



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MOLLY MCBRIDE-CRAWFORD,

Complainant,

v.

**GENERAL MILLS CEREALS OPERATIONS,
INC.,**

Respondent.

**NOTICE AND
FINAL ORDER**

Case No. 10135987

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 26, 2012, by Edward Luban, 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.

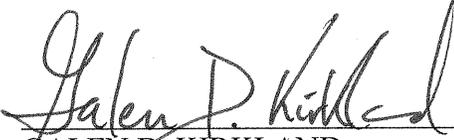
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been filed 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: 5/25/12
Bronx, New York



GALEN B. KIRKLAND
COMMISSIONER



ANDREW M. CUOMO
GOVERNOR

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

MOLLY MCBRIDE-CRAWFORD,

Complainant,

v.

**GENERAL MILLS CEREALS
OPERATIONS, INC.,**

Respondent.

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

Case No. **10135987**

SUMMARY

Complainant alleged that Respondent failed to provide her with facilities equal to those it provided male employees, subjected her to sexual harassment, and terminated her employment because of her sex and because she complained about sex discrimination. Because the evidence does not support the allegations, the complaint is dismissed.

PROCEEDINGS IN THE CASE

On August 26, 2009, Complainant filed a verified complaint with the New York State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent 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 Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on February 28, March 1, March 23, and May 11, 2011.

In a pre-hearing conference, ALJ Erazo permitted Complainant to amend the complaint to add a claim that Respondent retaliated against her for complaining about sex discrimination. Respondent submitted an amended answer to the amended complaint. (Tr. 11-13; ALJ’s Exhs. 4, 5)

Complainant and Respondent appeared at the hearing. Complainant was represented by Harvey P. Sanders, Esq. Respondent was represented by Margaret A. Clemens, Esq.

Complainant and Respondent filed proposed findings of fact and conclusions of law after the conclusion of the public hearing.

After the receipt of post-hearing submissions, the case was reassigned to Edward Luban, another ALJ of the Division.

FINDINGS OF FACT

1. Respondent operates a cereal plant (“plant”), including a flour mill and grain elevator (“elevator”), in Buffalo, New York. (Tr. 48; Respondent’s Exh. 15, p. 5)
2. Ryan McKinney, team leader, is responsible for the crew and the operation of the elevator. (Tr. 422-23)

3. The elevator has nine permanent employees. Respondent also employs casual employees (“casuals”) as needed to maintain a minimum crew of nine. (Tr. 63-64, 299-300, 377, 423-25)

4. Local 1286 of the International Longshoremen’s Association (“the union”) represents permanent and casual employees in the elevator. (Tr. 374)

5. Pursuant to the collective bargaining agreement between Respondent and the union, casuals do not receive vacation days, other paid time off, or benefits. Termination of casuals’ employment is not subject to the grievance procedure. (Tr. 66, 374, 412, 414, 563, 700; Joint Exh. 2)

6. When Respondent needs a casual, it notifies the union, who calls a person on the casual list. (Tr. 377, 389, 412, 479)

7. Complainant began working for Respondent as a casual in August 2006. (Tr. 52, 186; Respondent’s Exh. 13)

8. Complainant was the first and, as of the public hearing, the only female employee in the elevator. (Tr. 62, 301, 322, 434, 609-10)

9. Complainant worked 530.09 hours as a casual in 2006 and 46.34 hours in 2007. (Joint Exhs. 5, 6)

10. Although Complainant was still on the casual list in 2008, she did not work at all that year. (Tr. 191, 548; Joint Exh. 7)

11. Pamela O’Neill has been a Human Resources (“HR”) Assistant for Respondent since 1998. O’Neill’s responsibilities include reviewing the casual list with the union to make sure that people on the list are still available to work. (Tr. 490, 497)

12. In 2009, O'Neill met with the union to review the casual list. The union was considering taking several casuals, including Complainant, off the list. O'Neill said she would not take Complainant off the list until she found out if Complainant wanted to work or not. (Tr. 494-96, 567)

13. O'Neill called Complainant to find out if she still wanted to work as a casual. Complainant replied that she did. (Tr. 201, 271, 495-96, 567)

14. In her conversation with O'Neill, Complainant did not say that she had been harassed when she worked for Respondent in previous years. (Tr. 549)

15. O'Neill told the union that Complainant wanted to stay on the casual list. (Tr. 498)

16. In March 2009, soon after Complainant's conversation with O'Neill, the union called Complainant to work as a casual. Complainant filled in for James Lynch, a permanent employee who was out on disability leave. (Tr. 197, 304, 306, 429, 464, 499, 504)

17. Complainant acknowledged that she returned to work in 2009 because Respondent called her, not because she applied to Respondent. (Tr. 201, 271)

18. Complainant worked 1,031.66 hours as a casual from March to August 2009. This was the most hours any casual worked in 2009. The casual with the next highest number of hours worked 685.32 hours. (Joint Exh. 3)

19. When Complainant began working for Respondent in 2006, the elevator lunch room ("break room") was part of the men's locker room, bathroom, and shower. When Complainant was in the break room, she could see male employees changing their clothes or using the bathroom. (Tr. 125, 127, 212, 329, 625)

20. Kevin McFeely, the plant's production manager, told Complainant not to go into the break room until Respondent put up a wall to separate the break room from the locker room. (Tr. 626)

21. Subsequently, Respondent erected a wall between the break room and the locker room. The wall was present as of October 22, 2007, when McKinney began working for Respondent. (Tr. 213, 325, 463, 626, 689-90)

22. The wall is approximately seven to eight feet high and extends to within two to three feet of the ceiling. It includes a standard size vinyl door to provide access to the locker room, bathroom, and showers. From the break room, the locker room is located through the door and up two stairs to the right. The bathroom and showers are located through the door and to the left. (Tr. 295, 300, 330-33, 347, 691; Respondent's Exh. 8)

23. The wall blocks the view of the locker room, bathroom, and showers from the break room. However, if the door is open, the entryway into the bathroom and showers is visible from the corner of the break room nearest the doorway. Neither the urinals nor the showers are visible. The locker room is not visible from the break room. (Tr. 128, 301, 333-34, 352, 360, 364, 469-70; Respondent's Exh. 8)

24. The door between the break room and the locker room, bathroom, and showers is generally left open unless somebody is showering or changing his clothes. On occasion, McKinney has told male employees to shut the door. (Tr. 110-11, 300, 335)

25. On occasion, male employees are present in the break room without shirts, with their belts unbuckled, or with their pants unzipped. (Tr. 336, 342-43)

26. A time clock is located in the break room. Adjacent to the time clock is a clipboard on which job assignments, including overtime, are posted. (Tr. 214, 295-96, 323, 337, 693; Respondent's Exh. 5)

27. During 2009, McKinney held brief team meetings in the break room at the start of the shift in the morning. (Tr. 309, 324, 434)

28. A women's locker room, including a bathroom and lunch room, is located in the utility area of the mill, adjacent to and one floor up from the elevator. The locker room is about a two-minute walk from the men's locker room in the elevator. The women's locker room is larger than the men's locker room, and the lunch room is larger than the break room that adjoins the men's locker room. Other women's bathrooms are located in the milling department, packing department, warehouse, and main office. (Tr. 209-11, 338, 431, 467, 610-11, 614, 615-20; Respondent's Exhs. 7, 9-10; Joint Exh. 10)

29. On Complainant's first day of work in 2009, O'Neill gave McKinney a key to the women's locker room for Complainant. McKinney gave the key to Complainant and showed her the locker room. (Tr. 429-32, 512-13).

30. Complainant used this locker room, bathroom, and shower regularly. (Tr. 121-22)

31. In addition to the time clock in the break room, Complainant could use a time clock located approximately 50 to 75 feet from the women's locker room. (Tr. 430, 659, 661)

32. Complainant worked in "shanties" in the elevator. The shanties are small rooms with desks and telephones that can be called from inside and outside the plant. (Tr. 69-70, 85, 425-27)

33. Complainant testified that throughout her employment, she received anonymous telephone calls in her shanty as often as three or four times a day. According to Complainant,

the callers said, "We don't want you here," made animal sounds, or simply hung up when Complainant answered the telephone. (Tr. 73-82)

34. Complainant did not complain to McKinney or O'Neill about receiving harassing telephone calls. (Tr. 273, 474, 551-52)

35. Hasib Salihovic has been employed in the elevator since 2008. On one occasion in 2009, O'Neill called the elevator looking for Complainant. Salihovic answered the telephone and said words to the effect of "Oh, you want to speak to the girl." O'Neill said, "You do realize her name is Molly, right?" Salihovic replied something like, "Right, right, Molly." (Tr. 95, 98, 293, 517-18)

36. According to O'Neill, Salihovic did not say "the girl" in an offensive way. Rather, he was "reaching for her name . . . like he had a momentary lapse." (Tr. 517-18)

37. Complainant did not tell O'Neill that she was bothered that Salihovic called her "the girl," and she did not complain about Salihovic to McKinney. (Tr. 463, 518)

38. During 2009, Complainant told Salihovic that she was upset about job assignments. Complainant did not tell Salihovic that she was upset about the bathroom and locker room. (Tr. 312-13)

39. Mice are a problem in the elevator. In 2009, Respondent also had a problem with rats in the elevator. (Tr. 269, 481-82)

40. Complainant has seen mice and rats, both alive and dead, in the elevator. On one occasion, Complainant found a dead rat in her shanty and asked co-workers, "Did you guys put that there?" (Tr. 141-43)

41. Complainant did not complain to McKinney that someone put a dead rat in her shanty. (Tr. 480)

42. The plant is an international port protected by the Coast Guard. Twenty-seven surveillance cameras are located on the outside of the plant. These cameras cover the parking lots and “everything around the elevator.” All the spaces in the parking lots are visible on the cameras. (Tr. 637, 696)

43. Employees must go through a security gate before entering the elevator parking area. Two guards are always on duty at the gate. (Tr. 638)

44. Complainant testified that “numerous times” air was let out of her tires while her car was parked in Respondent’s lot. Complainant further testified that on two occasions a nail had been stuck in her tire. (Tr. 139)

45. Complainant acknowledged that she did not report these incidents to any supervisors. (Tr. 139)

46. Complainant did not complain about people letting air out of her tires, and she never reported any problems with her car in Respondent’s parking lot. Had she done so, Respondent would have reviewed the recordings from the surveillance cameras. (Tr. 468, 551, 638)

47. Complainant testified that from the first summer she worked in the elevator to the last week she worked there, she saw pornographic pictures and magazines on walls and desks in at least three shanties. Complainant testified that she saw such material daily “if you were looking for it” or “maybe once a week when somebody left it out.” (Tr. 83-86, 89)

48. John Girdlestone has been employed by Respondent for 42 years and works in the elevator. On occasion, Girdlestone has seen graffiti containing male and female anatomy and magazines with pictures of men or women in states of undress in the shanties. (Tr. 340-41, 345-46)

49. When Girdlestone has seen such graffiti, he has painted it over. (Tr. 343-45)

50. Respondent does not allow pornography in the plant. Respondent conducts monthly inspections related to food safety and other issues. Respondent is also subject to unannounced inspections by state and federal agencies at least once a year. (Tr. 631-32)

51. McFeely participates in the regular monthly inspections. During the period of Complainant's employment in 2009, McFeely did not find any pornographic images or magazines in the shanties where Complainant worked. (Tr. 633, 636, 695)

52. Complainant never complained to McKinney, McFeely, O'Neill or anyone else in HR about pornography. (Tr. 468, 552, 630)

53. In her Division complaint, Complainant did not mention finding pornography, the dead rat, or the incidents with her tires. (Tr. 206; ALJ's Exh. 2)

54. Complainant testified that on an unspecified occasion in 2009, she was standing outside the men's locker room and heard an unidentified person say, "We don't want pussy here." Complainant further testified that Salihovic was present when the comment was made and discussed the comment with her. When Salihovic testified, he denied that he heard such a comment or said anything to Complainant about it. (Tr. 93-94, 308)

55. In 2009, Sharon Manna was employed as a general laborer in the mill. Manna's responsibilities included cleaning the women's locker room that Complainant used. (Tr. 547-48, 671)

56. Complainant saw Manna frequently in the locker room and spoke with her about how things were going, including how the male employees treated her. (Tr. 124-25)

57. Manna was not a supervisor. Respondent has not employed anyone named Sharon in a management position. (Tr. 547)

58. Complainant did not complain to McKinney, McFeely, O'Neill, or anyone else in HR about sexual or other harassment, sex discrimination, or unfair treatment. (Tr. 468, 471, 549-50, 552, 628-29, 656-57).

59. Respondent has an Attendance Control Program ("ACP") for full-time regular and seasonal employees. Employees incur two points for unexcused absences, one point for lateness, and one point for leaving early with management approval. Regular employees who accumulate 24 points are subject to termination of employment; seasonal employees are subject to termination of employment at four to ten points, depending on date of hire. (Respondent's Exh. 15, pp. 16-18; Joint Exh. 1)

60. Vacation days taken with prior approval from management are considered excused absences. Other absences are considered unexcused, "regardless of whether or not the absence was the employee's fault and regardless of whether the employee can provide verification for the absence." Even if permission is granted, employees incur points for such absences. (Tr. 441, 522, 524; Respondent's Exh. 15, p. 15; Joint Exh. 1)

61. Absences for medical reasons are not considered excused absences. Unless such absences qualify as prior approved personal leave, disability leave, or workers' compensation leave, they are not excused. (Respondent's Exh. 15, p. 15; Joint Exh. 1)

62. Although the ACP did not apply to casuals in 2009, Respondent would have terminated the employment of a casual who accumulated ten points. (Tr. 402, 442, 448, 562)

63. Complainant was absent on April 3, May 25, July 29, and August 12, 2009. Complainant was late on April 20, April 23, May 6, May 30, and June 11, 2009. Complainant left work early on May 8, June 13, June 18, June 27, and July 20, 2009. (Tr. 244, 449; Joint Exh. 4)

64. On one occasion, Complainant missed work to take her daughter to the hospital. McKinney did not ask Complainant for a doctor's note. On another occasion, Complainant left work early with McKinney's permission to attend her son's pre-K graduation. Complainant received attendance points for both incidents. (Tr. 145-46, 160, 162, 436-38)

65. In July 2009, Complainant was absent four additional days for a vacation approved by McKinney. Complainant received eight points for these absences, but McKinney removed the points after Complainant left Respondent's employ. (Tr. 148, 153, 244, 436, 438, 452; Joint Exhs. 4, 12)

66. By June 11, 2009, Complainant had accumulated ten points. By August 12, 2009, Complainant accumulated eight more points, for a total of 18. These points do not include the eight points McKinney later removed for Complainant's approved vacation days. (Tr. 449; Joint Exh. 4)

67. After Complainant was absent on August 12, 2009, McKinney reviewed her attendance report. McKinney determined that Complainant's attendance issues had reached "an unacceptable level for a casual employee." McKinney and Pete Longhurst, associate HR manager, decided to terminate Complainant's employment for poor attendance. Complainant's last day of work was August 13, 2009. (Tr. 35, 144, 444, 449, 470-71, 474)

68. One other casual accumulated four points in 2009. The 18 other casuals accumulated between zero and two points each. (Tr. 560; Joint Exh. 9)

69. Complainant never received a written warning about her attendance. (Tr. 145, 442)

70. In April 2008, Respondent terminated the employment of Christopher Cook, another casual, for time and attendance issues. (Tr. 448, 460)

OPINION AND DECISION

Disparate Treatment

It is an unlawful discriminatory practice for an employer to discriminate against an employee in the terms and conditions of employment on the basis of sex. Human Rights Law §296.1(a). Complainant has the initial burden to prove a prima facie case of discrimination. She must show that she is a member of a protected class, that she was qualified for her position, that she suffered an adverse employment action, and that the adverse action occurred under circumstances giving rise to an inference of discrimination. *Ferrante v. American Lung Association*, 90 N.Y. 2d 623, 629, 665 N.Y.S. 2d 25, 29 (1997). If Complainant makes such a showing, the burden shifts to Respondent to present a legitimate, non-discriminatory reason for its action. If Respondent does so, Complainant must show that the reason Respondent has presented was merely a pretext for discrimination. *Id.*

Complainant, a woman, is in a protected class. Complainant was qualified for her position as a casual employee. Complainant contends that she suffered an adverse employment action when Respondent failed to provide her with locker room and bathroom facilities equal to those it provided male employees. While the failure to provide adequate facilities can constitute an adverse employment action (*Rigano v. City of Saratoga Springs*, No. 10120577 [Oct. 13, 2009]; *Spees v. James Marine, Inc.*, 2009 WL 1097559 [W.D. Ky. 2009], slip op. at 4, citing *Wedow v. City of Kansas City, Mo.*, 442 F. 3d 661, 672 [8th Cir. 2006]; *Stapp v. Overnite Transportation Co.*, 995 F. Supp. 1207, 1213 [D. Kan. 1998]), Complainant did not show that Respondent provided her with inadequate facilities. Complainant used the women's locker room, bathroom, and shower that were only a two-minute walk from the men's locker room, and she could also use other restrooms around the plant. Complainant did not establish that these

facilities were unequal to those Respondent provided to male employees. Accordingly, Complainant's claim of unlawful discrimination with respect to unequal facilities must fail.

Complainant did suffer an adverse employment action when Respondent terminated her employment. Because Complainant was the only female employee in the elevator, her discharge occurred under circumstances giving rise to an inference of discrimination. Thus, Complainant has established a prima facie case, the burden of which has been described as "de minimis." *Schwaller v. Squire Sanders & Dempsey*, 249 A.D. 2d 195, 671 N.Y.S. 2d 759 (1st Dept. 1998).

However, Respondent has presented a legitimate, non-discriminatory reason for its decision to terminate Complainant's employment. When Complainant was absent on August 12, 2009, McKinney reviewed her attendance report and determined that she had accumulated excessive points for absences, lateness, and leaving early. Complainant had 18 points, not counting the eight points she received in error for days she missed while she was on an approved vacation. This exceeded the ten points that Respondent considered unacceptable for casuals.

Complainant failed to show that Respondent's reason for terminating her employment was a pretext for unlawful discrimination. Complainant did not dispute the accuracy of her attendance report, other than the eight additional points she incurred for her approved vacation days. Complainant did contend that she received points for a medical absence for which McKinney told her she did not need a doctor's note and for a day on which she left early with McKinney's approval. However, the ACP provides that employees incur points for such incidents; absences for medical reasons are not considered excused absences, and leaving work early with management approval incurs one point. In addition, Complainant did not show that Respondent treated her differently from male employees. Complainant had far more points than any other casual, and Respondent also terminated the employment of Christopher Cook, a male

casual, for time and attendance issues.

Moreover, the record contains no evidence that Respondent was motivated by discriminatory animus because Complainant is a woman. It is noteworthy that Complainant returned to work for Respondent in 2009 because Respondent called her, not as a result of an application on her part. After her return, Complainant worked far more hours than any other casual in 2009. This belies Complainant's claim that her sex was the motivating factor in Respondent's decision to terminate her employment.

The ultimate burden of proving discrimination always remains with Complainant. *Ferrante* at 630, 665 N.Y.S. 2d at 29. Because Complainant failed to meet her burden, her claim of disparate treatment must be dismissed.

Sexual Harassment

Sexual harassment is a form of sex discrimination. Complainant alleges that Respondent subjected her to sexual harassment that created a hostile work environment. In order to sustain such a claim, Complainant must demonstrate that she was subjected to a work environment permeated with discriminatory intimidation, ridicule and insult that was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. The Division must examine the totality of the circumstances and the perception of both the victim and a reasonable person in making its determination. *Father Belle Community Ctr. v. N.Y. State Div. of Human Rights*, 221 A.D.2d 44, 50, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997).

Complainant testified that she frequently saw pornography in her work area, that the air was let out of her tires "numerous" times, that on one occasion she found a dead rat in her shanty, that Salihovic referred to her as "the girl," that on one occasion she overheard an

unidentified person say “we don’t want pussy around here,” that she frequently received harassing telephone calls, and that male co-workers came into the break room shirtless. Complainant’s testimony about these events was generally vague, and it was unsubstantiated; Complainant could not identify when the incidents occurred or who was responsible. In addition, Complainant did not mention pornography, finding a rat, or the incidents with her tires in her complaint; she brought them up for the first time when she testified at the hearing. While telephone calls like the calls Complainant claimed she received could be elements of sexual harassment, Complainant did not establish that any such calls were made by her co-workers. In these circumstances, Complainant failed to show that any conduct she experienced was sufficiently severe or pervasive to create an abusive working environment.

Even if Complainant had shown that she was subjected to such a work environment, Respondent could not be held liable. “[A]n employer cannot be held liable for an employee’s discriminatory act unless the employer became a party to it by encouraging, condoning, or approving it.” *Medical Express Ambulance Corp. v. Kirkland*, 79 A.D. 3d 886, 887, 913 N.Y.S. 2d 296, 298 (2nd Dept. 2010), *lv. den.*, 17 N.Y. 3d 716, 934 N.Y.S. 2d 374 (2011), quoting *Matter of State Div. of Human Rights v. St. Elizabeth’s Hosp.*, 66 N.Y. 2d 684, 687, 496 N.Y.S. 2d 411, 412 (1985). “Only after an employer knows or should have known of the improper conduct can it undertake or fail to undertake action which may be construed as condoning the improper conduct.” *Medical Express Ambulance Corp.* at 887-88, 913 N.Y.S. 2d at 298. Complainant did not bring her allegations to the attention of her supervisor, file a complaint with HR, or otherwise notify Respondent of her complaints. Thus, the evidence does not support a finding that Respondent knew or should have known of any improper conduct and that it condoned such conduct by failing to take remedial action. *See Doe v. State of New York*, 89

A.D. 3d 787, 788. 933 N.Y.S. 2d 688, 690-91 (2nd Dept. 2011).

Retaliation

It is an unlawful discriminatory practice to retaliate against a person who has opposed any practices forbidden under the Human Rights Law or who has otherwise complained about discrimination. Human Rights Law § 296.7. To prove a prima facie case of retaliation, Complainant must establish that she engaged in protected activity, that Respondent was aware she engaged in such activity, that she suffered an adverse employment action based on such activity, and that there was a causal connection between the protected activity and the adverse employment action. *Pace v. Ogden Services Corp.*, 257 A.D. 2d 101, 104, 692 N.Y.S. 2d 220, 223-24 (3d Dept. 1999).

In her amended complaint, Complainant alleged that Respondent retaliated against her because she “complained to supervisors and human resources officials about . . . being subjected to sex discrimination . . . throughout (her) employment.” Complainant further alleged that she complained to McFeely “approximately weekly during 2009,” to O’Neill in person and on the telephone in July and August 2009, and to “a manager named Sharon [last name unknown] approximately three times per week beginning in late June 2009.” The record does not support Complainant’s allegations that she complained at all to McFeely or O’Neill. In addition, Sharon Manna, with whom Complainant spoke in the locker room, was not a manager, and Complainant did not identify any specific complaints she made to Manna besides general conversation about her job.

Although Complainant suffered an adverse employment action when she was discharged, she did not establish that she complained about discrimination or engaged in any activity protected by the Human Rights Law. Therefore, Complainant failed to establish a prima facie

case of retaliation, and this claim must be 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 the complaint be, and the same hereby is, dismissed.

DATED: March 26, 2012
Syracuse, New York

A handwritten signature in black ink, appearing to read 'Edward Luban', with a long horizontal flourish extending to the right.

Edward Luban
Administrative Law Judge