

Hobson v Brann

2024 NY Slip Op 31274(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 155020/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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RICHARD HOBSON,

Petitioner,

- v -

CYNTHIA BRANN, THE NEW YORK CITY DEPARTMENT
OF CORRECTION, THE CITY OF NEW YORK

Respondents.

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INDEX NO. 155020/2020

MOTION DATE 04/10/2024¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 8, 9, 11, 12, 13, 14, 15, 16

were read on this motion to/for ARTICLE 78.

Petitioner seeks to annul his termination; respondents’ cross-motion to dismiss the petition is granted.

Background

Petitioner contends that he started working for respondent the New York City Department of Correction (“DOC”) on January 8, 2018 with a two-year probationary period. He explains that he was assigned to work in a facility where many of the inmates were gang members and so he routinely had to use force. Petitioner observes that on December 18, 2018, he was assigned to work on Riker’s Island and that an inmate refused to stand at the front of his cell for “the count.” He claims that this prisoner became verbally abusive and then started

¹ Although this proceeding was only reassigned to the undersigned this week, the Court is well aware that this proceeding has been pending for far too long. The Court apologizes, on behalf of the Court system, for the inexplicable delay in the resolution of this proceeding.

towards petitioner. Petitioner claims that the inmate hit him and so he responded by defending himself with physical force.

Next, Petitioner details another use of force incident on February 13, 2019 in which he sprayed a chemical irritant towards an inmate who had allegedly threatened him. He claims that the inmate then picked up a garbage can and petitioner “unintentionally struck the inmate in the face” while trying to get the inmate to calm down.

After this second incident, petitioner admits he was placed in the Early Intervention, Support and Supervision (EISS) program. But he claims that he never got any training about use of force issues. Petitioner also cites an October 7, 2019 incident in which he fought an inmate in his cell who allegedly attacked petitioner when his cell was opened.

Respondents cross-move to dismiss on the ground that petitioner was fired as a probationary employee and that there was no evidence of a bad faith termination. They explain that he was fired after three use of force incidents. Respondents point to his personnel determination review file (“PDR”) which observed that petitioner was fired for his substandard response to two of the aforementioned use of force incidents as well as submitting a false use of force report.

Respondents observe that with respect to the October 7, 2019 incident, the surveillance video footage contradicted petitioner’s version of events. They stress that petitioner indicated that he opened the inmate’s cell door a second time to remove obstructions but the video showed that there were no such obstructions and insist that petitioner should have just walked away. Respondents concluded that petitioner’s actions were “retaliatory” and that his use of force report was false.

Respondents also found fault with the December 18, 2018 incident. They stress that the initial physical confrontation fell within DOC guidelines but note that petitioner pursued the inmate in an aggressive manner after the inmate had retreated to another area while other staff had arrived to assist.

In reply and in opposition to the cross-motion, petitioner claimed he alleged enough facts to suggest that his termination was in bad faith. He claims he acted reasonably at all times and that DOC should have worked with him to ensure he became a tenured officer. Petitioner claims that the facts upon which he was fired were erroneous.

In reply to the cross-motion, respondents contend that petitioner did not identify a single fact that suggests his termination was in bad faith.

Discussion

“A probationary employee may be discharged without a hearing and without a statement of reasons in the absence of any demonstration that the dismissal was for a constitutionally impermissible purpose or in violation of statutory or decisional law” (*Thomas v City of New York*, 169 AD2d 496, 497-98, 169 AD2d 496 [1st Dept 1991] [sustaining the termination of a probationary corrections officer]).

The Court grants the cross-motion and dismisses the petition. The fact is that the PDR concluded that petitioner did not offer an accurate description of the October 7, 2019 incident (NYSCEF Doc. No. 12 at 1). Respondents relied upon the video footage of the incident in support of their conclusion that petitioner “submitted a false [Use of Force] report and his actions were found to be retaliatory” (*id.* at 2). The PDR also noted that for the December 2018 incident, the inmate “retreated into the dayroom as Officer Hobson followed him in an aggressive manner, and continued to follow him around the dayroom as other staff were present

to assist. At the very least, Officer Hobson should have ceased his actions once the inmate retreated into the back of the dayroom and other staff arrived to the area to assist” (*id.* at 3).

The Court is unable to find that these conclusions were made in bad faith. Respondents reviewed the available evidence and reached a determination that petitioner should be terminated. It is not this Court’s role in an Article 78 proceeding to do its own investigation of these incidents and assess whether termination is appropriate. Because petitioner was a probationary employee, he had to allege facts to sufficiently support that his termination was in bad faith. He failed to do so. That he disagrees with respondents’ assessment of these incidents or with the resources provided to him while working for DOC is not sufficient to deny respondents’ cross-motion.

Accordingly, it is hereby

ORDERED that respondents’ cross-motion to dismiss is granted; and it is further

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

4/11/2024

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE