id.*, *quoting Sier v. Jacobs Persinger & Parker*, 276 A.D.2d 401, 714 N.Y.S.2d 283 (1st Dept. 2000).

Thus, a continuing violation does not exist and all claims arising out of acts or events that occurred outside of the statute of limitation period are time-barred, including when Complainant was inappropriately touched by a coworker in or around 2015, and his suspension in 2016.

Complainant alleged that he was subjected to a hostile work environment because of his sex. In order to establish a hostile work environment claim under Human Rights Law § 296.1(a), a complainant must show that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment. *Forrest v. Jewish Guild for the Blind,* 3 N.Y.3d 295, 310, 786 N.Y.S.2d 382 (2004) (quoting *Harris v. Forklift Sys., Inc.* 510 U.S. 17, 21, 114 S.Ct. 367 (1993)). Whether an environment is hostile or abusive can be determined only by looking at all the circumstances, including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive." *Id.* at 311 (quoting *Harris,* at 23). Moreover, the conduct must both have altered the conditions of the victim's employment by being subjectively perceived as abusive by the plaintiff and have created an objectively hostile or abusive environment--one that a reasonable person would find to be so. *Id.* (quoting *Harris*, at 21).

A complainant must show that the discriminatory conduct occurred because of the complainant's protected class membership. *See Arcuri v. Kirkland,* 113 A.D.3d 912, 914, 978 N.Y.S.2d 439, 441 (3d Dept. 2014).

Complainant did not establish that he was subjected to a hostile work environment during the statutory period. Complainant's allegation concerning being touched by a coworker in or

around 2015 is well outside the statutory period, and Complainant did not allege any specific conduct within the statutory period that might establish the existence of a hostile work environment. This claim is dismissed.

Complainant alleged that Respondents discriminated against him based on his race and sex. To make out a prima facie case of unlawful discrimination in employment, a complainant must show that 1) the complainant is a member of a protected class, 2) the complainant was qualified for the position, 3) the complainant suffered an adverse employment action, and 4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful discrimination. *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 305, 786 N.Y.S.2d 382, 390 (2004) (citing *Ferrante v. Am. Lung Ass'n,* 90 N.Y.2d 623, 629, 665 N.Y.S.2d 25, 29 (1997)).

If a complainant makes out a prima facie case of unlawful discrimination, the burden shifts to the respondent to articulate a legitimate, independent, and non-discriminatory reason for its actions. *Id.* If the respondent does so, the complainant must show that the reasons presented by the respondent were merely a pretext for the unlawful discrimination by demonstrating both that the respondent's stated reasons were false and that the real reason was unlawful discrimination. *Id.* at 305, 786 N.Y.S.2d at 391. The "burden of persuasion of the ultimate issue of discrimination always remains" with the complainant. *Stephenson v. Hotel Empls. and Rest. Empls. Union Local 100 of the AFL-CIO*, 6 N.Y.3d 265, 271, 811 N.Y.S.2d 633, 636 (2006).

Complainant is a member of protected classes because he is male and Black. Complainant was qualified to be a custodian cleaner because he served in the position for years. Complainant suffered an adverse employment action when his employment was terminated. However, Complainant failed to show that the termination of his employment occurred under circumstances giving rise to an inference of unlawful discrimination. The record is devoid of

any evidence that might support Complainant's conclusory allegations that his race or sex played any role in the termination of his employment. This claim is dismissed.

Complainant alleged that Respondents retaliated against him for complaining about being inappropriately touched by a coworker. The Human Rights Law makes it an "unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate against any person" who has opposed discriminatory practices. To make out a prima facie case of retaliation, a complainant must show that 1) the complainant engaged in activity protected by the Human Rights Law, 2) the respondent was aware that the complainant participated in the protected activity, 3) the complainant suffered an adverse employment action, and 4) there is a causal connection between the protected activity and the adverse employment action. *See Adeniran v. State of New York,* 106 A.D.3d 844, 965 N.Y.S.2d 163 (2d Dept. 2013).

In a retaliation context, an adverse employment action is one which "might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Mejia v. Roosevelt Is. Med. Assoc.*, 31 Misc.3d 1206(A), 927 N.Y.S.2d 817 (Table) (Sup. Ct. N.Y. Co. 2011), *aff'd.*, 95 A.D.3d 570, 944 N.Y.S.2d 521 (1st Dept. 2012), *lv. to appeal dismissed,* 20 N.Y.3d 1045, 961 N.Y.S.2d 374 (2013), citing *Burlington Northern & Santa Fe Railway Co. v. White,* 543 U.S. 53, 68 (2006).

If a complainant makes out a prima facie case of retaliation, the burden shifts to the respondent to articulate a legitimate, independent, and non-discriminatory reason for its actions. If the respondent does so, the complainant must show that the reasons presented by the respondent were merely a pretext for discrimination. *Adeniran* at 845, 965 N.Y.S.2d at 165.

Complainant has failed to establish a prima facie case of retaliation. Complainant engaged in protected activity when he complained to Respondents about being inappropriately

touched by a coworker, and Complainant suffered an adverse employment action when his employment was terminated. However, Complainant did not establish a causal connection between the protected activity and the adverse employment action. Complainant offered no evidence that might establish that his complaint in or around 2015 had anything to do with the termination of his employment over two years later in January 2018. This claim is dismissed.

Complainant alleged that Respondents discriminated against him based on his disability when his employment was terminated for missing work because he was sick. Human Rights Law § 296.1(a) makes in an unlawful discriminatory practice for an employer to refuse to hire or employ or to bar or to discharge from employment an employee because of the employee's disability. A disability is defined as "(a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions … or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment." Human Rights Law § 292.21.

To make out a prima facie case of disability discrimination, a complainant must show that 1) the complainant suffered from a disability, 2) the complainant was qualified for the position, 3) the complainant suffered an adverse employment action, and 4) the adverse employment action occurred under circumstances giving rise to an inference of unlawful discrimination. If a complainant makes out a prima facie case of discrimination, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its action. If the respondent does so, the complainant must show that the reasons presented were merely a pretext for discrimination. *See Rainer N. Mittl, Ophthalmologist, P.C. v. State of Div. of Human Rights,*

100 N.Y.2d 326, 763 N.Y.S.2d 518 (2003); *Gill v. Maul,* 61 A.D.3d 1159, 876 N.Y.S.2d 751 (3d Dept. 2009).

Complainant did not make out a prima facie case because he did not show that the termination of his employment occurred under circumstances giving rise to an inference of unlawful discrimination. The evidence did not establish that Respondents had notice that Complainant was absent from work because he was sick at the time his employment was terminated. When Complainant called Respondents to advise that he would be out from work on December 26, 2017 through December 29, 2017, he did not say that he was sick. Complainant also failed to prove that he provided Respondents with a doctor's letter stating that he was absent because he was sick. Carey and Respondent Rom testified that Complainant never provided a doctor's letter in connection with these absences, and Complainant's testimony to the contrary was not credible. This claim is dismissed.

**ORDER**

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that this case be, and hereby is, dismissed.

DATED: March 30, 2021
Bronx, New York

Alexander Linzer
Administrative Law Judge