SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1526-16T2

BERNARD FLASHMAN,

Plaintiff-Appellant,

v.

JET AVIATION FLIGHT SERVICES, INC.,

Defendant-Respondent.

Submitted January 17, 2018 – Decided January 29, 2018

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-0636-14.

Steinberg Law, LLC, attorneys for appellant (Franklyn C. Steinberg, III, on the brief).

Morgan, Lewis & Bockius, LLP, attorneys for respondent (Richard G. Rosenblatt and Kimberley E. Lunetta, on the brief).

PER CURIAM

Plaintiff appeals a summary judgment which dismissed his CEPA[1] complaint; he argues he made a sufficient showing that his employer

---

[1] Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -8.

— defendant Jet Aviation Flight Services, Inc. — terminated his employment due to complaints he lodged about defendant's chain of communications, which he believed compromised flight safety. We find insufficient merit in plaintiff's arguments to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm substantially for the reasons set forth by Judge John J. Langan, Jr. in his thorough and well-reasoned written opinion. We add only the following.

To sustain a CEPA claim, a plaintiff must furnish proof that would enable a determination, as a matter of law, that the plaintiff has identified "the asserted violation with adequate particularity" for a jury's consideration. McLelland v. Moore, 343 N.J. Super. 589, 601 (App. Div. 2001). To accomplish this, a plaintiff must "identify and enunciate the specific terms of a statute, rule, regulation, declaratory ruling, professional code of ethics, or clear expression of public policy that the employee reasonably believes would be violated if the facts as alleged are true and determine that there is a substantial nexus between the complained-of conduct and the law or public policy identified by the court or the plaintiff." Klein v. Univ. of Med. & Dentistry of N.J., 377 N.J. Super. 28, 40 (App. Div. 2005). In considering plaintiff's attempt to meet this standard, we look to the nature of defendant's business and plaintiff's role in the organization.

Defendant maintains two distinct flight operations. Its "Part 91" operation includes the maintenance, operation, and piloting of private, non-commercial jets. Before 2009, this was a rather small operation. In 2009, defendant acquired another entity, which had employed plaintiff, and thereafter operated that entity's "Part 135" operation, which includes commercial charter flights. Upon that acquisition, plaintiff became Director of Operations (DO) for defendant's Part 135 operation. Defendant did not have — because it was not required to have — a DO position for its smaller Part 91 operation.

In late 2011, defendant decided it would reorganize so as to have a single DO with responsibility over both Parts 91 and 135. Defendant placed plaintiff into that role but plaintiff asserted he should be given a substantial salary increase commensurate with that undertaking. This led defendant to take another course.

Defendant had hired a new Chief Pilot — a position lower in authority than the DO position — for both operations. Because plaintiff had refused to perform the dual responsibilities of DO for both parts, defendant gave the DO job to the Chief Pilot; as a result, defendant no longer had a need for plaintiff and his employment was terminated. Plaintiff claims this reorganization was an "artifice," designed to impact only him. And, indeed,

plaintiff was the only employee terminated as a result of the reorganization.

In arguing that safety concerns were implicated by defendant's actions and its manner of communicating, plaintiff emphasizes that the DO position serves, in essence, as a "watch dog" to ensure compliance with federal regulations and "overall safe operation" of the business. Plaintiff claims his role in the organization was repeatedly undermined, and that his complaints about this undermining led to his dismissal in violation of CEPA. In response, defendant contends no safety concerns were implicated and plaintiff's complaints about his authority being undermined were mere manifestations of a personal power trip.

When drilling beyond plaintiff's conclusory and general statements and allegations about an impact on safety, we find, in borrowing Gertrude Stein's comment about the City of Oakland, "there is no there there." As the trial judge observed, plaintiff failed to identify "a clear standard by which [defendant's] conduct is to be gauged." Plaintiff suggested only that management "was not conducted with the highest degree of safety" without providing "a definite standard" as to how this alleged method of communication impacted "the level of safety owed to the flying public." Indeed, the only plausible interpretation of plaintiff's broad allegations is, as the judge determined, that any significant

communication flaws would be improved by the appointment of a single DO over both Parts 91 and 135. When defendant reorganized to consolidate these roles — thereby eliminating the potential for confusion in communications that allegedly concerned plaintiff — someone other than plaintiff was given the DO position. The judge accurately summarized this occurrence and its impact on plaintiff's CEPA claim in the following way:

> Again, like the plaintiff in Klein, although the [p]laintiff's recommendations could potentially improve the safety and efficiency of [defendant], "they are essentially disagreements with [defendant's] internal procedures and priorities . . ., and are not [based on] an objectively reasonable belief that [aviation safety] mandates are being violated." [377 N.J. Super. at 44]. In fact, [defendant] implemented one of [p]laintiff's recommendations and gave [p]laintiff the role he recommended. [Defendant] placed [p]laintiff as [DO] over both Part 91 and Part 135 operations. According to [p]laintiff, [defendant] having one [DO] for both Part 91 and Part 135 operations would eliminate the confusion employees, who work in both operations, had because now the employees who would report to only the [DO], instead of someone else. Therefore, this [c]ourt finds that [p]laintiff's whistleblowing activity [w]as nothing more than a private disagreement on how to operate [defendant's business].
>
> [(Some alterations added, others in the original).]

CEPA was enacted to prevent retaliatory action when an employee blows the whistle on improper activities, "not to assuage

egos or settle internal disputes at the workplace." Id. at 45. After a close and careful review of the factual record, which we undertook in complying with the applicable de novo standard of review, Townsend v. Pierre, 221 N.J. 36, 59 (2015), we agree that when viewing the allegations in the light most favorable to plaintiff, Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), defendant was entitled to summary judgment because plaintiff failed to sufficiently identify any rule, regulation, statute, or public policy violation sufficient to bring his complaints within CEPA's ambit; plaintiff demonstrated only an internal squabble and disputes personal only to him.

Affirmed.