



State of Connecticut  
**COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES**  
**OFFICE OF PUBLIC HEARINGS**

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*Promoting Equality and Justice for all People*

June 6, 2023

CHRO ex rel. Sebastian Nolan v. SunPower Corporation CHRO No. 1910454 Fed No. 16a201901183.

**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 via email to the commission, complainant, and respondent.

Very Truly yours,

  
Kimberly D. Morris  
Secretary II

cc.

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Jon P. FitzGerald, Presiding Human Rights Referee

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and Opportunities  
ex rel. Sebastian Nolan, Complainant

CHRO No. 1910454

v.

SunPower Corporation, Respondent

June 6, 2023

FINAL DECISION

I  
PRELIMINARY STATEMENT

OFFICE OF  
PUBLIC HEARINGS - CHRO  
DATE 6-6-23  
TIME 9:55 AM  
RECEIVED BY KDM

Sebastian Nolan, the complainant, filed his affidavit of illegal discriminatory practice (affidavit) with the commission on human rights and opportunities (commission) on April 18, 2019. He filed an amendment to his affidavit on September 17, 2020. In his affidavit as amended (complaint) he alleged that SunPower Corporation (SunPower) was his former employer. He further alleged that SunPower violated General Statutes § 46a-60 (b) (1) as well as Title VII as enforced through General Statute § 46a-58 (a). According to Mr. Nolan, because of his race, African/American, and color, black, SunPower discriminated against him in the terms and conditions of his employment, in its discipline of him, and in terminating his employment.

The complaint was certified to the office of public hearings on December 23, 2020. SunPower filed its post-certification answers to the complaint denying the allegations of discrimination on April 8, 2021. On October 14, 2021, the commission filed notice that pursuant to General Statutes § 46a-84 (d), it was deferring prosecution of the complaint

to Mr. Nolan's attorney. On April 13, 2022, the undersigned was appointed the presiding human rights referee for this matter.

On January 13, 2023, the parties filed a stipulation of facts. The public hearing was held on January 31, 2023, February 1, 2023, and February 2, 2023. Briefs were due on April 11, 2023 at which time the record closed. For the reasons set forth herein, the complaint is dismissed.

## II FINDINGS OF FACT

Based upon a review of the pleadings, exhibits, and transcripts and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found. References to the transcript are designated by Volume number and "Tr." followed by the page number.<sup>1</sup> References to exhibits are designated by C for Mr. Nolan and R for SunPower followed by the exhibit number.

### **Stipulated facts:**

1. On December 10, 2018, SunPower hired Complainant into the role of electrician.
2. Complainant reported to Don Stedman (Field Supervisor) who reported to Rebecca Hale (Operations Manager).
3. SunPower terminated the Complainant's employment on February 25, 2019.

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<sup>1</sup> Note that for each day, the transcript pagination begins anew with page 1. Volume 1 is a transcript of the hearing on January 31, 2023; Volume 2 is a transcript of the hearing on February 1, 2023; and Volume 3 is a transcript of the hearing held on February 2, 2023.

**Other facts:**

Mr. Nolan

4. Mr. Nolan has been a licensed E-2 electrician in Connecticut since 1999. Vol 1, 12.
5. Mr. Nolan self-identifies as black and African-American. Vol 1, 14.

SunPower

6. SunPower provides high-power solar products, including residential solar roof panels. R-1, R-4.
7. In 2018 and 2019, Rebecca Hale, now known as Rebecca Dobson, was SunPower's regional operations manager for Connecticut. Vol 2, 9. Ms. Dobson had hiring and terminating authority. She oversaw the office including the crews, warehouses, project managers, permit coordinators, surveyors, and inspection technicians. Vol 2, 10-11.
8. SunPower has a progressive disciplinary policy. SunPower used performance improvement plans for office staff but not for field positions such as Mr. Nolan's position. Vol 2, 11-13.
9. SunPower hired Don Stedman as an install tech 5 electrician in the spring of or summer of 2018. In November 2018, SunPower promoted Mr. Stedman to the position of field superintendent. His duties included crew oversight and

scheduling. He became the direct supervisor of the field crews, including Mr. Nolan. Vol 2, 15-16, 118.<sup>2</sup>

10. Electricians, who serve as crew supervisors or leads, are expected to provide mid-day status reports to Mr. Stedman on whether they would complete the job. If they could not contact him, they were to contact Ms. Dobson. Vol 2, 163.
11. SunPower had staff meetings in which all employees were told that inaccurate reporting of time would not be tolerated. Vol 1, 237-238; Vol 2, 143-144.
12. During January and February 2019, Mr. Stedman decided which crew would be assigned roof installation work and which would be assigned inspection work based on the crews' productivity. Because of the shorter amount of daylight, crews that worked better together and were more productive received installation work. If installation jobs were not available for all the crews, management found work for the employees to do such as inspections, repairs, or organizing their vans rather than sending them home unpaid. Vol 2, 133.
13. SunPower did not allow its electricians to work alone at a job site for new installation without a crew. Vol 1, 233-234; Vol 2, 36-37, 122-23. Working alone is not an industry standard as it is considered unsafe. Vol 1, 255.
14. Prior to the roofers leaving the job for the day, the electrician was responsible for reviewing their work so that the roofers could make any needed changes. Vol 1, 249; Vol 2, 165.

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<sup>2</sup> At the time of the hearing, Mr. Stedman no longer worked for SunPower. He had voluntarily resigned in 2020 for a position at another solar panel company. Vol 2, 117

15. On occasions SunPower allowed electricians to take the company van home after obtaining preapproval from their manager to do so. Vol 1, 245; Vol 2, 35.
16. It would be unusual for an electrician and a crew to remain at a job site after 5:00 PM. Typically, the day started at 8:00 AM and ended between 2:00 PM and 4:00 PM. Vol 1, 253; Vol 2, 44.

#### SunPower hires Mr. Nolan

17. In July 2018, Aerotek, a temporary employment agency, contacted Mr. Nolan with an opportunity to work at SunPower. Vol 1, 15.
18. Ms. Dobson interviewed and hired Mr. Nolan as a temporary installer tech 5 through Aerotek. Vol 1, 18-19; Vol 2, 13-15.
19. Mr. Nolan began working at SunPower as a temporary employee on July 23, 2018. Vol 1, 19.
20. Ms. Dobson later interviewed and hired Mr. Nolan as a regular SunPower employee as an install tech 5. Vol 1, 25-26; Vol 2, 15. Mr. Nolan began working as a regular SunPower employee on or about December 10, 2018. C-14, P091.
21. Ms. Dobson had hired Mr. Nolan as a regular SunPower employee because he was a licensed electrician at a time when it was very difficult to find qualified electricians. Even though he may not have had experience in residential solar installations, he seemed to have a good personality and capable of doing the work. During his time in the temporary position, he had performed adequately. She thought that with coaching and time he would get better. Vol 2, 88-90.

**22.** As part of his initial orientation with SunPower, Mr. Nolan received an employment letter; R-1; a company handbook with information on how to submit complaints of unlawful discrimination; R-3; and notice to notify his supervisor immediately in the event of an emergency; R-4, p. 000127.

Mr. Nolan's general duties

**23.** In his position as an install tech 5, Mr. Nolan was the electrical lead as well as the lead over a whole crew at a job site. He was responsible for wiring as well as solar panel installation. Vol 1, 18-19. He was in charge of the crew. Vol 2, 38.

**24.** A job site crew would consist of Mr. Nolan, an apprentice, and three people for the roof work. Vol 1, 19, 22.

**25.** Mr. Nolan did not have disciplinary authority. However, if he was having issues with a member of the crew, he should have contacted Ms. Dobson or Mr. Stedman. Vol 1, 236; Vol 2, 38-39.

Mr. Nolan's job performance

**26.** On December 17, 2018, Mr. Nolan received a verbal warning because he was not notifying his superiors on status of progress at job sites and then leaving the site before completing the work. R-10.

**27.** SunPower issued Mr. Nolan a final written warning on December 18, 2018. Mr. Nolan had worked until 11:07 PM on December 13, 2019. His supervisor had made three attempts to reach him prior to 7:30 PM, but Mr. Nolan did not respond until after 8:00 PM. Mr. Nolan had been working alone, even though

for safety reasons, SunPower requires at least two employees when work is being done at a job site. He did not have his roof senior riding with him. A third-party contractor sent to review Mr. Nolan's work found a hazard in the way that Mr. Nolan had left the electrical panel uncovered. The service wire was protruding, wires improperly prepared and too big for the main break. No main lug was present in the panel. Vol 2, 168-176; C-2; R-6.

- 28.** Leaving a cover off an electrical panel box is unsafe. There is live energy in the panel. Animals and people need to be kept out of the panel to avoid their electrocution. Vol 1, 255-256.
- 29.** Had Mr. Nolan notified Mr. Stedman that he was alone because the rest of the crew had left and that he was having issues with the installation, Mr. Stedman would have gone out to the job site to assist Mr. Nolan. Vol 2, 86, 158.
- 30.** The homeowner had complained to SunPower's project coordinator about the open panel. The owner thought the panel had sparked because the cover was off. He told the project coordinator that he could not sleep that night. Vol 2, 92, 156-157, 170.
- 31.** Although the cabinet to the electric box was closed, having the panel cover off was still a code violation. The panel cover, not the cabinet door, contains an electrical arc or blast from electrical components. Vol 2, 156-157.
- 32.** The homeowner did not want a SunPower electrician or crew back on his property to do the repairs. SunPower had to hire a third-party contractor to do the repairs. Vol 2, 171.



- 33.** Because of the condition of the work that had been done and the safety hazard it had created, the third-party contractor requested that Mr. Stedman contact the town inspector so that SunPower's permit would be pulled and the contractor could get his own permit to make repairs. Vol 2, 171-172.
- 34.** A town inspector came out to check Mr. Nolan's work. The inspector said that given the quality of Mr. Nolan's work, he would have terminated Mr. Nolan's employment if Mr. Nolan worked for him. The inspector also considered reporting SunPower to the electrical licensing board which could have caused SunPower to lose its license to operate in Connecticut. Vol 2, 93-94, 172-173.
- 35.** The workmanship concerns that resulted from Mr. Nolan working late resulted in SunPower incurring \$3500 to hire a third-party contractor to do an emergency panel upgrade. R-10.
- 36.** On January 31, 2019, SunPower had to send a second crew to make repairs due to a failed inspection of work that Mr. Nolan had done on January 11, 2019. The disconnect was too close to a conduit and the door would not open to a full 90 degrees. The conduit bodies had filled with water and frozen solid. Had the fittings been properly installed, there would not have been the excessive amount of water. As the lead electrician, it was Mr. Nolan's responsibility to either have correctly installed the fittings or to have reviewed the work done by the apprentice to ensure the fittings had been properly installed. Vol 2, 183-184; R-10.

37. Mr. Nolan had taken the SunPower van home on January 30-31, 2019 without obtaining preapproval in violation of company policy. Vol 2, 184-185; R-10.
38. On February 6, 2019, Mr. Nolan had redesigned the system without notifying the field supervisor. The previous design had been approved by the town. The new design was no longer an approved electrical installation based on the permit that SunPower had with the town. Vol 2, 185; R-10.
39. On February 20, 2019, Mr. Stedman notified Mr. Nolan of several issues found to be incorrect in a job he had done. These issues included use of a coldwater clamp that should not be used on ground rods, stickers being incorrect, the bonding screw was missing from the main panel, the CTs were backwards and the Romex he had used in a wet location was a code violation. Vol 2, 154-155; R-9.
40. SunPower issued Mr. Nolan a final written warning on January 31, 2019. Three times that week Mr. Nolan had clocked into work earlier than he had actually arrived. He was told to clock in when he arrived at the warehouse or job site, not while traveling there. Vol 2, 142, 178-179; C-3.
41. SunPower had to send another of its electricians to correct a problem with Mr. Nolan's work. Mr. Nolan had reversed wires. Vol 1, 243-244.
42. Failed inspections on other job sites by other crews were not the fault of the electrician. Vol 1, 241-242.
43. Mr. Stedman discussed more than once with Mr. Nolan that work done by him violated electric codes. Vol 2, 125.

### Mr. Nolan's termination

44. SunPower removed Mr. Nolan from installation work and assigned him to inspection work while Ms. Dobson worked with human resources on terminating Mr. Nolan's employment. Vol 2, 20-21.
45. Ms. Dobson, in consultation with human resources, made the decision to terminate Mr. Nolan. She based this decision on information obtained from Mr. Stedman, who pointed out code violations committed by Mr. Nolan; from project managers, and from project coordinators who were getting feedback from homeowners. Vol 2, 17.
46. As of the dates of the hearing, SunPower had not filled Mr. Nolan's former position. Vol 2, 23-24.

### III CAUSATION

Our appellate court in *Wallace v Caring Solutions, LLC*, 213 Conn. App. 605, 278 A.3d 586 (2022) discussed that the causation test for discrimination cases under Connecticut law is the motivating factor test; that is, a complainant must prove only that illegal discrimination was a cause in a respondent's adverse action. When, however,

it comes to Title VII, the adoption of the traditional but-for causation standard means a defendant cannot avoid liability just by citing some *other* factor that contributed to its challenged employment decision. So long as the plaintiff's sex was one but-for cause of that decision, that is enough to trigger the law.

(Emphasis in original.) *Bostock v Clayton County*, 140 S.Ct 1731, 1739, 207 L.Ed. 2d 218 (2020).

While *Bostock* specifically addressed sex discrimination, the statute imposes liability on employers when they fail or refuse to hire, discharge, or otherwise discriminate against anyone because of a statutorily protected characteristic. *Id.*, 1740.

IV  
ALLEGED DISCRIMINATION BASED ON RACE AND COLOR

A  
STATUTES

In his complaint, Mr. Nolan alleged that SunPower violated § 46a-60 (b) (1) and Title VII as enforced through General Statutes § 46a-58 (a) when it discriminated against him in the terms and conditions of his employment. He alleged that SunPower reassigned him from installation work to inspection work, disciplined him when it issued him verbal and written warnings, and terminated his employment because of his race, African/American, and color, black.

General Statute § 46a-60 provides that:

(b) 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 any 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, physical disability, including, but not limited to, blindness or status as a veteran . . . .

Section 46a-58 (a) provides that:

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, gender identity or

expression, sexual orientation, blindness, mental disability, physical disability or status as a veteran.

Title VII, 42 U.S.C. § 2000e-2 provides in relevant part that:

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

B  
STANDARD

Both state and federal courts utilize the *McDonnell-Douglas* burden shifting framework in their analysis of state and federal employment discrimination claims. In this analysis, the employee must first make a prima facie case of discrimination.

In order for the employee to first make a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that give rise to an inference of discrimination.... The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question.... This burden is one of production, not persuasion; it can involve no credibility assessment.... The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias.

(Citations omitted; internal quotation marks omitted.) *Feliciano v. Autozone*, 316 Conn. 65, 73-74, 111 A.3d 453 (2015); *Chima v KX Technologies, LLC.*, Docket No. 3:21-CV-00801 (JHC), 2022 WL 13682064, \*5-6 (D. Conn. October 21, 2022).

To prove pretext, the plaintiff may show by a preponderance of the evidence that [the defendant's] reason is not worthy of belief or that more likely than not it is not a true reason or the only true reason for [the defendant's] decision to [terminate the plaintiff's employment] .... A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons."

(Internal citations omitted; internal quotation marks omitted.) *Stubbs v Icare Management, LLC*, 198 Conn. App. 511, 522-523, 233 A.3d 1170 (2020).

## C DISCUSSION

In the present case, Mr. Nolan established a prima facie case of discrimination. He is a member of one or more protected classes as he is a black African American. He qualified for the position as is evident by SunPower hiring him on a temporary and then a permanent basis. He suffered an adverse employment action when SunPower reassigned him from installation to inspection work, gave him verbal and written warnings, and terminated his employment. As he was SunPower's only black African American install tech 5, the adverse actions occurred under circumstances that give rise to an inference of discrimination.

SunPower articulated a legitimate non-discriminatory reason for Mr. Nolan's termination. According to Ms. Dobson, the decision maker who twice hired and then terminated Mr. Nolan, she terminated him due to the

repetitive nature of the infractions in such a short period of time. Hoping with writeups and speaking with him that he could be coached into improvements and there were no improvements. It continued down that same line. It was almost like he didn't care at that point. So, then the decision was made to terminate.

Vol 2, 103-104.

According to Mr. Stedman, who was Mr. Nolan's supervisor, "[b]ased on that reoccurring theme of work and timekeeping, it was my recommendation to terminate."

Vol 2, 149. "It was not just one instance. It was a culmination of everything else that had been happening that caused this submission up through Rebecca [Dobson] and HR for his termination." Vol 2, 188.

Mr. Nolan did not establish by a preponderance of the evidence that SunPower's articulated reasons for his reassignment from installation to inspection work, verbal and written warnings, and termination were pretext for race and/or color discrimination.

There was credible evidence that SunPower's decision to assign Mr. Nolan inspections rather than installations was because (1) SunPower was in the process of terminating his employment and (2) there was a downturn in installation business due to the January and February winter months.

SunPower provided contemporaneous documentation and credible testimony of its issues with Mr. Nolan's job performance justifying the verbal and written warnings and the subsequent termination. During his approximately two and one-half months of employment as a regular SunPower employee, Mr. Nolan received one verbal warning on December 17, 2017; R-10; a final written warning on December 18, 2018; R-6; and a final written warning on January 31, 2019; R-7. These warnings related to policy violations

such as taking the company van home without prior authorization, improper time keeping (theft of time), and not providing timely updates on job status. Mr. Nolan's job performance also raised serious safety issues for himself by working alone. His job performance potentially created hazardous conditions to customers with open electrical panels and frozen conduit bodies. In addition, SunPower received complaints about Mr. Nolan's work not only from other employees but from a customer, a third-party contractor, and a town building official. Mr. Nolan's job performance cost SunPower \$3500 when it had to pay a third-party contractor to complete work Mr. Nolan had started. SunPower also nearly lost its license to operate in Connecticut because of Mr. Nolan's job performance.

Mr. Nolan identified no white Caucasian install tech 5 who committed as many infractions as he did in the short amount of time as he did without being disciplined and terminated.

#### V CONCLUSIONS OF LAW

1. Mr. Nolan established a prima facie case of race and color discrimination.
2. SunPower articulated legitimate non-discriminatory reasons for its decisions to reassign, discipline, and then terminate Mr. Nolan's employment.
3. Mr. Nolan did not establish by a preponderance of evidence that SunPower's reasons were pretext for race and/or color discrimination.
4. Mr. Nolan did not establish by a preponderance of the evidence that his race and/or color were motivating factors or one of several but-for factors in the adverse actions taken against him.



VI  
ORDER

The complaint is dismissed.

It is so ordered this 6<sup>th</sup> day of June 2023.

*/s/ Jon P. Fitzgerald*  
Hon. Jon P. Fitzgerald  
Presiding Human Rights Referee

cc.

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