Abbitt v Carrube
2016 NY Slip Op 32874(U)
December 5, 2016
Supreme Court, New York County
Docket Number: 101678/2015
Judge: Arthur F. Engoron
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 37

SERENA ABBITT,

Petitioner,

-against-

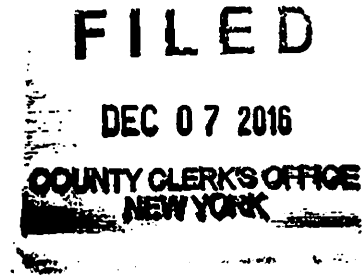
MICHAEL CARRUBE, individually and as President of Subway Surface Supervisors Association; KEITH BLAIR, as SSSA Trial Committee Chairman; SSSA PATRICK BEAUFORD, as Trial Committee Member; SSSA THOMAS CUMMINGS, as Trial Committee Member; SUBWAY SURFACE SUPERVISORS ASSOCIATION; and CHRISTOPHER JOHNSON, as New York City Transit Authority Senior Vice President of Labor Relations,

Respondents.

Index Number: 101678/2015

Sequence Numbers: 001, 003, 004

Decision and Order



Arthur F. Engoron, Justice

In compliance with CPLR 2219(a), this Court states that the following papers were used on petitioner's hybrid Article 78 petition and plenary action:

	Papers Numbered:
Notice of Petition - Affirmation - Exhibits	1
SSSA Defendants' Motion to Dismiss - Affirmation - Exhibits	2
Notice of Amended Petition	3
SSSA Defendants' Motion to Dismiss - Affirmation - Exhibits	4
Petitioner's Opposition to Motion to Dismiss - Affirmation - Exhibits	5
SSSA Defendants' Reply Affirmation	6
Johnson's Cross-Motion to Dismiss - Affirmation - Exhibits	7
Petitioner's Opposition to Cross-Motion - Affirmation - Exhibits	8
Johnson's Reply Affirmation	9

Upon the foregoing papers, the petition and defamation claims are hereby denied and dismissed, and the cross-motions to dismiss are hereby granted.

Background

Petitioner, Serena Abbitt, began her employment with the New York City Transit Authority ("TA") on or about May 1999. For approximately the last 10 years, she has held the title of Station Supervisor Level 1. In November 2014, Abbitt was elected Section Vice President for Station Supervisors Level 1 ("Section VP") of the Subway Surface Supervisors Association ("SSSA"), a public sector labor union, to serve a four-year term beginning in March 2015. In February 2015, Abbitt took a leave of absence from her TA job in order to work full-time for the SSSA. The parties disagree as to whether Abbitt was performing her Section VP duties as a Field Rep or a Staff Rep; while Staff Reps are paid by the union and may be terminated at will without a hearing, Field Reps receive a salary from the TA and can only be terminated with the approval of the SSSA Executive Board. It is undisputed that Abbitt was compensated for her Section VP position directly by the SSSA.

Shortly after defendant Michael Carrube, SSSA's President, was elected, he conducted staffing meetings on March 2, 2015 and March 25, 2015, at which point he explained, among other things, that Staff Reps were (1) not to break the chain of command and deal only with their TA counterparts; (2) to refer unresolved issues directly to himself or the SSSA's Executive Vice President, Y. Williams-Lawson; and (3) to use only union provided cell phones, emails, and business cards for union business.

On June 12, 2015, Carrube was presented with allegations that Abbitt had used a TA electronic stamp machine to stamp blank grievance forms in order to falsify claims of timeliness. The parties dispute the veracity of this allegation. On one hand, Abbitt claims that these allegations are untrue, and on the other, respondents claim that in June 2015, during a meeting with Carrube, Abbitt admitted to date-stamping blank grievances forms.

On or about June 17, 2015, pursuant to instructions she received from Williams-Lawson, and in accordance with her SSSA duties as Section VP, Abbitt filed grievances on behalf of the SSSA members she represents, challenging the TA's actions in assigning these members to perform "out-of-title duties," and requesting that all such members receive the appropriate corresponding salary. In response, due to the fact that Abbitt's grievants were not SSSA members, Bey La Verne, the TA's Labor Relations Hearing Officer, removed the grievances from the calendar. Abbitt challenged La Verne's action by email. The email, sent from Abbitt's personal account, was delivered to a wide array of TA officials, including a vice president, a senior vice president (defendant Christopher Johnson), the Chair of the Metropolitan Transit Authority ("MTA"), and the TA's parent company, allegedly breaking Carrube's chain-of-command instructions. After receiving Abbitt's email that same day, Johnson emailed Carrube to discuss his concern with the behavior of various reps, including Abbitt, and how their behavior was negatively impacting the relationship between the SSSA and the TA.

Abbitt alleges that on or about June 19, 2015, Carrube terminated her from her elected SSSA Section VP position, while respondents allege that she was removed from her Staff Rep position, but not from her elected Section VP position. On June 22, 2015, Abbitt sent another email allegedly outside the chain of command. Respondents allege that Abbitt was not terminated until July 1, 2015, after her second violation. Also on July 1, 2015, Carrube posted a letter on the union's website stating that Abbitt had breached his instructions and inappropriately sent emails to officials far outside the chain of command in a manner that was unethical and detrimental to the SSSA members, and to the relationship between the SSSA and the TA. Respondents allege, and Abbitt does not dispute, that the union's website is only available to SSSA members and requires a password to access.

On November 18, 2015, the SSSA Trial Committee Chair, defendant Keith Blair, sent Abbitt a notice of formal charges specifying the SSSA Constitution provisions she was alleged to have violated. Blair's letter also informed Abbitt that a hearing had been scheduled before the SSSA Trial Committee for November 30, 2015. Upon Abbitt's request, the hearing was postponed until December 8, 2015. On the day of the hearing, committee members Blair, defendant Patrick Beauford, and defendant Thomas Cummings unanimously sustained the charges and recommended that Abbitt be removed from her elected Section VP position. On or about January 8, 2016, the SSSA sent Abbitt a letter informing her that the Executive Board upheld the Trial Committee's recommendation.

The Instant Proceeding

On September 11, 2015, Abbitt commenced this hybrid CPLR Article 78 petition against Carrube and the SSSA to annul the SSSA's actions in unilaterally removing her from her elected Section VP position and her appointed Executive Board Member position and giving her insufficient notice, thereby denying her due process. Abbitt alleges that the SSSA's actions were arbitrary, capricious, irrational, in violation of law, in bad faith, and in violation of the SSSA Constitution. Abbitt requests the Court to compel the SSSA to reinstate her as a Section VP and to award her compensatory damages, back pay, and retroactive benefits. Abbitt also brings a concurrent action against the SSSA for defamation, including libel against Carrube, for publicly accusing her of engaging in unethical activities.

On November 16, 2015, Carrube and the SSSA moved to dismiss the petition. On February 26, 2016, Abbitt e-filed an Amended Petition, adding Blair, Beauford, Cummings, and Johnson as defendants to the proceeding. Abbitt's sole cause of action against Johnson is the tort of libel. On April 20, 2016, the SSSA, Carrube, Blair, Patrick, and Thomas ("SSSA Defendants") filed a motion to dismiss, and Johnson cross-moved to dismiss the complaint.

Discussion

I. Abbitt's CPLR Article 78 Petition Against Respondents Is Denied

In an Article 78 proceeding, the scope of judicial review is limited to whether the administrative action has a rational basis for its determination. See Matter of Pell v Board of Educ., 34 NY2d 222, 230 (1974). The SSSA Defendants have shown not only a rational basis, but good cause for terminating Abitt, as the Trial Committee and Executive Board's decisions were supported by substantial evidence. See 300 Gramatan Ave. Assoc. v State Div. of Human Rights, 45 NY2d 176 (1978) ("Substantial evidence consists of proof within the whole record of such quality and quantity as to generate conviction in and persuade a fair and detached fact finder that, from that proof as a premise, a conclusion or ultimate fact may be extracted reasonably, probatively and logically"). In the instant proceeding, the record contains several witnesses's affidavits who confirm that Carrube had indeed instructed the reps during staff meetings to limit their contacts to no higher than their department. In fact, Abbitt herself does not dispute that Carrube gave such instructions. Given Carrube's instructions, it was rational and reasonable for respondents to deem the penalty of removal appropriate as Abbitt's violation of the chain of command threatened to poison the goodwill between the union and the only employer for whose employees it bargains. See Berich v Ithaca Police Benev. Ass'n, Inc., 23 AD3d 904, 905 (3d Dept 2005) ("A person who displays disloyalty, performs acts injurious to the association or tending to its disruption is said to have breached the implied obligation of loyal support," such as would be ground for expulsion or suspension).

II. Abbitt's Defamation Claims Against Blair, Beauford, and Cummings Are Dismissed

Hearing officers are absolutely immune from suit for conduct taken in their adjudicatory roles. See Jacobs v Mostow, 69 AD3d 575, 576 (2d Dept 2010) ("The Supreme Court properly dismissed the complaint insofar as asserted against ... the hearing officer at the plaintiff's disciplinary hearing, [as he is] immune from liability for acts performed in [his] arbitral capacity") (internal quotations omitted). As a matter of law, Blair, Beauford, and Cummings, as the SSSA's hearing officers, are absolutely immune from suit, due to the quasi-judicial nature of their jobs, for conduct taken in their adjudicatory roles. See Harms v Riordan-Bellizi, 223 AD2d 624, 625 (2d Dept 1996) ("the decision of the hearing officer, rendered after a hearing, was quasi-judicial in nature, and therefore is clothed with absolute immunity from claims sounding in defamation"); see generally Arteaga v State, 72 NY2d 212, 216 (1988) ("The absolute immunity for quasi-judicial discretionary actions is founded on public policy and is generally said to reflect the value judgment that the public interest in having officials free to exercise their discretion unhampered by the fear of retaliatory lawsuits outweighs the benefits to be had from imposing liability").

III. Abbitt's Defamation Claim Against Carrube Is Dismissed

The elements of a defamation claim are "a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and it must either cause special harm or constitute defamation per se." See Frechtman v Gutterman, 115 AD3d 102, 104 (1st Dept 2014); see also Franklin v Daily Holdings, Inc., 135 AD3d 87, 94 (1st Dept 2015) ("If an allegedly defamatory statement is substantially true, a claim of libel is legally insufficient and should be dismissed") (internal citations omitted). Here, Carrube's letter, dated July 1, 2015, did not contain a false statement. Carrube's letter states that Abbitt had been removed from her position, that she violated the chain of command, and that she repeatedly failed to adhere to a direct request to cease all unauthorized communications. The record establishes that Abbitt did violate the chain of command by disseminating her complaint, not only once, but twice, to high-level TA officials. Because the falsity of the statement is an essential element of a defamation claim, the statement's truth or substantial truth is an

absolute defense. See Silverman v Clark, 35 AD3d 1, 17-18 (1st Dept 2006) ('Truth is an absolute defense to a cause of action based on defamation"). Thus, the veracity of Carrube's statements is enough to dismiss Abbitt's defamation claim as against him.

IV. Abbitt's Defamation Claim Against Johnson Is Dismissed

Johnson's statements, contained in a June 17, 2015 email, to Carrube are not actionable because they are expression of opinion, protected by qualified privilege, and said without malice.

Johnson's statements are simply his opinion of Abbitt's performance as a Staff Rep, and how her conduct affects the mutual cooperation and respect between the TA and SSSA. Ultimately, Johnson is expressing his personal, subjective dissatisfaction with her job performance, which is not actionable. See Rinaldi v Holt, Reinhart & Winston, 42 NY2d 369, 380 (1977) ("Opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth"); see also 600 W. 115th St. Corp. v Von Gutfield, 80 NY2d 130, 139 (1992) ("Because falsity is a necessary element in a defamation claim involving statements of public concern, it follows that only statements alleging facts can properly be the subject of a defamation action").

Johnson's statements are protected by qualified privilege because Johnson and Carrube share a common interest in the SSSA Staff Reps' work performance in order to ensure that they comport themselves appropriately and to maintain mutual cooperation and respect between the union (i.e. SSSA) and management (i.e. the TA). See Hoesten v Best, 34 AD3d 143, 158 (1st Dept 2006) ("It is well established that even where a statement is defamatory, a qualified privilege exists where the communication is made to persons who share a common interest in the subject matter"); see also Liberman v Gelstein, 80 NY2d 429, 437 (1992) ("The rationale for applying the privilege in these circumstances is that so long as the privilege is not abused, the flow of information between persons sharing a common interest should not be impeded").

Abbitt has not met her burden to overcome the qualified privilege afforded Johnson's June 17, 2015 email to Carrube as she has not shown "common law malice," which refers not to Johnson's general feelings about her, but to any "ill will" he may have had in making defamatory statements. See Freeze Right Refrig. and A.C. Servs., Inc. v City of New York, 101 AD2d 175, 186 (1st Dept 1984) ("The privilege is overcome only by a showing that the publication was motivated by common law actual malice, i.e., ill will or culpable recklessness"); see also Green v Combined Life Ins. Co. of N.Y., 69 AD3d 531, 531 (1st Dept 2010) ("Plaintiff's conclusory allegations of malice are insufficient to overcome the privilege"). The record contains no evidence that Johnson made his statements to Carrube for any purpose other than to address the common interest they shared in the management of the union's employees and the fostering of a good relationship between the TA and SSSA.

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Accordingly, the petition and defamation claims are hereby denied and dismissed without costs, and the cross-motions to dismiss are hereby granted.

Conclusion

Petition denied; defamation claims dismissed. Cross-motions to dismiss granted. The clerk is hereby directed to enter judgment accordingly.

Dated: December 5, 2016

Arthur F. Engoron, J.S.C.