



**Division of
Human Rights**

**NEW YORK STATE
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION
OF HUMAN RIGHTS**

on the Complaint of

MOHAMAD A. MOHAMAD,

Complainant,

v.

**REPUBLIC STEEL TECHNOLOGIES, THOMAS
SHRADER, GEOFF STANCLIFFE,**

Respondents.

**NOTICE AND
FINAL ORDER**

Case No. 10201505

Federal Charge No. 16GB903400

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 29, 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.

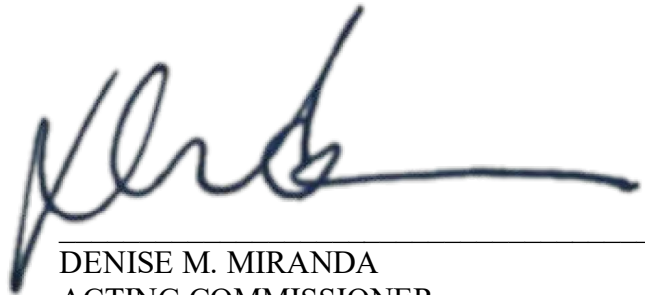
PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE DENISE M. MIRANDA, ACTING COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”). In accordance with the Division's Rules of Practice, a copy of this Order has been 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: 07/03/2024
Bronx, New York



DENISE M. MIRANDA
ACTING COMMISSIONER



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MOHAMAD A. MOHAMAD,

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**REPUBLIC STEEL TECHNOLOGIES,
THOMAS SHRADER, GEOFF STANCLIFFE,**
Respondents.

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

Case No. **10201505**

Federal Charge No. 16GB903400

SUMMARY

Complainant alleged that Respondents subjected him to a hostile work environment and terminated his employment because of his race and creed. Complainant failed to provide any credible evidence to support his allegations, and the case is dismissed.

PROCEEDINGS IN THE CASE

On May 15, 2019, Complainant filed a complaint with the New York State Division of Human Rights (“Division”), charging Respondents 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 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 Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. Virtual public hearing sessions were held on December 5 and December 6, 2022, and May 19, 2023.

Thereafter, ALJ Erazo left state service and the case was reassigned to ALJ Rebecca Clancy, pursuant to 9 New York Code of Rules and Regulations (“N.Y.C.R.R.”) § 465.12(d)(2). A final virtual public hearing session was held on December 13, 2023.

Complainant and Respondents appeared at the hearing. The Division was represented by Alyssa Talanker, Esq., Senior Attorney. Respondents were represented by Amanda L. Lowe, Esq., Elizabeth A. Bove, Esq., and Chloe J. Nowak, Esq.

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

FINDINGS OF FACT

1. Complainant is Muslim and Arab-American. (Tr. 30)
2. Respondent Republic Steel Technologies (“Republic Steel”) manufactures steel products in a plant located in Lackawanna, New York. (Tr. 29, 276)
3. On or about May 21, 2018, Respondent Republic Steel hired Complainant to work as a mill speed operator, which entailed controlling operating equipment using computer systems. (Tr. 275-78, 471; ALJ’s Exhibit 1)

4. In approximately July 2018, Complainant had not made the necessary progress while training for the mill speed operator position, and Respondent Republic Steel changed Complainant's position to guideman crane operator in the roll buildup area ("RBU"). (Tr. 276-79)

5. On January 7, 2019, Terry Booker, a line manager in the RBU, noticed that 21 Suboxone pills, a narcotic medication that was prescribed for his use, had been removed from a pill bottle in his backpack that was stored inside his work locker. (Tr. 291, 294; Respondents' Exhibit 15)

6. On January 10, 2019, Booker reported the theft of the pills to Jim Galczynski,¹ a manager for Respondent Republic Steel. (Tr. 280; Respondents' Exhibit 15)

7. On January 11, 2019, Galczynski notified Respondent Republic Steel's plant manager, Jeffery Kreuder, about the theft of Booker's Suboxone pills. (Tr. 279-80)

8. Thereafter, Respondent Republic Steel's general manager of human resources and labor relations, Kyle Vuchak, and Christine Good, Vuchak's direct report in human resources, investigated the pill theft. (Tr. 287-88, 418-19)

9. Respondents Shrader and Stancliffe reported that Complainant had offered to sell them Suboxone pills. (Tr. 56, 295; Respondents' Exhibit 14)

10. On January 23, 2019, Respondent Republic Steel's director of operations, Jason Case, issued Complainant a written counseling report alleging that Complainant had approached Respondent Shrader at work and asked if he wanted to buy Suboxone pills. (Tr. 282, 284; Respondents' Exhibit 17).

¹ Jim Galczynski's name was misspelled in the hearing transcript. (Tr. 318, 431)

11. The counseling report stated that, because the alleged theft violated Respondent Republic Steel's rules prohibiting possession of illegal narcotics and theft of employee property, Complainant was suspended for five days pending discharge. (Tr. 282, 284; Respondents' Exhibit 17)

12. Complainant was a member of United Steelworkers, local 2603 ("the union"). (Tr. 56, 420).

13. On or about January 17, 2019, the union filed a grievance challenging the charges against Complainant and demanding that Complainant be allowed to return to work immediately. (Tr. 56-57, 420, 423; Complainant's Exhibit 4)

14. The union grievance process has four steps: step 1 allows for the union and a manager to try resolve minor offenses without the involvement of Respondent Republic Steel's Human Resources and Labor Relations department; step 2 is a hearing on disciplinary charges that may result in an employee's suspension and/or discharge from employment; step 3 is an appeal of a step 2 determination to Respondent Republic Steel's director of labor relations, which gives the union and Respondent Republic Steel another opportunity to resolve a grievance before it is referred to an arbitrator at step 4. (Tr. 304, 307, 436-37, 441)

15. Because Complainant had been suspended and was subject to discharge from employment, the grievance went straight to a step 2 hearing on January 29, 2019. (Tr. 57, 304)

16. At the step 2 hearing, Complainant was given the opportunity to present evidence in his defense. (Tr. 286, 424-25)

17. Vuchak was the hearing officer at the step 2 hearing. (Tr. 423)

18. The step 2 hearing was attended by Complainant, Mike Wahl, the union grievance chair, Case, Kreuder, and Chris O’Leary, Respondent Republic Steel’s maintenance manager. (Tr. 304, 308; Respondents’ Exhibit 19)

19. During the step 2 hearing, Complainant admitted that he was at work when Booker’s Suboxone pills were stolen and denied taking them, but did not otherwise present evidence in defense to the charges against him. (Tr. 309-10, 425)

20. Instead, Complainant alleged that Respondents Shrader and Stancliff, Larry Kroll, the RBU supervisor, and Allen Schmidt, a coordinator in the RBU, called him “sandman,” “sand nigger,” “ham” and “Dan,” which Complainant alleged was an acronym for “dumb ass nigger” during their shifts. (Tr. 34-36, 426-27, 310-12, 316)

21. During the hearing on the instant complaint, Complainant alleged that Respondents Shrader and Stancliff called him “champagne man” and “dune coon.” (Tr. 34-35)

22. I do not credit Complainant’s testimony regarding these names, which were raised for the first time at hearing and not included in the instant complaint. Both Vuchak and Krueder testified that Complainant made no reference to these names at the step 2 hearing. (Tr. 311, 427)

23. During the step 2 hearing, Complainant alleged that someone had urinated on his work boots while they were in his work locker, but he failed to offer any corroborating evidence. (Tr. 42, 317, 389, 429)

24. The month-long Muslim holiday of Ramadan began on May 16, 2018. (Tr. 31-32, 104, 471)

25. I do not credit Complainant’s testimony at the hearing on the instant complaint that someone urinated on his boots while they were stored in his locker during Ramadan. (Tr. 42-43)

26. Complainant alleged that, from approximately June 21, 2018, until September 15, 2018, someone urinated on his work boots and that it stopped after he reported it to Galczynski and Kroll in mid-September 2018. (Tr. 43-44)

27. This testimony is rendered implausible because Ramadan ended in mid-June 2018, before the alleged conduct. (Tr. 471)

28. Complainant did not complain about any harassing conduct toward him prior to the step 2 hearing. (Tr. 317, 320, 388, 426)

29. After the step 2 hearing, Vuchak and Good undertook an investigation into Complainant's harassment allegations. (Tr. 389-90, 430)

30. Vuchak first spoke with Wahl, who had conducted his own investigation into the circumstances surrounding Complainant's grievance and had interviewed several employees of Respondent Republic Steel, but was not aware of any name-calling or other acts of harassment toward Complainant. (Tr. 430; Respondents' Exhibit 18)

31. Vuchak and Good interviewed Galczynski, Booker, Respondents Stancliff and Shrader, and Elliot Gilmore, a crane operator who worked with Complainant, and ultimately concluded that none of the alleged harassment that Complainant described during the step 2 hearing had occurred. (Tr. 40, 432-33; Respondents' Exhibit 18)

32. On February 11, 2019, Respondent Republic Steel denied the step 2 grievance and terminated Complainant's employment. (Tr. 64, 433-435; Respondents' Exhibits 19, 21)

33. Thereafter, the union pursued a step 3 hearing. (Tr. 329, 436)

34. At the step 3 hearing, Complainant repeated the allegation that he had been called "ham" and "Dan." (Tr. 439-40)

35. Complainant alleged at the step 3 hearing and at the hearing in this matter that someone urinated in the crane that he operated. (Tr. 45-46, 336)

36. I do not credit Complainant's testimony that he complained to Kroll on June 26, 2018, about someone urinating in the crane he was operating and that his work shifts were subsequently changed given the credible testimony of Kreuder that Complainant had been training in the mill speed operator position and was not operating a crane in June 2018. (Tr. 46-49, 276)

37. At the step 3 hearing and in this matter, Complainant offered an audio recording of a conversation that Complainant had with union representative Craig Young on January 11, 2019, in which Complainant complains that he was being "blamed for everything," including urinating in the crane (the "January 11th conversation"). (Tr. 335-36, 440-41; Complainant's Exhibit 6)

38. During the January 11th conversation, Complainant complained that someone had urinated next to his locker and that he could smell urine when he retrieved his work tools. (Complainant's Exhibits 1, 2 at pages 10-11)

39. Complainant does not, however, complain during that conversation that someone was harassing him by urinating in the crane or on his work boots. (Complainant's Exhibits 1, 2)

40. I do not credit Complainant's testimony at the hearing on the instant complaint that someone broke into his work locker on September 9, 2018, and November 24, 2018, and stole his tools. (Tr. 53-54)

41. Complainant testified that someone used a saw to cut the lock on his locker and took his tools, and that he complained to Young about it. (Tr. 53)

42. However, during the January 11th conversation, Complainant made no such complaint. (Complainant's Exhibit 2)

43. Complainant alleged at the step 3 hearing and testified at the hearing on the instant complaint that the charges against him were fabricated by Respondents Shrader and Stancliff so that he would be discharged from employment, which would protect them, as employees with less seniority, from potential layoffs. (Tr. 58-59; Respondents' Exhibit 20)

44. While layoff decisions take seniority into consideration, employees in different job titles would not compete against each other to keep their jobs where layoffs were concerned. (Tr. 338, 400)

45. At the time relevant the complaint, Respondents Shrader and Stancliff were stand builders, unlike Complainant. (Tr. 32)

46. Respondent Republic Steel denied the grievance after the step 3 hearing. (Tr. 441; Respondents' Exhibit 20)

47. Respondent Republic Steel terminated Complainant's employment effective February 11, 2019. (Tr. 435; Respondents' Exhibit 21)

48. Thereafter, the union withdrew its grievance and did not seek to proceed to step 4. (Tr. 441-42; Respondents' Exhibit 22)

OPINION AND DECISION

Pursuant to N.Y. Exec. Law art. 15 (the "Human Rights Law") it is an unlawful discriminatory practice for an employer to discriminate against an individual on the basis of race or creed. Human Rights Law §296.1 (a).

To make out a prima facie case of unlawful discrimination in employment, a 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 the respondents to articulate a legitimate, independent, and non-discriminatory reason for its actions. *Id.* If the respondents do so, the complainant must show that the reasons presented by respondents were merely a pretext for the unlawful discrimination by demonstrating both that the respondents' 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.2d 633, 636 (2006).

Complainant did not make out a prima facie case of unlawful employment discrimination based on race or creed. Complainant, who is Muslim and Arab-American, is a member of protected classes, was qualified to work in the guideman crane operator position, and sustained an adverse employment action when his employment was terminated. However, aside from his self-serving testimony that he was harassed throughout his employment with Respondent Republic Steel because of his race and creed, Complainant failed to present any credible evidence that the termination of his employment occurred under circumstances evincing unlawful discrimination.

Even if Complainant had made a prima facie case of unlawful discrimination, Respondents met their burden of articulating a legitimate, independent, and non-discriminatory reason for terminating Complainant's employment. Complainant was charged with violating Respondent Republic Steel's rules prohibiting the possession of illegal narcotics and theft of

property and was suspended. The union filed a grievance to challenge Complainant's suspension, and he was given an opportunity to present evidence in his defense to the alleged rules violations at the step 2 and step 3 hearings. Although Complainant claimed during the step hearings that he had been subjected to harassment, he failed to offer any proof to rebut the rules violations charges that were at issue, and his employment was terminated as a result.

Complainant failed to demonstrate that Respondents' reason for terminating his employment was a pretext. There is no evidence to support Complainant's allegation that Respondents Shrader and Stancliff made false claims against him so that he would face termination, thereby protecting themselves from potential layoffs. There was no evidence demonstrating that racial or religious animus played any part in the termination of Complainant's employment. Accordingly, the discrimination claim is dismissed.

Complainant alleged that Respondents subjected him to a hostile work environment because of his race and creed. A complainant who alleges that they were exposed to a hostile work environment must show that the workplace was permeated with discriminatory intimidation, ridicule, and insult that was sufficiently severe or pervasive to alter the conditions of his employment and create an abusive work environment.² See *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 310, 786 N.Y.S. 382, 394 (2004). In determining whether a work environment is hostile, consideration must be given to the totality of circumstances and the

² Effective October 11, 2019, an amendment to the Human Rights Law made it an unlawful discriminatory practice for an employer to subject an individual to harassment because of that person's, *inter alia*, race or creed . . . "regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims. Such harassment is an unlawful discriminatory practice when it subjects an individual to inferior terms, conditions, or privileges of employment because of the individual's membership in one or more of these protected categories." Human Rights Law § 296.1(h). Because the harassment claims raised in the instant complaint occurred before this statutory amendment, the amendment does not apply to this case.

perception of both the victim and a reasonable person in making its determination. *See Father Belle Cmty. Ctr. v. New York State Div. of Human Rights*, 221 A.D.2d 44, 50-51, 642 N.Y.S.2d 739, 744 (4th Dept. 1996), *lv. denied*, 89 N.Y.2d 809, 655 N.Y.S.2d 889 (1997). A complainant must also show that the discriminatory conduct occurred because of his protected class membership. *See Arcuri v. Kirkland*, 113 A.D.3d 912, 914, 978 N.Y.S.2d 439, 441 (3d Dept. 2014).

At the step 2 hearing, Complainant claimed that he had been called derogatory names and subjected to harassing behavior rather than mount any defense to the charges leveled against him. A subsequent investigation into Complainant's claims failed to produce anything that would corroborate Complainant's allegations. Moreover, Wahl, as the union grievance chair, was not aware of anything that would support Complainant's claims of harassment after conducting his own investigation into the circumstances surrounding Complainant's grievance. Overall, Complainant's testimony that he was called derogatory names because of his race and creed were not credible. Likewise, given that Complainant's testimony that someone urinated on his work boots and in the crane, that his work shifts were changed after he complained about it, and that someone broke into his locker and stole his tools cannot reasonably be credited, his claim of harassment 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 dismissed.

DATED: April 29, 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