10-26-2006

MILDRED TAYLOR, Grievant/, Petitioner, vs. TENN. BOARD OF PROBATION AND PAROLE, Respondent

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BEFORE THE TENNESSEE
CIVIL SERVICE COMMISSION

IN THE MATTER OF: )
) )
MILDRED TAYLOR ) DOCKET NO. 26.41-063946J
Grievant/Petitioner )
v. )
) )
TENN. BOARD OF PROBATION )
AND PAROLE )
Respondent )

INITIAL ORDER

This contested administrative proceeding was heard on October 26, 2006, before James A. Hornsby, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, and sitting for the Tennessee Civil Service Commission in Nashville, Tennessee. The Grievant, Mildred Taylor, was present and represented by her attorney, Robert A. O’Connell. The State was represented by Columba A. McHale, counsel for the Board of Probation and Parole (hereafter “Board”).

This is an unusual grievance in that it does not concern a disciplinary action taken against Ms. Taylor. It concerns Ms. Taylor’s interest in a disciplinary action taken against a co-worker, Larry Turner. When the matter was heard, a full record of the facts was made. However, it was heard with the understanding that no decision would be made on the merits of the grievance until the question was resolved as to whether it is a grievable matter within the Commission’s jurisdiction.

The issue of jurisdiction became ready for resolution on February 1, 2007, after the parties submitted written briefs. After consideration of the briefs of the parties and
the entire record, it is DETERMINED that the matter is not grievable and the
Commission does not have jurisdiction to hear it.

**FINDINGS OF FACT**

1. The disciplinary action at issue was taken against Larry Turner mainly
because of an incident that took place between him and Ms. Taylor in a training session
on August 17, 2004, but it also involves prior instances when Mr. Turner drew cartoons
and gave them away to people in his office.

2. The August 17th incident occurred when a Board training instructor
showed a film about the Ku Klux Klan at a group training session. The film caused
comments from some of the attendees about the relationship of African-Americans and
Caucasians. Ms. Taylor, an African-American, and Mr. Turner, a Caucasian, were seated
together. In a disturbance that followed the verbal comments, Mr. Turner’s coffee ended
up on Ms. Taylor’s dress.

3. Ms. Taylor believes that Mr. Turner intentionally threw his coffee on her,
and that his cartoons were racial slurs against African-Americans. She also believes that
the film, which was originally aired as a public television special, should not have been
shown.

4. The Respondent Board investigated Ms. Taylor’s complaints about the
incidents. It concluded that there was insufficient proof that Mr. Turner intentionally
threw his coffee on Ms. Taylor, and also concluded that his cartoons were not racial slurs.
However, the Board did find that he overreacted to the incident at the training session and
that his cartoons were inappropriate in the workplace. He was given a written warning as
a disciplinary action, and instructed not to distribute any more cartoons.
5. The Board agreed with Ms. Taylor that the film should not have been shown and told the training instructor to use better judgment about training materials in the future.

6. Ms. Taylor is not satisfied with the results of the investigation, and is asking for three things in her grievance to the Civil Service Commission:
   a) An increased penalty for Mr. Turner.
   b) An apology to her by Mr. Turner.
   c) Racial sensitivity training conducted by the Board of Probation and Parole.

**CONCLUSIONS OF LAW**

1. The Tennessee Civil Service Commission is a statutory entity, and as such has only such authority and jurisdiction as is expressly conveyed by statute. *Slatton v. Tenn Bd of Architectural & Engineering Examiners*, Tenn. Court of Appeals, Middle Section, No. 88-47-II, Opinion filed July 6, 1988.

2. Tennessee Code Annotated, Sections 8-30-328 (e) and (f) set out the only relief the Commission can grant. Section (e) says the Commission can “order the employee to be reinstated or made whole, or both, without loss of pay or benefits,” and Section (f) allows the Commission to award attorney’s fees.

3. Department of Personnel Rule 1120-11-.08 excludes certain specific actions from the grievance procedure, and at (17) excludes “Any other matter over which … the Commission has no control or jurisdiction or is without authority to grant requested relief.” It is DETERMINED that the remedies sought by Ms. Taylor are not within the Commission’s statutory authority and are therefore not grievable.
4. Interpreting the law as allowing Ms. Taylor to challenge the subject disciplinary action would be contrary to established case law in similar circumstances. In the matter of Anderson v. Memphis City Schools Bd. Of Education, 75 F. Supp. 786 (W.D.Tenn 1999), the Court stated that “a harassment victim may not dictate an employer’s action against a co-worker.” Blankenship v. Parke Care Centers, Inc., 123 F.3rd 868, 874 (6th Cir. 1997) (citing Bell v. Chesapeake & Ohio Ry, 929 F.2nd 220 (6th Cir.1991). In Bell, an African-American employee complained that co-workers had erected Ku Klux Klan recruiting posters. The employer took the posters down. The Court found this remedial action was sufficient and held that a plaintiff will not prevail simply because the remedy offered by defendant was not what the plaintiff wanted.

5. It is DETERMINED that the Commission does not have the authority to grant the remedies requested by Ms. Taylor. This matter is not grievable and is therefore DISMISSED. This decision is not intended to address any other administrative or judicial legal remedy which Ms. Taylor may have.

This Initial Order entered and effective this 12th day of March, 2007.

____________________________________
James A. Hornsby
Administrative Judge

Filed in the Administrative Procedures Division, Office of the Secretary of State, this 12th day of March, 2007.