

BEFORE THE
NAVAJO NATION SUPREME COURT

FILED
SUPREME COURT

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NAVAJO NATION

Falana Hadley)

Appellant,)

vs.)

Navajo Nation Department of Public)
Safety, Chinle Police Department,)

Appellee,)
_____)

No. SC-CV-20-15

Brief of Appellee

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STATEMENT OF THE CASE

At an evidentiary hearing held on September 12, 2014, the Navajo Nation Labor Commission (Commission) concluded that Appellee did not violate Appellant's rights under the Navajo Preference and Employment Act and dismissed Appellant's harassment claim. The Commission ordered that by a showing of preponderance of the evidence by the Appellee, Appellant was not harassed as defined by 15 N.N.C. § 604(B)(9). Further, The Commission found that in 2011, Hadley defied Harvey's attempt to exercise supervision over her. The Commission also found that the 2013 intimidation allegation to be her attempt to justify her unprofessional conduct toward Harvey.

STATEMENT OF THE ISSUES

Did the Commission abuse its discretion when it dismissed the 15 N.N.C. 604(B) (9) harassment complaint filed against the Navajo Nation Department of Public Safety Chinle District filed by Falana Hadley?

STATEMENT OF THE FACTS

The Commission found the following facts and these facts are relevant to this appeal for review.

1. Falana Hadley had been employed by the Navajo Nation Department of Public Safety from in January 2008 till July 9, 2014. (Finding of Fact No. 3.)
2. Falana Hadley had completed all Navajo Nation Police Officer training including proper police procedures, Navajo Nation Department of Law Enforcement Code of Conduct, Navajo Nation Department of Law Enforcement Code of Ethics and Officer

Protocol. Falana Hadley received training documents pertaining to NNDPS General Orders, NNPS Police Officer job expectations, and the Navajo Nation Personnel Policy (Finding of Fact No. 6.)

3. In 2008, Falana Hadley was initially employed as a Police Officer at the Shiprock Police District where Lt. Dempsey Harvey was Petitioner's supervisor from 2008-2009. (Finding of Fact No. 4.)
4. Soon after her 2008 initial employment, Falana Hadley became pregnant for Sgt. Hadley after a motorcycle training sponsored by Navajo Nation Department of Public Safety while he was stationed in Chinle, Arizona. (finding of fact No. 7 and 8)
5. In 2009, Falana Hadley's request for transfer to Chinle Police District was granted. (Finding of Fact No. 5.)
6. Falana Hadley asserts that Lt. Harvey began to harass her in early 2009 after she disclosed she was pregnant for Sgt. Hadley. Lt. Harvey asked her to clean his office and to dust his bookshelves while he watched. Falana Hadley claims that Lt. Harvey talked to her about her personal life, in particular stating that Sgt. Hadley would leave her and when he met her mother then Sgt. Hadley would become her step dad. (Finding of Fact No.9, and 10)
7. Petitioner did not file a complaint against Lt. Harvey regarding the bookshelf cleaning incident nor did she tell anyone about the comments Lt. Harvey made during this time. She also stated this this occurred only one during her six and one-half years she has worked for Lt. Harvey. (Finding of Fact No. 11 and 12)

8. Falana Hadley did not file a complaint for the claims asserted. All Navajo Nation employees are entitled a right to file such complaints according to Section XIV A. of the Navajo Nation Personnel Policies Manual.

An employee who feels aggrieved as a result of an application of disciplinary action such as discharge, suspension, loss of pay or benefits, or an employee or an applicant for an employment position who alleges a violation of the Navajo Preference in Employment Act has a right to utilize the procedures provided in this Section.

9. Although, Falana Hadley testified that she requested a transfer to Chinle Police District because of the bookshelf incident, she later testified that she was starting a family with Sgt. Hadley and wanted to work with him and besides him. Falana Hadley filed her harassment claim against Lt. Harvey on February 8, 2014 (Finding of fact No. 1 and 13.)
10. Lt. Harvey admitted that he warned Falana Hadley about getting involved with another police officer. Sgt. Hadley at the time was living with another female police officer in Wheatfields, Az. Lt. Harvey admitted he warned Falana Hadley of the problems she would face if she transferred to Chinle because of Sgt. Hadley being stationed there. As an example, he warned her that it was against Navajo Nation Department of Public Safety policy for people who are involved in a relationship to work at the same district under the same command. (Finding of Fact No. 14)
11. According to the Navajo Nation Personnel Policies Manual Section III (F) (1)-(3) Employment Practices, Hiring of relatives is impermissible and the Navajo Nation will not employ, in any position the immediate relative of current employees if:
 - a. One is directly supervising the other on a regular basis,

- b. There is potential for creating and adverse effect on supervision, security or morale, or the potential for conflict of interest.
 2. If employees become related after employment and a conflict such as described in the above paragraph is created; or, if a reorganization creates such a conflict, 90 calendar days will be allowed to resolve the matter voluntarily or by transfer of one of the employees. If that is not possible, the employee with the most recent date of continuous employment will be released. For purposes of this policy, the term "relative" is defined as an individual who is related by blood or marriage to the employee as a father, mother, son, daughter, brother, sister, grandmother, grandfather, uncle, aunt, cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, stepfather, stepmother, stepson, stepdaughter, stepsister, stepbrother, half brother or half sister.
 3. If employees become related after employment and a conflict such as described in the above paragraph is created; or, if a reorganization creates such a conflict, 90 calendar days will be allowed to resolve the matter voluntarily or by transfer of one of the employees. If that is not possible, the employee with the most recent date of continuous employment will be released.
12. Lt. Harvey testified that his warning to Falana Hadley was intended as advice to assist here on her path to become a good police officer and to protect her well-being. (Finding of Fact No. 15)
13. On October 15, 2010, Falana Hadley filed a written complaint addressed to Captain Dwayne Billsie and her then Supervisor, Lt. Tully Jim, complaining on a change or revision of the police districts duty schedule. Falana Hadley also complained that her new supervisor Lt. Emmett Yazzie intended to cite her for violating policies, general orders, or district directives. Lt. Harvey was reassigned to Chinle Police District until January 31, 2011. (Finding of Fact No. 16, 22 and Respondents exhibit 7.)
14. Falana Hadley in her complaint expressed her distain for her superiors and she harshly criticized how the Chinle Police District was managed. Lt. Harvey was

- reassigned to Chinle Police District until January 31, 2011. (Finding of Fact No. 17, 22 and respondents exhibit 7)
15. As it turned out, the police duty schedule was changed so that Falana's husband, Sgt. Dean Hadley would no longer be Falana's supervisor. (Respondents exhibit 7 and 8.)
 16. In Lt. Yazzie response to Falana's complaint he indicated that he was directed by his supervisor, Lt. Tully Jim that he would assume the supervision of Falana Hadley because it was against the Navajo Policies Manual to allow a spouse to supervise their spouse. (Respondents Exhibits 17 and 21)
 17. On October 14, 2010, Lt. Yazzie met with Falana to establish "a professional working relationship and to help provide any solutions to specific problems or issues." However during that meeting, Falana became defensive and informed Lt. Yazzie that some co-workers told her that Lt. Yazzie was calling her in to write her up for insubordination and that she had already met up with Capt. Billsie who told her he would be her supervisor. (Respondents exhibit No. 21, Finding of Fact No. 20.)
 18. In the October 25, 2010, response to Falana Hadley's complaint, Lt. Yazzie indicated to Falana Hadley that he was not meeting with her to discipline her. (Finding of Fact No. 21 Respondents exhibit No. 21.)
 19. On January 31, 2011, Capt. Billsie reassigned Lt. Harvey to the Chinle Police District where he immediately became Falana Hadley's direct supervisor. (Finding of Fact no. 22)
 20. On February 2, 2011, Lt. Harvey issued a directive to all "light duty" status personnel which included Falana Hadley, to among other things, maintain contact

with the Chinle Police District by radio or telephone. (Respondents exhibit No. 9, Finding of Fact No. 23)

21. On February 16, 2011, 17 days after Lt. Harvey was reassigned to Chinle Police District, Falana Hadley filed a written complaint titled "intimidation" in which she accused Lt. Harvey of harassing her. She states that Lt. Harvey called her into his office to ask her why she did not follow his instructions to return the tribal vehicle as soon as possible because it was needed immediately. Falana Hadley claimed she did not get the message to return the vehicle until 1343 hours. She then accused Lt. Harvey of creating discord between her and Dispatcher Eleanor Begay by not handling the situation in a professional manner. Falana Hadley accused Lt. Harvey put [ting] me in a position of being insubordinate, when it was his fault by not communicating with me directly. Instead he lies, fabricates statements and blames me for his lack of communication. I strongly feel that he belittled me and intimidated me after our conversation this on matter, by starting me down, when he left I left his office. She then asked to be supervised by Capt. Dwayne Billsie. (Respondents exhibit 10, finding of fact No. 24)

22. In Lt. Harvey's February 22, 2011 written response to Petitioner's intimidation complaint, Lt. Harvey explained he got a call shortly before noon and was told to return the truck. Lt. Harvey asked Dispatcher Eleanor Begay to contact Falana Hadley on the radio to tell her to return to Chinle District as soon as possible. When Ms. Begay gave Falana Hadley the message she was in Rough Rock serving papers. Shortly after 1330 hours, Lt. Harvey asked Ms. Begay where Falana Hadley was. Ms. Begay responded she had given Falana Hadley the message when she was still in

Rough Rock and she should be on her way (back to Chinle). Ms. Begay told Lt Harvey that she would text Falana Hadley again. A security check revealed that Petitioner was in Del Muerto after 1400 hours. (Respondents Exhibit 11 and Finding of Fact 25)

23. In his February 22, 2011 written response to Petitioners intimidations complaint, Lt. Harvey states he called Falana Hadley into his office after 1600 to ask her where she was and if she got Ms. Begay's message to return to Chinle. Falana Hadley said she was in Rough Rock and Round Rock serving papers and went home to eat lunch in Wheatfields. Falana Hadley then asked Lt. Harvey if she wanted to look at her log, he said no-he just wanted to know why there was a delay. (Respondents exhibit 11 and finding of fact 26)
24. In response to Falana Hadley's accusation that Lt. Harvey should have communicated the message directly to her, Lt. Harvey states he was not able to contact Falana directly to instruct her to return the vehicle immediately because she had not submitted her contact information as directed on February 2, 2011. (Respondents Exhibit 11 and 9, Finding of Fact No. 23 and 27)
25. Lt. Harvey asserts that as Falana's supervisor he had a duty to supervise all of Falana's activities during her regular tour of duty and Falana had a duty to dispatch any changes regarding her location, status and progress of her assignments (Respondents Exhibit 11, Finding of fact 28)
26. On January 14, 2013, Lt. Harvey issued a memorandum directing all Chinle District staff to submit current email addresses and cell and home telephone numbers to him no later than 8:00 am, Friday January 18, 2013, pursuant to General Order 17-15.

The purpose of the request, among other things, was to enhance communications so that police personnel could be contacted during emergencies and back-up calls. The memorandum stated: **“Strict adherence to this directive is expected. Failure to adhere to this directive will result in disciplinary action for insubordination.”**

(Exhibit 11A, Finding of Fact 29)

27. Falana Hadley was the only Chinle District Police personnel who did not submit her cell or home telephone number to Lt. Harvey. (Finding of Fact 30)
28. Falana Hadley admitted she did not supply her telephone numbers to Lt. Harvey. Falana stated she did not do so because in 2012, Lt. Harvey sent a text message to her husband, Sgt. Hadley stating that he wanted to see his “tits.” (Finding of Fact 31)
29. Lt. Harvey testified he intended to send the text message to his wife but instead sent the text message to Sgt. Hadley by mistake. The text message was sent while he was enroute to Phoenix to attend an evening class. On this day he had been exchanging text messages back and forth with his wife and Sgt. Hadley who was in charge of the Chinle Police District while Lt. Harvey was on travel. (Finding of Fact 32)
30. Sgt. Hadley, whom has since retired from NNDPS, testified that Lt. Harvey never apologized to him for sending the text message. Lt. Harvey testified that he did apologize to Dean Hadley and he was disciplined for unprofessional conduct regarding this matter. (Finding of Fact 33)
31. Falana Hadley refused to comply with the January 14, 2013, directive issued by Lt. Harvey despite the following: (a) Petitioners admission that she knew that General Order 79-15 required her to have a phone and required her provide emergency contact information; (b) Petitioner’s admission that as a Police Officer, she owed a duty to

- be in contact with the police district at all times as communications a very important part of being a dispatcher and commissioned officer, and; (c) Petitioner's admission that she swore to uphold all the laws, codes of ethics and conduct that apply to Navajo Nation Commissioned Officers. (Finding of fact 34)
32. By a memorandum dated January 22, 2013, Lt. Harvey directed Falana Hadley to meet with him in his office on Friday January 25, 2013, at 0900 hours to address her refusal to comply with Lt. Harvey's January 14th memorandum. (Finding of fact 35)
33. The same day, on January 22, 2013, Falana Hadley saw Lt. Dempsey Harvey enter the Chinle Chevron station and waited outside for him. Falana angrily accosted Lt. Harvey in front of other customers, yelling, "whats up with you?" "what is wrong with you?" Lt. Harvey told Falana to go to the office to discuss her concerns. Petitioner angrily responded. "I don't have a babysitter!" and then recklessly sped off in her truck. (Finding of Fact 36)
34. Lt. Harvey was on duty and in full police uniform when Falana Hadley yelled at him in front of the Chinle Chevron station in the presence of members of the public. (Finding of Fact 37)
35. Falana Hadley testified that she did not meet with Lt. Harvey on January 25, 2013, because her supervisor, Police Officer Renita Benally, did not give her the January 22nd , directive until January 29, 2013, seven days later. (Finding of Fact38)
36. Falana Hadley testified that the police department knew how to reach her during emergencies because her supervisor and dispatchers had her telephone number. (Finding of Fact 39)

37. Falana as a Sr. Police Officer is required to follow the chain of Command; therefore, she is required to comply with all lawful directives issued by her supervisors. Lt. Harvey's request for her telephone numbers is a lawful directive. The fact that Falana's supervisor and the dispatchers had her telephone numbers does not relieve Falana of her duty as a Sr. Police Officer to comply with her supervisor, Lt. Harvey's lawful request for her contact numbers. (Finding of Fact 40)
38. On February 5, 2013, Falana Hadley sent a memorandum addressed to Ivan Tsosie, Captain/Acting Chief of Police, titled "Complaint, (Dis-Respectful Behavior of a Superior)." Falana Hadley reiterated her complaints against Lt. Harvey dating back to 2008 and 2011. (Respondents Exhibit 12)
39. After rehashing her 2008 and 2011 claims of harassment, without any specific reference to the January 22, 2013 Chevron incident, Falana Hadley stated, "I strongly believe he (Lt. Harvey) has provoked me to approach him in this manner. Why should one show respect, when the other dis-respected from the beginning. But instead he (Lt. Harvey) responds and accuses me of being disrespectful to a superior. If he can't tolerate what he initiates, then he should earn his respect through proper professional behavior..." (Respondents Exhibit 12 at page 2 ¶3)
40. The tone of the February 5th Complaint clearly shows that Falana Hadley harbored deep animosity, anger and rage toward Lt. Harvey. Falana Hadley also clearly expressed her opinion that she had no respect for her superior officers and the NNDPS chain of command. (Respondents exhibit 12)

41. Renita Benally testified that Lt. Harvey created a Hostile work environment in the Chinle Police District by shouting at subordinates and he targets some persons for particular discipline. (Finding of Fact 44)
42. Renita Benally testified that because of Lt. Harvey's harassment, there are only four women left at the Chinle District. Lt. Harvey testified that there had been five women in the Chinle District and only four women remain. (Finding of Fact 45)
43. When Lt. Harvey was reassigned to the Chinle Police District on January 31, 2011, the District was in disarray. There were 17,776 pending reports. There was infighting and discord among police officers. Police officers were fraternizing with one another and were not following the chain of command. There was "too much favoritism" as some individuals were able to influence top personnel. (Finding of Fact 46)
44. Lt. Harvey got the District in order by holding staff accountable by imposing disciplinary action when warranted. Lt. Harvey states those officers he has held accountable are now conspiring against him and accusing him of intimidation and harassment. (Finding of fact 47)
45. Currently, there are a little over 1,000 pending cases. (Finding of fact 48)
46. On April 3, 2013, Lt. Harvey issued Falana Hadley a notice of suspension for 25 days without pay effective April 8, 2013. The disciplinary notice cited two offenses as basis for the suspension: (Offense 23 – Insubordination. Penalty imposed 15 working days; (2) Offense 37 – Failure to treat fellow employees with Courtesy. Penalty Imposed 10 working days. (Respondents exhibit 13)

47. Falana Hadley was suspended for 15 working days for insubordination for her failure to submit her email address and telephone number as directed by Lt. Harvey on January 13, 2013, and for failure to report to Lt. Harvey's office on January 25, 2013 as directed. (Respondents Exhibit 13)
48. Falana Hadley was suspended for 10 days for failure to treat Fellow Employees with Courtesy based on her conduct and behavior toward Lt. Harvey at the Chinle Chevron Station on January 22, 2013. (Respondents Exhibit 13)

STANDARD OF REVIEW

This Court reviews a Commission decision for an abuse of discretion. One such abuse is when the facts found by the Commission are not supported by "substantial evidence." *Jackson v. BHP World Minerals*, 8 Nav. R. 560, 568 (Nav. Sup. Ct. 2004). Findings are "supported by substantial evidence" where, after examining the relevant evidence, a "reasonable mind could accept [the evidence] as adequate to support the conclusion, even if it is possible to draw two inconsistent conclusions from the evidence." *Tsosie v. Central Consolidated School District*, No. SC-CV-34-06, slip op. at 19 (Nav. Sup. Ct. August 12, 2009). When there are two possible conclusions that may be reached on the record, the Court gives due deference to the Commission as a fact finder so long as a reasonable mind could support the factual conclusions it reaches. *Silentman v. Pittsburg and Midway Coal Mining Co.*, 8 Nav. R 306, 312 (Nav. Sup. Ct. 2003).

ARGUMENT

I. THE LABOR COMMISSION'S FINDINGS ARE SUPPORTED BY "SUBSTANTIAL EVIDENCE."

As the fact-finder, the Commission heard the testimony of the witnesses, weighed their credibility, and determined the facts relevant to Hadley's harassment claim. Based on the testimony, the Commission correctly found that Lt. Harvey did not harass Hadley.

Hadley has a high burden to convince this Court that the Commission's factual findings are not supported by "substantial evidence." She has not met that burden. For the Commission's findings to be supported by "substantial evidence," a "reasonable mind could accept [the evidence] as adequate to support the conclusion, even if it is possible to draw two inconsistent conclusions from the evidence." *Tsosie*, No. SC-CV-34-06, slip op. at 19, (quoting *Silentman*, 8 Nav. R. at 312). The Supreme Court therefore defers to the fact-finding role of the Commission; it does not review the evidence de novo and make its own factual determination. This is consistent with the appropriate roles of the lower tribunal and appellate court in the Navajo system: the Commission finds the fact based on the witnesses and other evidence presented to it, and the Supreme Court decides whether the Commission correctly applied the law. *See Allen v. Fort Defiance Housing Corporation*, 8 Nav. R. 759, 764 (Nav. Sup Ct. 2005). Indeed, this Court does not hear witness testimony, and cannot make determinations about the credibility of the witnesses, but reviews a written transcript of the evidence presented. Only if no "reasonable" factfinder could interpret the evidence to reach the conclusion that Lt. Harvey did not harass Hadley can the Supreme Court override the facts found by the Commission.

Here, there is ample evidence that there was no harassment, and the Commission's factual findings should not be disturbed. Based on a comprehensive consideration of all the evidence,

not just the narrow testimonial evidence cited by Hadley in her opening appellate brief, the Commission reasonably concluded that Harvey did not harass Hadley, and that Hadley had a pattern of insubordination in defiance of her supervisors' clear instructions at the Chinle Police District. The Commission heard all of the evidence, not just those few lines of testimony she emphasizes in her brief. This Court should not accept her evidence alone, as the Commission did not, as neither parties nor the courts can "piñon pick" evidence any more than particular sections of statutory law to support a particular position. *See Navajo Housing Authority v. Navajo Nation Labor Comm'n*, No. SC-CV-31-14, slip op. at 7 (Nav. Sup. Ct. May 22, 2015).

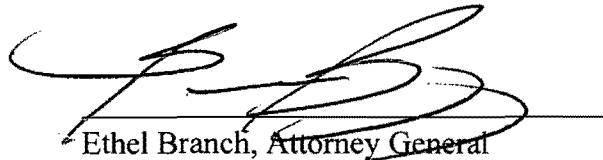
II. THE COMMISSION REASONABLY DISCOUNTED RENITA BENALLY'S TESTIMONY.

In Hadley's opening appellate brief, she emphasizes the testimony of Rita Benally as establishing evidence of Harvey's harassment. Opening Brief at 9-11. During the hearing of this case the Commission appropriately heard the testimony of Renita Benally, weighed its credibility, and determined the facts relevant to Hadley's harassment claim in light of all the evidence, and reasonably concluded Lt. Harvey did not harass Falana Hadley. Importantly, Ms. Benally's testimony did not identify any specific harassment acts or violations toward Falana Hadley, but alleged there was a general atmosphere of harassment. This case concerns Hadley, and whether she was harassed, and testimony alleging harassment of others does not show violations of the NPEA against Hadley. The Commission's factual findings reasonably did not rely on Benally's testimony to overcome all the other evidence presented. However, even if Benally did testify on specific harassment of Hadley, the Commission cannot and did not apply that testimony in isolation, but reasonably weighed the testimony of all the witnesses to reach its factual conclusions.

CONCLUSION

For the above reasons the Nation respectfully requests this court to affirm the Labor Commission's decision in this case.

Respectfully submitted this 13th day of August, 2015.

A handwritten signature in black ink, appearing to be 'Ethel Branch', written over a horizontal line.

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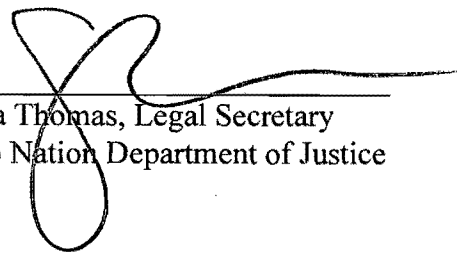
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