



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**LLOYD JAMES,**

Complainant,

v.

**SAGE SEARS, KAITLYN DOUGLAS, ANDREW  
FISCHER, MITCHELL THOMAS, TARGET  
CORPORATION,**

Respondents.

**NOTICE AND  
FINAL ORDER**

Case No. 10210811

Federal Charge No. 16GC100987

**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 April 12, 2024, by Rebecca A. Clancy, 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.

Pursuant to 9 N.Y.C.R.R. § 465.17(c)(3), Chief of Staff Belkis Alonso-Ortiz, Esq., has been designated by the Commissioner as the person who is fully empowered to decide this case.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED  
ORDER IS HEREBY ADOPTED AND ISSUED BY BELKIS ALONSO-ORTIZ, ESQ.,  
CHIEF OF STAFF, 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: 07/18/2024  
Bronx, New York



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BELKIS ALONSO-ORTIZ  
CHIEF OF STAFF



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**LLOYD JAMES,**

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**SAGE SEARS, KAITLYN DOUGLAS,  
ANDREW FISCHER, MITCHELL THOMAS,  
TARGET CORPORATION,**

Respondents.

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

Case No. **10210811**

Federal Charge No. 16GC100987

**SUMMARY**

Complainant alleged that Respondents subjected him to unlawful discrimination because of his race and national origin and retaliated against him after he complained about unlawful discrimination. Because Complainant failed to sustain his burden of proof, the complaint is dismissed.

**PROCEEDINGS IN THE CASE**

On February 3, 2021, Complainant filed a complaint with the New York State Division of Human Rights ("Division"), charging Respondent Target Corporation with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 ("Human

Rights Law”). The Division amended the complaint on May 24, 2021, to add Respondents Sage Sears, Kaitlyn Douglas, Andrew Fischer, and Mitchell Thomas.

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 Rebecca A. Clancy, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held virtually on May 17 and 18, 2023, and October 30 and 31, 2023.

Complainant and Respondents appeared at the hearing. Complainant was represented by James D. Hartt, Esq. Respondents were represented by Sanjeeve K. DeSoyza, Esq., and Paul J. Buehler, III, Esq.

Permission to file post-hearing briefs was granted. Respondents timely filed a post-hearing submission which was considered and, where appropriate, adopted.

### **FINDINGS OF FACT**

1. Complainant is Black and was born in Jamaica. (Tr. 21; ALJ Ex. 1)
2. Respondent Target Corporation (“Target”) has a distribution center located in Wilton, New York (the “distribution center”) that ships merchandise to approximately 90 of its stores. (Tr. 530)
3. In May 2017, Complainant started working as a “team member” in the distribution center’s outbound department. (Tr. 27-28, 73-74; ALJ Exhibit 1)

4. Complainant's job entailed removing cartons of goods from a conveyor belt and placing them into shipping trailers, as well as sorting items that were too large for a conveyor belt and preparing them for transport to Respondent Target's stores. (Tr. 27-28, 533)

5. In March 2018, Respondent Kaitlyn Douglas, who I observed to be White, started working as a team member at the distribution center. (Tr. 393)

6. In September 2020, Respondent Sage Sears, who is White, began working as a team member at the distribution center.<sup>1</sup> (Tr. 35, 337-39)

7. In October 2020, Complainant introduced himself to Respondent Sears and helped her load boxes into delivery trucks because she was behind in her work. (Tr. 340-41)

8. Thereafter, Complainant began making comments to Respondent Sears insinuating that he wanted to see her outside of work. Respondent Sears responded that she was not interested and asked Complainant to leave her alone. (Tr. 346)

9. During the time relevant to the complaint, Complainant told Respondent Sears about a visit he had made to a strip club and, when Respondent Sears told Complainant she was not comfortable with that topic of conversation, Complainant laughed. (Tr. 347)

10. Respondents Mitchell Thomas and Andrew Fischer were outbound operations managers at the distribution center and supervised Complainant. (Tr. 531-32, 584-85)

11. On November 9, 2020, Complainant complained to Respondents Thomas and Fischer that there were other team members who were trying to get him fired because he was taking freight out of order to boost his productivity ratings ("cherry picking"). (Tr. 223-24, 418, 543-54, 590-91; Joint Exhibit 2)

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<sup>1</sup> At the time of the public hearing, Respondent Sage Sears' name had changed to Sage King following her marriage in 2022. (Tr. 336)

12. During the November 9<sup>th</sup> conversation, Complainant also complained that Respondent Douglas told other team members that Complainant had previously sexually assaulted a team member in 2018 and that it was affecting how he felt at work. (Tr. 69-71; Joint Exhibit 2)

13. During the November 9<sup>th</sup> conversation, Respondent Thomas drafted an email detailing Complainant's complaint, showed Complainant the text of the email to ensure that it was accurate, and confirmed that it contained all of Complainant's concerns. (Tr. 544-45, 592)

14. After Complainant reviewed the email, Respondent Thomas sent it to Emma Rorick, a human resources manager at the Wilton distribution center, Christian Tiberia, a senior operations manager, and Alex Douglas, an operations manager. (Tr. 402, 416-17, 544-45)

15. I do not credit Complainant's testimony that, on unknown dates in September 2020, and during a staff meeting in October 2020, Respondent Sears called Complainant a "nigger." (Tr. 35-36, 38, 40, 194-96, 206) Respondent Sears did not meet Complainant until sometime in October 2020, and she credibly denied ever using any racial slur. (Tr. 340, 368).

16. Additionally, Complainant's testimony that he told Respondent Thomas about Respondent Sears' alleged racial comments immediately after the October 2020 staff meeting and again on a subsequent date in October 2020 when Respondent Thomas asked Complainant to assist Respondent Sears with her work is not credited as such testimony was vague and lacked sufficient detail. (Tr. 40, 77-78, 206-07).

17. Respondents Thomas and Fischer provided detailed testimony refuting that Complainant had ever reported the use of racial slurs or derogatory comments of any kind, including remarks regarding Complainant's race, color or national origin. (Tr. 547, 588, 593)

18. Similarly, I do not credit Complainant's vague testimony that Respondent Douglas called him a "Jamaican Black boy" on an unknown date in October 2020 as such allegation was raised for the first time at hearing and not pleaded in the instant complaint. (Tr. 79)

19. Similarly, I do not credit Complainant's testimony that Respondent Douglas called him a "Jamaican kidnapper" on November 5, 2020, because Respondent Douglas was not at work on November 5, 2020. (Tr. 42-43, 396-97, 470-71)

20. Respondent Target has an equal employment opportunity and harassment-free workplace policy (the "workplace policy") that is provided to all new employees during their orientation and is accessible through Respondent Target's electronic document management system. (Tr. 406-07)

21. The workplace policy expressly prohibits Respondent Target from making employment decisions that consider "protected categories," which include, among others, race, national origin, and sex. (Tr. 406-08; Respondents' Exhibits 6, 7)

22. In addition, the workplace policy prohibits harassment based on protected categories, including the use of slurs or derogatory remarks, sharing or displaying offensive images through photos, using graphic or degrading language to describe someone or otherwise acting in a manner that makes the workplace intimidating, hostile or offensive for another person. (Tr. 408-09; Respondents' Exhibit 6, 7)

23. The workplace policy directs employees who believe they have been subjected to harassment to report it so that it may be investigated. (Tr. 408; Respondents' Exhibits 6, 7)

24. On or about November 10, 2020, a team member Mayssa (last name unknown) told Respondent Sears that there was a group text among some team members in which there was a

wager about who would be the first to have sexual relations with Respondent Sears. (Tr. 349; Respondents' Exhibit 8)

25. Respondent Sears approached Marcus (last name unknown), an African American team member, and asked him if he was aware of the group text. (Tr. 354, 365)

26. Marcus showed Respondent Sears the group text which contained several sexual remarks made by Complainant about her. (Tr. 352, 354; Respondents' Exhibit 8)

27. On November 14, 2020, Respondent Sears reported the group text to Respondents Thomas and Fischer. Respondent Sears also notified them that Complainant had previously made sexual remarks directly to her and had shown her a photo of his penis on his cellphone. (Tr. 352-53; Respondents' Exhibit 8)

28. Respondent Thomas reported Respondent Sears' complaint to Rorick. (Tr. 420, 549-50)

29. From November 14, 2020, through mid-December 2020, Rorick and Stephanie Furgal, Rorick's human resources partner, investigated Respondent Sears' allegations and interviewed Respondent Sears and other employees at the distribution facility, including Complainant. (Tr. 426-27, 436-39)

30. On November 24, 2020, during Rorick's interview with Complainant, Complainant told Rorick that he felt "embarrassed" about Respondent Sears' sexual harassment allegations and that there had been an allegation that he was a "kidnapper" made by another team member in 2018 that still affected him. (Tr. 439-40; Respondents' Exhibit 8)

31. Complainant added that his family was "poor" and that he is "Black," but he did not explain why he made these comments, nor did he complain that he had been called a "Jamaican kidnapper" or other racial slurs. (Tr. 440-41)



32. During his interview with Rorick, Complainant denied showing Respondent Sears a photograph of his penis and claimed that Respondent Douglas and another team member, MacKenzie (last name unknown), were conspiring to have Complainant's employment terminated because he had been cherry picking. (Tr. 441-43; Respondents' Exhibit 8)

33. On December 12, 2020, Tiberia reported to Rorick that Respondent Sears reported that Complainant was continuing to "sexually harass" her and called her a "dumb bitch." (Tr. 357, 447; Respondents' Exhibit 8)

34. On December 13, 2020, Michael Switek, a team member and trainer, told Rorick that he had previously observed Complainant following female team members around and that he was aware that Complainant had showed them photos of his penis, but the female team members did not report it because they felt Complainant's conduct would eventually stop. (Tr. 451, 523; Respondents' Exhibit 8)

35. Rorick shared the findings of her investigation with Furgal and Kristin Mariello, Respondent Target's human resources manager, and determined that Complainant had violated Target's workplace policy. (Tr. 455)

36. On December 13, 2020, Respondent Target terminated Complainant's employment. (Tr. 28; Respondents' Exhibit 9)

37. On December 14, 2020, Complainant filed an internal appeal of his termination of employment in which he checked off boxes indicating that the termination was improper because it was not done in accordance with Respondent Target's policies and procedures and that he was terminated because of race or other protected classification. (Tr. 621-22)

38. Complainant wrote in the appeal that, a week before he was reported to human resources, he had complained to his operations managers about being targeted by two female team members, but his complaint was not investigated. (Tr. 51, 53; Complainant's Exhibit 2)

39. On December 14, 2020, Christopher Lundy, who was Respondent Target's labor relations consultant, reviewed Complainant's appeal and began an investigation. (Tr. 616-17, 620, 623)

40. On December 15, 2020, Lundy emailed Complainant and asked him for information regarding the circumstances of his employment termination, including the names of the operations managers to whom Complainant reported his concerns and, specifically, how team members were "orchestrating" Complainant's termination. (Tr. 631; Joint Exhibit 1)

41. On December 16, 2020, Complainant told Lundy that he had complained to Respondents Thomas and Fischer that Respondent Douglas and MacKenzie wanted to have Complainant fired for cherry picking. Complainant also denied sexually harassing anyone and stated that he did not want to "use the 'race card' as an excuse." (Tr. 632-33; Joint Exhibit 1)

42. Lundy followed up with an email asking Complainant if he felt that race played a role in the termination of his employment and, if so, whether Complainant could provide specific evidence to support that claim. (Tr. 637; Joint Exhibit 1)

43. On December 16, 2020, Complainant responded to Lundy, stating that he told Respondents Thomas and Fischer that Respondent Douglas had told other female team members that he was Jamaican and that they should "be aware of [Complainant] because he would stalk and trail them to see where they live then go back and kidnap them." (Tr. 676; Joint Exhibit 1)

44. On December 30, 2020, Lundy notified Complainant that he had reviewed the information that Complainant provided during the termination appeal process, as well as the

notes from Rorick's investigation into Respondent Sears' harassment complaint and determined that the termination of Complainant's employment was not based on any protected classification and that the termination decision would stand. (Tr. 640; Joint Exhibit 1)

### **OPINION AND DECISION**

It is unlawful for an employer to discriminate against an employee based on race or national origin. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.1(a). To make out a prima facie claim of unlawful employment discrimination, Complainant must show that (1) he is a member of a protected class, (2) he was qualified for the position, (3) he 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 Complainant makes out a prima facie case of unlawful discrimination, the burden shifts to Respondents to present a legitimate, independent, and non-discriminatory reason for their actions. *Id.* If the Respondents do so, Complainant must show that Respondents' proffered reasons were a pretext for unlawful discrimination by showing that Respondents' stated reasons were false and that the real reason was unlawful discrimination. *Id.* at 305, 786 N.Y.S.2d at 391.

Complainant failed to make a prima facie case of unlawful discrimination. Complainant, who is Black and Jamaican, is a member of protected classes, was qualified for the position he held for several years, and sustained an adverse employment action when his employment was terminated. However, Complainant failed to present evidence that the termination of his employment was motivated by discriminatory animus based on his race or national origin.

Even if Complainant established a prima facie case of unlawful discrimination, Respondents articulated a legitimate, independent, non-discriminatory reason for terminating Complainant's employment. Respondents determined that Complainant had harassed Respondent Sears in violation of the workplace policy. After Respondent Sears complained about Complainant's conduct toward her, which included discussing a visit to a strip club, showing her a photograph of his penis, and making sexual remarks about her within a group text, Rorick undertook an extensive investigation into the claims which were corroborated by Switek, who observed Complainant engage in similar acts toward other female team members. Rorick also discovered that during the investigation into Respondent Sears' allegations, Complainant continued to engage in harassing behavior toward Respondent Sears. At the close of the investigation into Respondent Sears' claim of harassment, Rorick concluded that Complainant had violated the workplace policy prohibiting harassment and recommended that Complainant's employment be terminated.

Complainant failed to demonstrate that Respondents' reason for terminating his employment was a pretext. There was no evidence demonstrating that racial animus played any part in Respondent Target's termination of Complainant's employment. The discrimination claim is dismissed.

Complainant alleges that Respondent Target retaliated against him after he complained about unlawful discrimination based on his race and national origin. It is unlawful for an employer to retaliate against an employee for having filed a complaint or opposed unlawful discriminatory practices. Human Rights Law § 296.7. To make out a prima facie case of retaliation, Complainant must show that 1) he engaged in activity protected by the Human Rights Law, 2) Respondents were aware that Complainant participated in the protected activity, 3) he

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).

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

Complainant failed to make a prima facie case of unlawful retaliation. Complainant did not engage in protected activity at any time prior to the termination of his employment. During the November 9, 2020, conversation with Respondents Thomas and Fischer, Complainant made no mention of any acts of unlawful discrimination against him. Complainant expressed his concern that other team members wanted to have him fired for cherry picking, and that he was still reeling from an allegation made in 2018 that he had sexually assaulted another team member. During Rorick's interview of Complainant on November 24, 2020, Complainant said that there had been an allegation made in 2018 that he was a "kidnapper," and he added that he was "poor" and "Black," but failed to articulate any complaint of unlawful discrimination due to his race or national origin. The retaliation 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 the complaint be dismissed.

DATED: April 12, 2024  
Bronx, New York

A handwritten signature in black ink, appearing to read "Rebecca A. Clancy", with a long horizontal flourish extending to the right.

Rebecca A. Clancy  
Administrative Law Judge