State of Connecticut

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January 29, 2014

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3M Purifications dba Cuno, Inc.
400 Research Parkway
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CHRO
25 Sigourney Street
Hartford, CT 06106

RE: CHRO ex rel. Jorge Collazo v. 3M Cuno and 3M Purifications, Inc., CHRO Nos. 0940298 & 1040407

FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent by certified mail, return receipt requested to the complainant and the respondent. The return post office receipt shall be proof of such service.

Very Truly Yours,

Kimberly D. Morris
Secretary II

cc.
Margaret Nurse-Goodison, Esq. – via email only
Byran P. Fiengo, Esq. – via email only
Mark L. Zaken, Esq. – via email only
Michele C. Mount, Presiding Human Rights Referee

Certified No. 7014 0150 0001 0774 2687 (J. Collazo)
Certified No. 7014 0150 0001 0774 2694 (3M dba Cuno, Inc.)

STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Jorge Collazo, Complainant

CHRO Nos. 0940298 & 1040407

v.

3M Cuno, Inc. and 3M Purification, Inc. Respondents

January 29, 2015

FINAL DECISION

PRELIMINARY STATEMENT

On March 18, 2009, Jorge Collazo (complainant) a twenty-three (23) year employee of 3M/Cuno, Inc. and 3M Purification, Inc. (respondent) filed a discrimination complaint with the Commission on Human Rights and Opportunities (CHRO) pursuant to General Statutes §§ 46a-58a, 46a-60(a)(1), 46a-60(a)(4) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2003 and the Civil Rights Act of 1991. In his complaint, the complainant alleged that he was subjected to harassment and unequal treatment due to his national origin and ancestry by respondent's plant engineer supervisor, Kevin Knight. The complainant was an employee at the time of the above filing. The complainant had been issued one lock-out, tag-out (LOTO) violation between December 1986 and November 2008 and was suspended for one day. He was regarded as a hardworking, good employee who was promoted and had his duties expanded over his 23 year employment. Mr. Kevin Knight (Knight) was promoted to plant engineer and became the complainant's supervisor in August of 2008.

The complainant alleged that when Knight became supervisor, his working conditions changed. The complainant alleged that Knight: (1) singled him out by rigorously questioning him about his work and skills, his reasoning for how he performed his job duties and questioning vacation requests. If the complainant requested vacation time, Knight began examining the complainant's daily reports although Knight did not do this to others under his supervision, and; (2) subjected the complainant to different discipline, terms and conditions of employment. Under Knight's supervision the complainant was suspended twice, for three days each time, for insubordination and, put on a performance improvement plan. Ultimately, the complainant was put on a last chance performance plan for an alleged lock out tag out violation in October 2009.

On June 1, 2010, the complainant, after his employment was terminated, requested that his CHRO complaint be amended to include retaliation. He stated that his discharge was in retaliation for the filing of his prior complaint alleging employer discrimination based on his Hispanic ethnicity and Puerto Rican ancestry. The respondent denied any discrimination and stated that complainant was discharged for a safety issue, a violation of respondent's LOTO Procedures. The public hearing was held on April 7, April 9, and June 3, 2014 before the undersigned.

I

FACTS

The following facts are derived from the pleadings, the exhibits admitted into evidence and the testimony of witnesses at the public hearing. References to exhibits are identified by introducing party: Complainant ("C") or Respondent ("R") followed by

the applicable number. Record exhibits are identified as such. References to the hearing transcript are identified by ""Tr." followed by page number(s). Only those facts deemed necessary to an understanding of the issues raised at the public hearing and discussed in this decision are set forth herein.

1. All procedural, notice and jurisdictional prerequisites have been satisfied and this matter is properly before this presiding officer to hear the complaint and render a decision.
2. The complainant's ethnicity is Hispanic and national origin is Puerto Rican. (Complaint ¶ 1)
3. The complainant spoke English as a second language (ESL). (Tr. 21)
4. The complainant was last employed by the respondent as a maintenance technician/mechanic. (Tr. 21)
5. On, December 8, 1986 the complainant was hired as line operator for at Cuno (Tr. 22)
6. The complainant worked second shift, 3:00pm to 11:00pm. (Tr. 30)
7. The complainant was promoted to group leader in 1996 (Tr. 29)
8. In or about 2000/2001 the complainant was promoted to maintenance mechanic (Tr. 30)
9. In 2006 Rich Kosko (Kosko), a supervisor of the complainant's, noted in a performance review that "[h]is troubleshooting skills are very good and probably rate up top of all mechanics in the plant." (Ex C-33)
10. 3M acquired Cuno in or about August of 2008.

11. From October 1986 to June 2008 the complainant worked at Building 1, the Micro Klean facility. (Tr. 29)
12. In June 2009, Knight and Kosko told the complainant he would now work at Building 2, the IPC/Betapure facility. When the complainant ask several questions regarding why he was being moved after 22 years, Knight deemed the questions to be insubordination and Collazo was suspended for one day.
13. On October 24, 2007 the complainant was cited for his first LOTO violation, and suspended for 1 day (Tr. 532) (Ex R 27)
14. On August 2008, Knight was promoted to plant engineering supervisor and became the complainant's direct supervisor. (Tr. 637, 696-698)
15. Prior to August 2008 Kosko served as Plant Engineering Supervisor and the complainant's direct supervisor. (Ex C-30)
16. Kosko performed two employee evaluations for the complainant and found that the complainant was meeting expectations with regard to safety. (Ex C -30)
17. Kosko evaluated the complainant and indicated that he was a good mechanic. (Tr. 571-573)
18. Prior to October 2009, Knight in his evaluation found that the complainant was meeting managerial expectations, specifically with regard to safety and agreed that he was a good mechanic. (EX C-33, TR. 707-708)
19. In January 2009, a LOTO violation by Sean Gilligan (Gilligan) was reported to Knight by the complainant. Knight gave Gilligan a verbal warning, although Knight did not report him to the respondent's Human Resources manager,

Jennifer Koch (Koch) nor was he disciplined in any way. Knight concealed Gilligan's violation. (Tr. 736-739, EX C 37)

20. Gilligan is a Caucasian maintenance mechanic employed in the same position as the complainant. (Tr. 70)

21. Human resources relied on Knight and Kosko to report violations of 3M policy, including LOTO violations. (Tr. 382, 588)

22. On February 5, 2009 the complainant was suspended by Knight for 3 days for alleged insubordination regarding failing to follow orders. Knight called the complainant to leave the Micro Clean Department and report to the Betapure department. The complainant asked if he could have a few moments to finish working on a complicated project that he was busy with in the Micro Clean facility; Again Knight construed the complainant's questions as insubordination. Initially Knight said okay, however, he reflected on the matter he was irritated that the complainant did not immediately drop what he was doing, called the complainant back, and then told him he was being insubordinate. (Tr. 46-48)

23. February 5, 2009 Knight, put the complainant on performance improvement plan (PIP) based on his alleged "confrontational behavior." There was no mention of any safety violation concerns (Tr. 660) (EX R-30)

24. The complainant filed discrimination complaint with Commission on Human Rights and Opportunities (CHRO) alleging harassment and unequal treatment by Knight due to his national origin and ancestry on March 18, 2009. (Tr. 55)

25. After the complainant was filed the complainant testified that the harassment went to new level, it went from "being real bad" to "real aggressive." (Tr. 105)

26. Koch did not investigate the complainant's CHRO complaint and was never interviewed; neither Kosko nor Knight provided a statement to Human Resources. (Tr. 375-377, 476, 617, 698)

27. Knight told Tobbin Robbins (Robbins) another long time employee of 3M that he had a problem with the complainant and "not to interfere." (Tr. 128)

28. Knight harassed Robbins regarding his work habits and Robbins was keeping notes on the harassment. One of the items in the notes regarded Knight's harassment of the complainant (Tr. 130-133, Ex C-16)

29. When asked by the respondent's counsel if Knight made ethnic remarks, Robbins stated that yes, Knight joked around with people. (Tr. 135)

30. Koch did not speak with the complainant and no written notes were made about an investigation. Koch informed Knight and Kosko of the CHRO complaint (Tr. 375)

31. Koch's only information regarding the complainant was received from Knight or Kosko. (Tr. 378)

32. October 12, 2009, the complainant received a second LOTO violation. (Tr. 298, Ex R-31)

33. On October 20, 2009, the complainant admitted his LOTO violation to Koch at Human Resources. (Tr. 301, 302)

34. On October 22, 2009, the complainant was cited for failure to follow supervisor's instructions. (Tr. 208)

35. On November 5, 2009, the complainant was suspended for 3 days for the October LOTO violation, and was put on a last chance performance plan (Tr. 45, 302), (EX C- 26)

36. On November 19, 2009, the complainant noted LOTO violations by his co-workers Andy Hebb (Hebb), Carl Myers (Meyers), Eugene Little (Little), and Kevin Ferris (Ferris) and reported the violations to management. (Tr. 40-45)

37. The complainant was extremely upset and depressed following his suspension, the scrutiny he was under when compared to other employees and for being put on a last chance PIP. (Tr. 292-293)

38. Eleven (11) days after the last chance PIP was issued, Knight reported to Koch that the complainant allegedly had a cell phone use violation; no action was taken by Koch. (Tr. 740)

39. In January 2010, Knight also, reported to Koch that the complainant committed an alleged attendance policy violation. No action was taken by Koch.

40. On March 2, 2010, the complainant was involved in a group LOTO violation. A group LOTO involves obtaining a hasp, a group lock out box, where multiple locks, one by each employee on the project, are placed. (Tr. 550, 583-585)(Ex C-5)

41. On March 2, 2010, in the Micro Klean Department, a resin separator became clogged due to a pump failure. A group lock, out box was necessary to complete the repairs. (Tr. 548-549, C-4)

42. The Micro Klean department was in the process of replacing mechanical pumps with hydraulic air pumps. (Tr. 675-76)

43. The clogged machine had not yet undergone the changeover to hydraulic air pumps. (Tr. 676)
44. Gilligan was the first shift mechanic to report to the resin separator and was the principle authorized employee on the first shift. (Tr. 396-97, 596-600)
45. Gilligan had the responsibility to obtain the LOTO procedures for the particular machine that was clogged and being repaired on line C, but he failed to do so. (Tr. 397-398)
46. These instructions should have remained on the site of the repair for the duration of the repair (Tr. 583-585)
47. Gilligan asked the complainant to come help to fix the pump and the complainant asked Gilligan about the LOTO procedures. (Tr. 72, 76, 317-318)
48. The complainant had 20 years of experience working on the machines in the Micro Klean department. (Tr. 73)
49. The complainant informed Gilligan that it was a very serious situation and if the repair was not done correctly, it could cause a hazardous material/waste spill. The complainant suggested doing the repair differently and discussed this with Gilligan for approximately half an hour. (Tr. 73-78)
50. Gilligan seemed confused and at a loss according to Collazo. (Tr.78)
51. Gilligan and the complainant left the area to search for parts to repair the machine (Tr. 78-79, 318)
52. While they were searching, Gilligan spoke to Hebb by intercom. Hebb informed them that he and located the part they were looking for. At that point, the complainant went back to Betapure and Gilligan went to Hebb. (Tr. 80, 318)

53. When Hebb came on duty at 3pm he had locked out the electrical portion of the machine, but it was not the normal area to be locked out, "it was further upstream," because of changing the pump from electrical to air pump it made impossible to follow the normal procedure. (Tr. 334-335)

54. Under the LOTO policy it was the principle authorized employee's responsibility, in this case Gilligan, to notify the incoming maintenance new shift employee, Hebb, of the safety consequences of the LOTO. Gilligan failed to make this communication (Tr. 397-398)

55. Hebb, on his own, went to obtain the LOTO procedures, but he did not report that to Gilligan who failed to pull the procedures on his shift. Hebb locked out the electrical portion of the pump and did not speak to anyone else. (Tr. 397-398)

56. At the time of the repair, when replacing an electric pump with a new mechanical pump, a normal LOTO procedure is not possible. A correct LOTO procedure did not exist for the change out work being performed because of the type of malfunction on the subject machine and the replacement to the pump. (Tr. 405, 410)

57. At the end of Hebb's shift, he removed his lock from the LOTO box, leaving no remaining locks on the box. Hebb did not report this to anyone and Hebb was not disciplined for leaving a machine exposed to electrical currents. (Tr. 398-402, 437-438)

58. Neither, Gilligan nor Hebb communicated a problem to the complainant regarding LOTO when he came on during the second shift. (Tr. 437, 721-24)

59. Further, another employee, Hardy, went to get a hasp, the group LOTO box, shortly after 7pm, which was the new shift. At this time, the electrical pump had been replaced with the air pump. (Ex C-4)(Tr.329-330)

60. The complainant returned to the area sometime between 6:30pm and 7:00pm.

61. The LOTO box for the subject machine with a new air pump was in place for the third shift after the electrical pump was replaced. (Tr. 83-84)

62. Several of the employees committed a violation of the procedure, however, the complainant was the only employee reported by Knight. (See Tr. 442-446, 737-739)

63. Gilligan allegedly self-reported his involvement in the group LOTO violation eight (8) days after the incident. However, it was only through Koch's investigation that other parties were found to be involved in the LOTO violation that occurred when the pump in the resin separator was being replaced in addition to the complainant. Koch was unaware of the prior LOTO violation by Gilligan, as it was unreported by Knight. (Tr. 442-446, 737-739)

64. On March 26, 2010, the complainant was terminated for the group LOTO violation, which broke the terms of his last chance PIP, put in place primarily because of Knight's reports to Koch. (Complainant's Exhibit 3), (Tr. 366)

65. June 1, 2010, the complainant amended his March 18, 2009, discrimination complaint that was filed with CHRO to include retaliation.

66. On March 8, 2010, Myers, a white male electrician, was fired after his alleged first LOTO violation, described as very serious in nature. However, Collazo

reported a violation by Myers in November 2009 it was not investigated. Myers had an indifferent attitude towards the violation. (Tr. 526)

67. Gilligan did not testify nor did the rest of the employees involved in the group LOTO violation incident, despite the fact they could have provided exculpatory, corroborating or contradictory evidence regarding the repair of the machine, and the failure of Knight to report his LOTO violation.

III
LAW

The respondent has been charged with violating § 46a-60(a) (1)[1] by discriminating against the complainant because of his race, color, national origin,

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[1] **§ 46a-60. Discriminatory employment practices prohibited**

(a) It shall be a discriminatory practice in violation of this section:

(1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need, to refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness;

(2) For any employment agency, except in the case of a bona fide occupational qualification or need, to fail or refuse to classify properly or refer for employment or otherwise to discriminate against any individual because of such individual's race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness;

(3) For a labor organization, because of the race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness of any individual to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless such action is based on a bona fide occupational qualification;

(4) For any person, employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because such person has opposed any discriminatory employment practice or because such person has filed a complaint or testified or assisted in any proceeding under section 46a-82, 46a-83 or 46a-84;

(5) For any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any act declared to be a discriminatory employment practice or to attempt to do so;

(6) For any person, employer, employment agency or labor organization, except in the case of a bona fide occupational qualification or need, to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against individuals because of their race, color, religious creed, age, sex, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability or physical disability, including, but not limited to, blindness;

(7) For an employer, by the employer or the employer's agent: (A) To terminate a woman's employment because of her pregnancy; (B) to refuse to grant to that employee a reasonable leave of absence for disability resulting from her pregnancy; (C) to deny to that employee, who is disabled as a result of pregnancy, any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by the employer; (D) to fail or refuse to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits upon her signifying her intent to return unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so; (E) to fail or refuse to make a reasonable effort to transfer a pregnant employee to any suitable temporary position which may be available in any case in which an employee gives written notice of her pregnancy to her employer and the employer or pregnant employee reasonably believes that continued employment in the position held by the pregnant employee may cause injury to the employee or fetus; (F) to fail or refuse to inform the pregnant employee that a transfer pursuant to subparagraph (E) of this subdivision may be appealed under the provisions of this chapter; or (G) to fail or refuse to inform employees of the employer, by any reasonable means, that they must give written notice of their pregnancy in order to be eligible for transfer to a temporary position;

(8) For an employer, by the employer or the employer's agent, for an employment agency, by itself or its agent, or for any labor organization, by itself or its agent, to harass any employee, person seeking employment or member on the basis of sex or gender identity or expression. "Sexual harassment" shall, for the purposes of this section, be defined as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (A) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (B) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (C) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;

(9) For an employer, by the employer or the employer's agent, for an employment agency, by itself or its agent, or for any labor organization, by itself or its agent, to request or require information from an employee, person seeking employment or member relating to the individual's child-bearing age or plans, pregnancy, function of the individual's reproductive system, use of birth control methods, or the individual's familial responsibilities, unless such information is directly related to a bona fide occupational qualification or need, provided an employer, through a physician may request from an employee any such information which is directly related to workplace exposure to substances which may cause birth defects or constitute a hazard to an individual's reproductive system or to a fetus if the employer first informs the employee of the hazards involved in exposure to such substances;

(10) For an employer, by the employer or the employer's agent, after informing an employee, pursuant to subdivision (9) of this subsection, of a workplace exposure to substances which may cause birth defects or constitute a hazard to an employee's reproductive system or to a fetus, to fail or refuse, upon the employee's request, to take reasonable measures to protect the employee from the exposure or hazard identified, or to fail or refuse to inform the employee that the measures taken may be the subject of a complaint filed under the provisions of this chapter. Nothing in this subdivision is intended to prohibit an employer from taking reasonable measures to protect an employee from exposure to such substances. For the purpose of this subdivision, "reasonable measures" shall be those measures which are consistent with business necessity and are least disruptive of the terms and conditions of the employee's employment;

(11) For an employer, by the employer or the employer's agent, for an employment agency, by itself or its agent, or for any labor organization, by itself or its agent: (A) To request or require genetic information from an employee, person seeking employment or member, or (B) to discharge, expel or otherwise discriminate against any person on the basis of genetic information. For the purpose of this subdivision, "genetic information" means the information about genes, gene products or inherited characteristics that may derive from an individual or a family member.

(b) (1) The provisions of this section concerning age shall not apply to: (A) The termination of employment of any person with a contract of unlimited tenure at an independent institution of higher education who is mandatorily retired, on or before July 1, 1993, after having attained the age of seventy; (B) the termination of employment of any person who has attained the age of sixty-five and who, for the two years immediately preceding such termination, is employed in a bona fide executive or a high policy-making position, if such person is entitled to an immediate nonforfeitable annual retirement benefit under a pension, profit-sharing, savings or deferred compensation plan, or any combination of such plans, from such person's employer, which equals, in aggregate, at least forty-four thousand dollars; (C) the termination of employment of persons in occupations, including police work and fire-fighting, in which age is a bona fide occupational qualification; (D) the operation of any bona fide apprenticeship system or plan; or (E) the observance of the terms of a bona fide seniority system or any bona fide employee benefit plan for retirement, pensions or insurance which is not adopted for the purpose of evading said provisions, except that no such plan may excuse the failure to hire any individual and no such system or plan may require or permit the termination of employment on the basis of age. No such plan

ancestry and/or alienage. As set forth in § 46a-60 (a), "It shall be a discriminatory practice in violation of this section: (1) For an employer, by the employer or the employer's agent, except in the case of a bona fide occupational qualification or need ... to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race, color, religious creed, age, sex, marital status, national origin, ancestry ...." It is well established that Connecticut's anti-discrimination statutes are coextensive with the federal law on this issue and, therefore, this case will be analyzed using both the prevailing Connecticut and federal law. See *Pik-Kwik Stores, Inc.* v. *Commission on Human Rights & Opportunities*, 170 Conn. 327, 331 (1976). "State courts look to federal fair employment case law when interpreting Connecticut's antidiscrimination statutes, but federal law should be used as a guide and not the sole resource in interpreting state statutes." See *State of Connecticut* v. *Commission on Human Rights & Opportunities*, 211 Conn. 464, 470 (1989); see also *Wroblewski* v. *Lexington Gardens, Inc.*, 188 Conn. 44, 53 (1982)." *Commission on Human Rights and Opportunities ex rel. Phillip Baroudjian, Complainant*

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which covers less than twenty employees may reduce the group hospital, surgical or medical insurance coverage provided under the plan to any employee who has reached the age of sixty-five and is eligible for Medicare benefits or any employee's spouse who has reached age sixty-five and is eligible for Medicare benefits except to the extent such coverage is provided by Medicare. The terms of any such plan which covers twenty or more employees shall entitle any employee who has attained the age of sixty-five and any employee's spouse who has attained the age of sixty-five to group hospital, surgical or medical insurance coverage under the same conditions as any covered employee or spouse who is under the age of sixty-five.

(2) No employee retirement or pension plan may exclude any employee from membership in such plan or cease or reduce the employee's benefit accruals or allocations under such plan on the basis of age. (3) The provisions of this section concerning age shall not prohibit an employer from requiring medical examinations for employees for the purpose of determining such employees' physical qualification for continued employment.

(4) Any employee who continues employment beyond the normal retirement age in the applicable retirement or pension plan shall give notice of intent to retire, in writing, to such employee's employer not less than thirty days prior to the date of such retirement.

v. North East Transportation Company, Inc., Respondent, 2008 WL 3019695, at 6. "The United States Supreme Court has enunciated two theories of discrimination with differing requirements for establishing a prima facie case and the employer's burdens of proof and production. These theories are the disparate treatment theory; see *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 252–56, 101 S.Ct. 1089, 1093–95, 67 L.Ed.2d 207 (1981); *McDonnell Douglas Corp. v. Green,* supra, 411 U.S. at 802, 93 S.Ct. at 1824; and the direct evidence theory. See *Price Waterhouse v. Hopkins,* 490 U.S. 228, 246, 109 S.Ct. 1775, 1788, 104 L.Ed.2d 268 (1989)" *Levy v. Comm'n on Human Rights & Opportunities,* 35 Conn. App. 474, 480, 646 A.2d 893, 896 (1994) aff'd, 236 Conn. 96, 671 A.2d 349 (1996).

Further, the complainant alleged that the respondent violated General Statutes § 46a-58(a) which provides: "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability." General Statutes § 46a-58 (a) has expressly converted a violation of federal antidiscrimination laws into a violation of Connecticut antidiscrimination laws. *Trimachi v. Connecticut Workers Compensation Committee*, 2000 WL 872451, 7 (Conn.Super.) (Internal quotation marks omitted) *Commission on Human Rights and Opportunities ex rel. Phillip Baroudjian, Complainant v. North East Transportation Company, Inc., Respondent*, 2008 WL 3019695, at 6. See also *CHRO v Board of Education of the Town of Cheshire,* 270 Conn. 665 (2004). The Tribunal's analysis on this issue has been thorough and

consistent since the decision in *Trimachi* in 2000, and in the Connecticut Supreme Court decision in *Cheshire* in 2004.

"The issue of awarding emotional distress damages in employment claims arising from Title VII violations [a breach of federal law] has been fully analyzed in prior decisions and rulings. See *Commission on Human Rights & Opportunities ex rel. John Crebase v. Proctor and Gamble Pharmaceuticals, Inc.* CHRO No. 0330171, pp. 69-71 (July 12, 2006). Emotional distress damages pursuant to § 46a-86 (c) may be awarded for violations of § 46a-58 (a) as was ordered in *Crebase*, supra. Subsequently, this tribunal continued to decide, in the affirmative, the issue of awarding emotional distress damages for violations of Title VII employment claims that are covered under § 46a-58 (a). As a result, emotional distress damages have been awarded for violations of Title VII as enforced through § 46a-58 (a) in *Commission on Human Rights & Opportunities ex rel. Randall L. Saex v. Wireless Retail, Inc.*, CHRO NO. 0410175, July 26, 2006; *Commission on Human Rights & Opportunities ex rel. Rosa DiMicco v. Neil Roberts, Inc.*, CHRO No. 0420438, September 12, 2006; *Commission on Human Rights & Opportunities ex rel. Correa v. La Casona Restaurant*, CHRO No. 0710004, April 28, 2008; *Commission on Human Rights & Opportunities ex rel. Jane Doe v. Claywell Electronics*, CHRO No. 0510199, December 9, 2008; and *Commission on Human Rights & Opportunities ex rel. Jennifer Swindell v. Lighthouse Inn*, CHRO NO. 0840137, January 29, 2009. *Commission on Human Rights and Opportunities ex rel. Samuel Braffith*, CHRO NO. 0540183 November 13, 2009.

A. Discrimination

"In order to establish a prima facie case, the complainant must prove that: (1) he [was] in the protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) that the adverse action occurred under circumstances giving rise to an inference of discrimination." (Internal quotation marks omitted.) *Jacobs v. General Electric Co.*, 275 Conn. 395, 400, 880 A.2d 151 (2005).

Once the complainant has established a prima facie case, the burden of production shifts to the respondent to rebut the presumption of discrimination by articulating (not proving) a legitimate, non-discriminatory reason for the adverse employment action. *See Levy v. Commission on Human Rights and Opportunities*, 236 Conn. 108; "Once the respondent articulates a legitimate, non-discriminatory reason, the complainant has an opportunity to prove by a preponderance of the evidence that the proffered reason is pretextual. " *Taylor v. Dept. of Transportation*, 2001 Conn. Super. LEXIS 197, 21.

"After the plaintiff has established a prima facie case, and the defendant has produced evidence of a legitimate, nondiscriminatory reason for the employment action, "[t]he plaintiff retains the burden of persuasion. [The plaintiff] now must have the opportunity to demonstrate that the [defendant's] proffered reason was not the true reason for the employment decision. This burden now merges with the ultimate burden of persuading the court that [the plaintiff] has been the victim of intentional discrimination. [The plaintiff] may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing

that the employer's proffered explanation is unworthy of credence." (Emphasis added.) *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 256, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Employment discrimination, therefore, can be proven either directly, with evidence that the employer was motivated by a discriminatory reason, or indirectly, by proving that the reason given by the employer was pretextual. The Supreme Court later refined the ruling set forth in *Burdine* in *St. Mary's Honor Center v. Hicks,* 509 U.S. 502, 507-508, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993), and in *Reeves v. Sanderson Plumbing Products, Inc.,* 530 U.S. 133, 143, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). In *Board of Education v. Commission on Human Rights & Opportunities,* supra, 266 Conn. at 511, 832 A.2d 660, we recently adopted "the explicit holding in *Reeves* that evidence establishing the falsity of the legitimate, nondiscriminatory reasons advanced by the employer may be, in and of itself, enough to support the trier of fact's ultimate finding of intentional discrimination." Jacobs v. Gen. Elec. Co., 275 Conn. 395, 401, 880 A.2d 151, 156 (2005)

The pretext/McDonnell Douglas-Burdine model is used "when a [complainant] cannot prove directly the reasons that motivated an employment decision but nevertheless may establish a prima facie case of discrimination through inference by presenting facts sufficient to remove the most likely bona fide reasons for an employment action." *Taylor v. Dept. of Transportation*, 2001 Conn. Super. LEXIS 197, 19-20; See also *McDonnell Douglas Corp. v. Green*, 411 U.S. 802-04; *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 252-56." The burden shifting analysis of McDonnell Douglas-Burdine applies to the Connecticut Fair Employment Practices Act

("CFEPA") § 46a-51 et seq." See *Ann Howard's Apricots Restaurant, Inc. v. Commission on Human Rights and Opportunities*, 237 Conn. 209, 225 (1996). "From a showing that an employment decision was not made for legitimate reasons, a fact finder may infer that the decision was made for illegitimate reasons." Taylor v. Dept. of Transportation, 2001 Conn. Super. LEXIS 197, 20. Opportunities, 266 Conn. 492, 505 (2003). Although under the McDonnell Douglas-Burdine model, the burden of persuasion remains with the complainant.

"The McDonnell Douglas-Burdine analysis keeps the doors of the courts open for persons who are unable initially to establish a discriminatory motive. If a [complainant], however, establishes a [...] prima facie case, thereby proving that an impermissible reason motivated a [respondent's] employment decision, then the McDonnell Douglas-Burdine model does not apply, and the [complainant] should receive the benefit of the [respondent] bearing the burden of persuasion ... ." (Citations omitted.) *Taylor v. Dept. of Transportation*, 2001 Conn. Super. LEXIS 197, 21-22." (Internal quotation marks omitted) *Commission on Human Rights and Opportunities ex rel. David Graves, Complainant v. Sno-White Avenue Car Wash, Respondent*, 2006 WL 4753456, at 5-6. Nevertheless, if "[t]he fact finder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination, and ... upon such rejection, [n]o additional proof of discrimination is required...." (Citation omitted; internal quotation marks

omitted.) *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 511, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993). *Jackson v. Water Pollution Control Auth. of City of Bridgeport*, 278 Conn. 692, 705-06, 900 A.2d 498, 508 (2006).

The matter at hand involves alleged disparate treatment. "The principal inquiry of a disparate treatment case is whether the [complainant] was subjected to different treatment because of his or her protected class." *Levy* v. *Commission on Human Rights & Opportunities* 236 Conn. 96, 104 (1996). In the instant disparate treatment case, the complainant must show that he was treated less favorably than non-Hispanic employees in circumstances from which a race-based motive could be inferred. To establish that the other employees were similarly situated, complainant must show that in all material respects he was similarly situated to a non-Hispanic employee, but was treated differently on the basis of race or nationality. The complainant could show that he and a non-Hispanic employee "reported to the same supervisor ... [were] subject to the same standards governing performance evaluation and discipline, and ... engaged in [similar] conduct ... without such differentiating or mitigating circumstances that would distinguish their conduct or the appropriate discipline for it." *Mazzella v. RCA Global Communications, Inc.,* 642 F.Supp. 1531, 1547 (S.D.N.Y.1986), aff'd, 814 F.2d 653 (2d Cir.1987). It is important to note, however, that being similarly situated in all material respects does not require one to demonstrate "disparate treatment of an identically situated employee." *McGuinness v. Lincoln Hall,* 263 F.3d 49, 54 (2d Cir.2001). Employees need show only "a situation sufficiently similar to [their own] to support at least a minimal inference that the difference of treatment may be attributable to discrimination." *Id.* In short, "once a minimal prima facie case is proved and the

employer's nondiscriminatory explanation has been given ... the governing standard is simply whether the evidence, taken as a whole, is sufficient to support a reasonable inference that prohibited discrimination occurred." (Internal citations omitted) *United Technologies Corp./Pratt & Whitney Aircraft Div. v. Comm'n on Human Rights & Opportunities, 72 Conn. App. 212, 232, 804 A.2d 1033, 1047 (2002).*

The credibility of witnesses is a matter within the province of the administrative agency. *Murphy v. Commissioner of Motor Vehicles, 254 Conn. 333, 347 n. 16 (2000); Elf v. Department of Public Health, 66 Conn. App. 410, 422 (2001).* The hearing officer has the prerogative to assess the credibility of witnesses and believe or disbelieve any evidence presented. *Levy v. Commission on Human Rights & Opportunities, 35 Conn. App. 474, 489, aff'd, 236 Conn. 96 (1996).*

The fact finder assesses credibility "not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude .... [The fact finder has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences there from .... As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because demeanor, conduct and other factors are not fully reflected in the cold, printed record." *Shelton v. Statewide Grievance Committee, 277 Conn. 99, 111 (2006); Hutton v. Commissioner of Correction, 102 Conn. App. 845, 853 (2007). Commission on Human Rights and Opportunities ex rel. Adam Szydlo, Complainant v. EDAC Technologies Corporation, Respondent, 2007 WL 4258347, at *10*

B. Retaliation

In the amended complaint it is alleged that respondent retaliated against the complainant after he filed his March 2009 CHRO discrimination complaint. "Under the Connecticut Fair Employment Practices Act (act); General Statutes § 46a–51 et seq.; employers are prohibited from discriminating against an employee on account of their opposition to "any discriminatory employment practices or because such person has filed a complaint [before the commission]...." General Statutes § 46a–60(a) (4). The act is coextensive with Title VII of the federal Civil Rights Act of 1964; therefore, Connecticut courts often look to federal case law for guidance in interpreting the provisions of the act. *State v. Commission on Human Rights & Opportunities,* 211 Conn. 464, 470, 559 A.2d 1120 (1989)." *Ayantola v. Bd. of Trustees of* Technical Colleges, 116 Conn. App. 531, 536, 976 A.2d 784, 788 (2009).

"The majority of [discrimination] cases are not cut from ... seamless cloth. Even when retaliation is derivative of a particular act of harassment, it normally does not stem from the same animus. Most often, retaliation is a distinct and independent act of discrimination, motivated by a discrete intention to punish a person who has rocked the boat by complaining about an unlawful employment practice." *Noviello v. Boston*, 398 F.3d 76, 87 (1st Cir.2005). *Jackson v. Water Pollution Control Auth. of City of Bridgeport,* 278 Conn. 692, 708, 900 A.2d 498, 509 (2006). "Analysis of a retaliation claim follows the three-step burden-sharing paradigm established in the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802,-804 (1973) referenced above. The establishment of the first step, the prima facie case, requires the Complainant to show

that (1) he/she engaged in a statutorily protected activity; (2) the Respondent was aware of the Complainant's participation in the protected activity; (3) the Complainant suffered an adverse employment action; and (4) there existed a demonstrable causal link between the protected activity and the adverse action." *Quinn v. Green Tree Credit Corp.*, 159 F.3d 759, 769 (2d Cir. 1998); *Distasio v. Perkin Elmer Corporation* 155 F.3d 55, 56 (2d Cir. 1998)." *Commission on Human Rights and Opportunities, ex rel. Monica Carver, Complainant v. Drawbridge Inn Restaurant, Respondent*, 2002 WL 34403142, at 7.

IV
ANALYSIS

A. Discrimination

The complainant is in a protected class; a Hispanic male whose ancestry is Puerto Rican. The complainant's twenty-three year work history, performance evaluations, promotions and testimony given by his employers is sufficient evidence that the complainant was qualified for the position he held. Therefore, he has satisfied the first two elements of his prima facie case. The complainant was also suspended multiple times and ultimately terminated from his employment, which illustrates the third element of his case, suffering an adverse employment action.

It is the fourth and final element, the adverse action occurred under circumstances giving rise to an inference of discrimination, which warrants the bulk of the analysis. The most glaring inference arises out of the disparate treatment of the complainant verses other similarly situated employees, in particular Gilligan. There is

evidence of disparate treatment in the day to day supervision of the complainant, the reporting of LOTO violations and differences in the type of punishment for LOTO violations. The testimony of respondent's employees Knight and Kosko describes the LOTO as strictly adhered to company policy, yet Knight did not report or punish Sean Gilligan, a white mechanic, similarly situated to the complainant, for his first or second LOTO violation. Also there was no investigation into Meyers when Collazo reported him and three others of committing LOTO violations. Myers later committed a very serious and dangerous LOTO violation for which he was fired. Knight was willing to look the other way when it came to Gilligan, and apparently, no one took Collazo's reports very seriously.

Prior to 2008 over his 20-year employment, the complainant had received one suspension for a single day. After Knight became the complainant's supervisor, he was suspended twice, for 3 days for each incident, for insubordination, which is a subjective determination rather than a bright line rule or policy, as with a LOTO violation. Most of the cited insubordination involved the complainant asking too many questions. It is probable that the complainant's questioning was an attempt to clarify an order, whereas, the respondent categorized it as not following orders.

It was apparent during the testimony the complainant, as an ESL speaker, needed clarification regarding questions he was being asked by all counsel and the undersigned. He was asked several questions on the stand, which he did not quite understand the nuance of the question. Nevertheless, once some clarification was given, he was always able to give relevant, appropriate answers. It occasionally took the

complainant longer and required rephrasing the question to reach an answer. The complainant wanted to make sure he completely understood before he testified. The complainant testified that he was meticulous about his work and always needed to make sure he was doing the right task, in the right way. Knight testified that he thought the complainant asked too many questions, was confrontational and insubordinate. Knight also testified that the complainant was an excellent mechanic. Based on the testimony of the witnesses, their demeanor and tone of voice, it is the undersigned's opinion it is more likely that Knight was impatient with the complainant, or did not want to allow questioning, even if it was to clarify a situation. It is also reasonable to infer from the demeanor of Knight that some of this impatience was based on a "Theirs not to reason why, Theirs but to do and die,"[2] attitude rooted in discriminatory animus.

Further, it was revealing that the respondent did not have any other witnesses who were involved in the March 2, 2010, incidents testify as to what happened. Management testified on behalf of those employees based on interviews with the employees that occurred up to three weeks later. While hearsay is admissible in an administrative proceeding, admissible does not mean credible. In fact, it is highly suspect that the respondent did not have those involved testify to corroborate their recounting of what the employees stated. Perhaps they would not add anything that would aid the respondent's case, or perhaps and more likely, their testimony would harm it.

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[2] Alfred Lord Tennyson, "Charge of the Light Brigade."

The miscommunication and impatience situation is illustrated on pages 654-655 of the transcript during Knight's testimony. See attached Addendum A (Tr. 654-655). The complainant was suspended for 3 days because Knight felt the complainant was being disrespectful. The transcript is replete with examples of miscommunications and instances where disputes took place, several of them where the complainant was disciplined. However, the majority of the instances were centered on communication issues. Based on the complainant's and Knight's testimony the undersigned believes that this is a case of a failure to communicate efficiently with, and/or unwillingness to try to understand, the employee rather than insubordination. Another small but telling fact, is that Knight and other supervisors refereed to the complainant as "George." Complainant had stated he preferred to be called his actual name Jorge, using the Spanish pronunciation.

On March 2, 2010, there was problem with a resin separator in the Micro Clean Department regarding a clog in the pump on Line C. A number of employees on the first shift responded, including Gillian and Hebb both Caucasians. The complainant was asked by Gilligan to consult and help with the repair of the pump when he came on during the second shift.

The complicating facts that make it extremely hard to determine who committed what, if any, LOTO violation, are that during the repair to the machine that was clogged, it was decided to change the type of pump that was used, from a mechanical pump on the resin separator, to a hydraulic air pump. During the change out, there was a time when a correct LOTO procedure did not exist. There were three separate shifts involved

in the repair and different stages in the repair. The hydraulic air pump was being installed to all the machines in the facility as part of complete change over. Each machine had a different LOTO procedure and the testimony indicated there was confusion as to which LOTO procedure was to be used. There were questions regarding if there was an updated LOTO procedure, and a time when there was no correct LOTO procedure as there was no pump in the machine or it had been change. It becomes more muddled when you factor in the three different shifts of employees that were involved and that several employees left the area for varying amounts of time. It is apparent that violations occurred originally when no LOTO procedure for the mechanical pump was brought to the sight, but it is difficult to determine when a violation occurred for not having the correct LOTO procedure for the air pump. Collazo was not initially involved in the repair and it was not until his shift started that he began working in the area, at some point a correct LOTO procedure did not exist, he left the area and returned, close in time to when Hardy pulled the LOTO procedures and locked out the box and Collazo added his lock. Given these types of variables, it seems very suspect and an unfair, that Knight focused his investigation on the complainant. None of the other employees who were involved in the repair of the pump testified. Management testified as to what they concluded in their investigations.

Several LOTO violations potentially occurred that day, and there are discrepancies regarding who played what role in the repair. Given the confusion of multiple employees involved in the repair work, which LOTO procedure governed the repairs and, if an applicable LOTO procedure even existed for portion of the work. This

indicates that respondent supplied insufficient procedures and/or employee training for a situation for that ultimately resulted in the complainant's termination.

Previously, in or around November 2009, the complainant reported Gilligan to Knight for a LOTO violation. Knight only talked to Gilligan about the incident. Knight did not report this violation to anyone, nor were there any consequences for Gilligan. Further, Gilligan's part in the group LOTO violation was not initially reported to Knight's superior, Koch in human resources.

Gilligan was suspended for only one day for being the part of the group violation because this was allegedly his first violation and it was stated to be a "self-reporting" situation. The suspension was done on Koch's part, as Knight never reported Gilligan's first or second LOTO violation to her as company policy dictated. The complainant was suspended for three days and put on a Last Chance Performance plan for his second LOTO violation, which occurred in October of 2009.

Other Caucasian employees involved in that same group lock out violation in March 2010, for which the complainant was terminated, were also not reported by Knight. Knight never reported Gilligan or the other violators of the group to Koch; Knight only reported the complainant. It was only through Koch's investigation of the incident that it became known that there were other employees, in addition to the complainant, involved. There was extreme disparate treatment in the way incidents were investigated and punished depending on what employees were accused of the same type of violations. LOTO violations were not investigated or punished uniformly. There were discretionary determinations of who would receive consequences for offenses.

In addition to the above, many of the respondent's witnesses gave conflicting testimony; Knight in particular was not credible. Knight not only covered up for a Caucasian employee, he denied that he did it while on the witnesses stand until he was confronted with physical evidence in the form of his own notes. Further, he admittedly did not like Collazo. The totality of the conflicting evidence, proof of a cover-up, the credibility of the respondent's witnesses, and the lack of respondent's investigation of the complainant's original 2009 complaint to the CHRO, and subjective reporting of a specific violation, is sufficient to support a conclusion that prohibited discrimination occurred. Therefore, the fourth element of the prima facie case is proven.

Arguendo, even if it is disputed that direct evidence was not present and the burden of persuasion remained with complainant to prove the respondent's articulated, legitimate business reason (safety violations) was a pretext, and discrimination is the actual reason for the complainant's termination, the complainant has provided sufficient evidence to rebut the legitimate business reason proffered by the respondent. He showed by a preponderance of the evidence that discrimination was the motivating factor.

The respondent discredited itself by witnesses giving conflicting testimony on the stand and offering many contradicting statements to the written evidence presented. It is more than reasonable to infer the insubordination issue was motivated by respondent's dislike for having to communicate more fully and answering what respondent deemed as unnecessary questions due to the complainant being an ESL speaker. Further, it is more likely than not that respondent acted improperly and with discriminatory animus regarding safety violations. Knight treated similarly situated employees differently by

covering up violations, failing to investigate and withholding punishment from Caucasian employees.

The respondent provided a meticulous list of reasons for the complainant's suspensions, last chance performance agreement, and ultimate termination but, upon closer inspection of the facts and Knight's own testimony, the confrontation issues most likely occurred due to problems of communication. The respondent points to 8 instances of confrontation in three years of his last 23 years of employment.[3] In twenty-three years of employment it is reasonable that disagreements between co-workers happen and disagree about who is at fault for the dispute. It is odd that the majority of these disputes were with Knight. Further, based on the lack of actual witnesses who were involved in the repair, and the complexity of the chain of event, the focus on the complainant in a group violation on March 2, 2010, makes reasons for the complainant's suspensions and termination highly suspect.

B. **Retaliation**

The complainant has also met his burden of showing retaliation by the responded. The complainant filed his complaint with the CHRO on March 9, 2009, which is a protected activity. The respondent never investigated the complainant's CHRO complaint. Koch told Knight and Kosko that complainant filed a complaint, however there was never any investigation regarding the allegations of the complaint. Several

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[3] In August 2000 Collazo received a verbal warning for telling a co-worker that he should "pray to Allah." Collazo admitted he was wrong and apologized. However, he felt badly about the incident, and not as an excuse for the behavior, Collazo didn't want to offend the co-worker by telling him to pray to the wrong Deity. It is just another small illustration about the differences in thought process regarding discrimination.

incidents after March 2009 indicate that Knight's discipline with regard to the complainant was motivated by retaliation against the complainant. There was heightened scrutiny on the complainant and Knight had the complainant placed on a last chance PIP on November 5, 2009. The last chance PIP was reasonably close in temporal proximity to the CHRO complaint as to aid the inference of retaliation. Once the last chance PIP was in place, Knight reported the complainant for petty alleged violations of cell phone and attendance policies to HR to precipitate further action; however, HR did not take action against the complainant. Singling out the complainant for a LOTO violation based on a confusing and complicated repair, which involved many people over at least a ten (10) hour time frame, indicates that Knight was interested having the complainant terminated. Moreover, while Gilligan allegedly self-reported the group LOTO incident to Knight the next day, Koch did not investigate his involvement until March 24, 2009.

The LOTO procedure, which was stated to be a strictly followed policy, and that any violations were not tolerated, was not shown to be evenly applied. There were subjective determinations of who was reported and punished. Moreover, the analysis applied in above discussion regarding the prima facie case, also applies to the retaliation charge. There are enough insistences of increased discipline and scrutiny to prove a discriminatory animus was the motivating factor for Knight's actions towards the complainant; especially in light of the disparate treatment of comparators. These actions increased after the CHRO complaint was filed.

VI
CONCLUSION

Based on the foregoing the complainant has proven the respondent illegally discriminated and retaliated against him. He was subjected to punishment that was applied in a disparate manner to white co-workers. Written evidence showed that the respondent attempted to cover up a white worker's violation and misrepresented that evidence on the stand. The complaints of discrimination and other safety violations reported by the complainant were not pursued nor investigated by the Human Resources Department. The respondent's testimony is replete with contradicting statements and ones that contradicted written evidence, which seriously diminished its credibility.

VII
DAMAGES

"When the presiding referee determines that unlawful discrimination has occurred, he is authorized to award relief (see General Statutes § 46a-86), the goal of which is to restore the employee to the status he would have enjoyed but for his unlawful termination. *Saulpaugh v. Monroe Community Hospital*, 4 F.3d 134, 144 (2nd Cir. 1993), cert. denied, 510 U.S. 1164 (1994); *Kirsch v. Fleet Street, Ltd.*, 148 F.3d 149, 166 (2nd Cir. 1998); *Worthington v. City of New Haven*, 1999 WL 958627 *14 (D.Conn. 1999)."

"General Statutes § 46a-86 (b) specifically authorizes an award of back pay for lost wages. Back pay awards may include commissions, merit increases, and fringe

benefits, so long as the complainant can prove, rather than merely speculate, that he would have earned these absent the discriminatory act. *Equal Employment Opportunity Commission v. Joint Apprenticeship Committee of the Joint Industry Board of the Electrical Industry*, 186 F.3d 110, 124 (2nd Cir. 1999); *Saulpaugh v. Monroe Community Hospital*, supra, 4 F.3d 145. Back pay awards run from the date of termination to the date of judgment; *Kirsch v. Fleet Street*, supra, 148 F.3d 167; but may be tolled earlier if the complainant assumes a new position with equal or higher salary, or under other circumstances such as retirement or cessation of job-seeking. Id., 168; *Nordquist v. Uddeholm Corp.*, 615 F.Supp. 1191, 1203-04 (D.Conn. 1985)" *Commission on Human Rights and Opportunities ex rel. Adam Szydlo, Complainant v. EDAC Technologies Corporation, Respondent,* 2007 WL 4258347, at 18.

In this case, if respondents were found liable the parties stipulated that "Collazo is entitled to back pay (including lost benefits) in the amount of $70,988.35." He is additionally entitled to prejudgment interest, at a rate of 10% (APR), in the amount of $31,944.75. The complainant is also entitled to post judgment interest at a rate of 10% (APR). Post-judgment interest compensates the prevailing party when the prevailing party is deprived or does not have the use of the money between the order of payment and the actual payment by the losing party. *Commission on Human Rights and Opportunities ex rel. Taranto v. Big Enough, Inc.,* CHRO No. 0420316 (June 30, 2006) 2006 WL 47534476. The victimized employee should not be deprived of the true value of the money while the employer makes use of that money prior to payment. *Thames Talent v. Commission*, 265 Conn. 127 (2003)

The respondent's deprivation of the complainant's right to a work in an environment free of discrimination constitutes a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2003 and the Civil Rights Act of 1991, enforced as a violation of state law through General Statute § 46a-58 (a) and enables the complainant and commission to seek the remedies available to them under § 46a-86 (c) (Citations omitted.) *See Commission on Human Rights & Opportunities ex rel. Ramseur v. Colonial Chimney and Masonry, Inc.*, 2005 WL 4828677 (CHRO No. 0440130, November 28, 2005). (Citations omitted.) *Commission on Human Rights and Opportunities ex rel. Joselin Correa, Complainant v. La Casona Restaurant, Respondent.* 2008 WL 7211987 (CT.Civ.Rts.)

Further, remedies available under General Statutes § 46a-86 (c) apply to violations of § 46a-58 (a). *Commission on Human Rights & Opportunities v Board of Education of the Town of Cheshire,* supra, 270 Conn. 665. It is well-settled in Connecticut law that the "broad authority to award damages under General Statutes § 46a-86 (c) ... includes the authority to award damages for emotional distress or other non-economic harm." *Commission on Human Rights and Opportunities ex rel. Little v. Clark and Bauer*, CHRO No. 9810387, p. 10 (August 2, 2000).

Criteria to be considered when awarding damages for emotional distress include: the complainant's subjective internal emotional reaction to the respondents' actions; the public nature of the respondents' actions; the degree of offensiveness of those actions; and the impact of those actions on the complainant. *Commission ex rel. Peoples v. Belinsky*, supra, 1988 WL 492460, ; *Commission on Human Rights & Opportunities ex*

rel. Aguiar v. Frenzilli, CHRO No. 9850105, pp. 9-15 (January 14, 2000). The complainant was distraught and felt a deep injury to his pride; his fellow co-workers knew that complainant was terminated, after 23 years of services, and complainant was publically humiliated. The complainant was seeking garden-variety type of emotional distress, the complainant's distress and health issues were complicated by the discriminatory conduct. The award of $5,000.00 for emotional distress damages is based on the complainant's obvious distress over being terminated and the corroborating testimony of his witness.

The complainant's counsel has requested attorney's fees in the amount of $24,580.00. The complainant's counsel submitted a very detailed account of his time and the amount due based on the loadstar method of calculation and is entitled to the full amount of $24,580.00.

VIII
ORDER

1. Within one week of the date of this decision, the respondents shall pay to the complainant damages in the amount of **$132,513.10 plus post judgment interest** based on the following:

2. The respondent shall pay back pay in the amount of **$70,988.35**

3. The respondent shall pay pre-judgment interest in the amount of **$31,944.75**

4. The respondent shall pay post-judgment interest which shall accrue on the unpaid balance at the rate of 10% per annum; from the date payment is due.

5. The respondent shall pay Attorney's fees in the amount of **$24,580.00**

6. The respondent shall pay emotional distress damages in the amount of **$5,000.00**

7. The respondent shall cease and desist from all acts of discrimination prohibited by state or federal law, and shall provide a nondiscriminatory work environment pursuant to state and federal law.

8. The respondent shall post in prominent and accessible locations, visible to all employees and applicants for employment, such notices regarding statutory antidiscrimination provisions as the commission shall provide. The respondent shall post the notices within three working days of their receipt.

9. The respondent shall not—and shall ensure that employees do not retaliate against the complainant, relatives of the complainant or any person who participated in this proceeding.

It is so ordered this 29th day of January 2015

Michele C. Mount
Presiding Human Rights Referee

cc.
Jorge Collazo
Margaret Nurse Goodison, Esq.
Byran P. Fiengo, Esq.
Mark L. Zaken, Esq.

where you called him over at IPC and ask him to go to Micro-Klean?

A Yes.

Q Do you want to tell me about that incident?

A Micro-Klean Line 3 had gone down due to a burner issue. At the time, Micro-Klean was behind in terms of orders. I had called a -- placed a call to George to ask if he would go down to Line 3 and help out mechanically.

Q Where were you at the time?

A I can't recall if I was on site or at home.

Q What is your normal shift or what was your normal shift during the period of 2008 and 2010 when you supervised Mr. Collazo?

A It would have been first shift.

Q So, what were your regular hours?

A Well, typically, the hours are 7:00 to 3:00, but my hours span ten plus hours a day.

Q So, sometimes you're offsite but still working?

A Yes.

Q How far do you live from the plant?

A Eleven miles.

Q Okay, so on this particular day, did you call Mr. Collazo and direct him to go to Micro-Klean?

A Yes, I did.

Q And, can you tell me what happened then?

A George became argumentative saying that he was busy. I believe he was working on a machine in IPC. It was the dual flow machine or -- or a cartridge machine.

Q Okay, and how was this resolved, if at all?

A I let it go on the first phone call. Then I said, wait a minute. And, I called him up again. And, I said, "George, I need you at Micro-Klean Line 3. That's the priority right now." And, ultimately George did go to Line 3. I recall that George had requested written documentations stating that it was all right for George to work on that line because it was a burner system. And, I recall saying that I was not going to provide him with written documentation as in fact it was deemed unnecessary in terms of what his actual mechanical actions were going to be with the line.

Q Did you bring this incident to anyone's attention?

A Yes.

Q Tell me about that.

A I brought it up to Rich Kosko's attention.

Q Why did you do that?

A Because I felt that it was disrespectful the