

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION No.:

RONALD W. NICKLE,

Plaintiff

v.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,

Defendant.

E-FILED 3/17/2021

COMPLAINT

Parties

1. The defendant Massachusetts Bay Transportation Authority (MBTA) is a political subdivision of the Commonwealth that operates as a public authority within the Massachusetts Department of Transportation. As such, it qualifies as a public body employer subject to the prohibitions against retaliatory actions set forth in Section 185 of Massachusetts General Laws Chapter 149 (Section 185).

2. The plaintiff Ronald W. Nickle is a resident of South Weymouth, Massachusetts, who was employed as the Chief Safety Officer of the MBTA from September 12, 2011, to March 22, 2019, and as such qualifies as a public employee within the meaning of Section 185.

Jurisdiction and Venue

3. This Court has jurisdiction over the MBTA pursuant to Section 185(d) of Mass GL

Chapter 149. Venue is appropriate given Suffolk County is the location of the MBTA's headquarters and is where the relevant events occurred.

Facts

4. The Massachusetts Bay Transit Authority (MBTA) provides subway, commuter rail, bus, paratransit, and ferry transportation throughout the greater Boston metropolitan area. The plaintiff Ronald W. Nickle served as MBTA's Chief Safety Officer from September 12, 2011, to March 22, 2019. His authority and responsibilities as MBTA Chief Safety Officer included oversight of the MBTA's safety programs for light and heavy transit rail, commuter rail, construction safety, safety infrastructure and systems engineering, contractor safety compliance, passenger safety, roadway worker safety, and right of way public safety. During the 7.5 years leading up to March 22, 2019, Nickle received commendations and compliments for his contribution as Chief Safety Officer and had not received notice of issues with his performance of his duties.

5. Nickle has extensive training and experience in the field of public transit safety, including serving as a Special Advisor to the United States Department of Transportation's Federal Transit Administration (FTA), and as a member of FTA's Safety Standards Working Group. When safety issues came to his attention it was his practice to document the resulting activities, discussions, and communications through emails, correspondence, and other forms of documentation, with cc's of such communications to management (including the MBTA General Manager and Deputy General Manager), members of his staff, and regulators, as applicable.

6. Leading up to March 22, 2019, Nickle engaged in written and verbal communications regarding critical safety hazards posing unacceptable risks to the safety of MBTA passengers and employees. Those communications concerned safety issues he raised

regarding the December 6, 2018, electrocution of a MBTA shop employee, the February 5, 2019, derailment on the Green Line, and near miss incidents and safety violations on the GLX Project (a FTA grant funded construction project to extend the MBTA's light rail Green Line).

7. Nickle conducted a full investigation of the electrocution incident and identified major electrical safety violations. On February 18, 2019, he issued a written Safety Stand Down requiring senior management to conduct Safety Meetings to reinforce the MBTA's existing electrical safety procedures. Nickle followed up with a March 19, 2019, Meeting with senior management that included General Manager Steve Poftak, Department of Public Utilities (DPU) State Safety Oversight directors, and Massachusetts Department of Labor Standards (DLS) representatives. At that meeting Nickle stressed the need to develop a Corrective Action Plan in coordination with the DPU and DLS that would avoid such incidents in the future.

8. On February 5, 2019, a derailment occurred on the MBTA's Green Line mainline due to unsafe track conditions. In compliance with Federal Transit Administration and Mass DPU-State Safety Oversight regulations, Nickle started a Chief Safety Officer investigation in order to provide a report to those agencies within 60 days of the derailment.

9. While driving to the site, Nickle received a phone call from Deputy Director of Safety Engineering Steve Culp instructing Nickle not to attend the derailment per the order of Deputy General Manager Jeff Gonneville. Nickle responded that as Chief Safety Officer he must and would attend the site in order to conduct his mandated investigation.

10. When Nickle arrived at the site he found that—without his required approval—the train had been rerailed and its crew had left. Nickle inspected the point of derailment and documented with photographs several critically unsafe conditions and track defects, including track deficiencies the Right of Way Department should have corrected per the 2015 Corrective Action

Plan accepted by the DPU-SSO. Nickle brought his findings to the attention of General Manager Poftak, Deputy General Manager Gonneville, Deputy Director Culp, and the majority of the MBTA's senior executive management team.

11. A meeting with the regional FTA was scheduled, and at the MBTA's pre-FTA meeting Nickle spelled out the corrective actions necessary to address the safety issues he found. At that pre-FTA meeting, DGM Gonneville presented incorrect causes of the derailment and minimized the condition of the track. Nickle explicitly disagreed with Gonneville's comments and repeated his findings regarding the causes and the required corrective actions.

12. Nickle was not allowed to attend the actual FTA regional meeting, which he normally would attend. Nickle's CSO investigative report to the FTA and DPU-SSO was due on April 9, 2019. However, the MBTA terminated Nickle on March 22, 2019, and the report the MBTA submitted to the FTA and DPU-SSO failed to identify the defects, hazards, and risks of the unsafe track conditions Nickle discovered and disclosed to MBTA management.

13. On March 1, 2019, Nickle learned of a train versus work crew near miss incident involving a GLX construction work group that was allowed to operate heavy equipment in the commuter rail right-of-way without protection. When Nickle presided over a March 6th meeting of senior executives and staff to discuss this serious incident, it became apparent there was a high level of tension and disagreement between the MBTA, the MBTA's commuter rail operation contractor Keolis, and the GLX Project construction contractors. Before Nickle could conduct a site inspection and audit, there was a second train versus work crew near miss incident on March 8, 2019, when a GLX construction operator attempted to cross a live commuter rail track without authorization and protection.

14. Accordingly, a few days later Nickle made an unannounced safety inspection and audit of a GLX Constructors work site along the commuter rail right-of-way. There were approximately 50 workers at the site using four large pieces of construction equipment. Nickle found a complete breakdown in on-track and construction safety protocols in violation of 49 CFR PART 214, OSHA regulations, the Keolis Roadway Worker Program, and the General Duty Clause. Nickle reported his findings in writing on the MBTA's Safety Industry Safe system. Those findings included: unsafe construction equipment activities exposing GLX construction workers to serious injury or death due to the movement of equipment without adequate precautions or warnings; lack of site security allowing unprotected entry from all sides of the project; absence of a safety officer present to ensure coordination and compliance; absence of an Employee-in-Charge responsible for ensuring construction and Right Of Way safety; and workers walking in the blind side of rotating equipment. Nickle interviewed 15 CLX Constructor employees, none of whom were able to answer basic questions regarding receiving a federally required Roadway Worker Protection safety briefing, on-track Roadway Worker Protection safety, and the location and or means to contact the Employee in Charge of Roadway Worker Protection.

15. Then at approximately 10:00 AM Nickle witnessed a third train versus employee near miss safety violation when a locomotive passed through the work zone near workers without any alert or on-track safety procedures in place. At that point Nickle directed all the workers to cease work, and he performed an on-track safety briefing stressing the imperative need for following on-track and construction safety regulations. Shortly thereafter Nickle received a call from MBTA Chief Railroad Officer Ryan Coholan, who was extremely upset Nickle had "Shut down the project!" and told Nickle he had no business interrupting the project job site.

16. The morning of March 11th Nickle met with MBTA Project Manager John Dalton to

inform him of his findings and actions. Nickle drafted a Report regarding those safety hazards and continued to investigate and discuss those safety issues. From March 11th to the 15th, Nickle distributed the Report to the top senior MBTA managers and met with them to discuss his findings, including with Chief Railroad Officer Ryan Coholan, GLX MBTA Project Manager John Dalton, and the Keolis General Manager, safety officers, and senior executives.

17. On or about March 12th the Federal Transit Administration's Acting Regional Administrator, Peter Butler, called Nickle to request a meeting regarding the GLX Project near misses and safety concerns. Nickle gave him an overview of his findings and sent Butler the Report. Acting Administrator Butler called back later that day stating he would need a letter from MBTA General Manager Poftak providing a response to the issues raised by Nickle in the Report.

18. On March 15th Butler again called Nickle stating he wanted to meet with Nickle and MBTA Deputy General Manager Jeffrey Gonneville regarding the GLX Project safety issues Nickle identified in the Report. Nickle texted GM Poftak and DGM Gonneville notifying them of FTA's request. Nickle then called and left a message on their phones, and also spoke in detail to their executive secretaries to ensure they were advised of the safety concerns and FTA's request. On March 20th Gonneville confirmed to Nickle in person that he had received that text.

19. The Meeting with FTA Acting Regional Administrator Butler and Federal Railroad Administration Administrator Les Fiorenzo regarding the GLX Project safety concerns was scheduled for March 21, 2019. In anticipation of the meeting, Nickle gave MBTA Chief Environmental Health & Safety Officer Nancy Prominski a copy of the Report, and she prepared a summary of the Report's findings and recommended remedial actions.

20. On March 20th Prominski held a meeting for senior management to prepare for that

FTA/FRA meeting. Present at that meeting were Deputy General Manager Jeff Gonneville, Mass DOT Deputy Rail Administrator John D. Ray (who reported directly to Massachusetts Secretary of Transportation Stephanie Pollack), Chief Railroad Officer Ryan Coholon, MBTA GLX Project Manager John Dalton, and GM Poftak's Chief of Staff Dave Abdoo (Dalton and Abdoo both reported directly GM Poftak).

21. The meeting was held in the GM's Conference Room at the GM executive office suite. Prominski distributed copies of the Report summary to everyone present. The attendees went over each item in the Report summary to prepare for the next day's FTA/FRA meeting. Gonneville received a copy of the Report summary and also confirmed at the meeting he had received Nickle's March 15th text notifying him the FTA wanted to meet to discuss Nickle's Report.

22. At that meeting, some attendees commented on Nickle's use of the term "near miss," suggesting it be called a "rule violation" instead. Nickle strongly disagreed, pointing out it fully qualified as a near miss incident. Nevertheless, the group agreed they would use the term "rule violation" with the FTA. Prominski then indicated Nickle was to let others speak to the safety issues raised at the FTA Meeting. In response Nickle pointed out FTA Administrator Butler specifically asked him to be at the Meeting, and since he was the Chief Safety Officer responsible for the investigation Butler almost certainly would ask him direct questions he would have to answer.

23. The March 21st FTA/FRA meeting began at 9 AM and lasted two hours. The same senior managers were at that meeting (except Gonneville, who did not attend despite FTA Butler's specific direction that he be there). The group used the Report summary to structure the discussion. FTA Administrator Butler began by asking Nickle to provide an overview of the situation. Nickle explained the findings of his safety inspections and audit, and discussed the corrective actions

being developed. FTA Butler directed many of his questions to Nickle directly and wanted a direct answer from Nickle in his role as Chief Safety Officer. Nickle answered all the questions the FTA and FRA asked of him. At the end of the meeting FTA Administrator Butler asked Nickle to personally contact the FTA if any new incidents or safety concerns arose on the GLX Project or any other FTA funded project.

24. The next morning, on March 22, 2019, MBTA Chief Environmental Health & Safety Officer Nancy Prominski informed Nickle he was terminated. No written cause or explanation was given. MBTA leadership terminated Nickle as Chief Safety Officer without informing the MBTA Board, the Secretary of Transportation, or the Office of the Governor.

25. Nickle was terminated due to MBTA management's negative reaction to his reporting of risks to public safety, actions that precipitated public body regulatory investigations and invited public scrutiny of the MBTA's safety record and culture.

26. In particular, the plaintiff Ronald W. Nickle was terminated for providing information to the Department of Public Utilities State Safety Oversight, the Massachusetts Department of Labor Standards, the Federal Transit Authority, and the Federal Railroad Administration public bodies about MBTA activities he reasonably believed posed a risk to public safety. Nickle was terminated after and due to his providing information to the investigations being conducted by those public bodies into the MBTA activities Nickle reasonably believed posed a risk to public safety.

27. Moreover, the plaintiff Ronald W. Nickle was terminated for disclosing or threatening to disclose to MBTA supervisors or to a public body activities that he reasonably believed posed a risk to public safety. He was terminated after bringing the attention of his MBTA

supervisors to those activities by written notice and affording the MBTA a reasonable opportunity to correct those activities.

COUNT ONE

(Retaliatory action in violation of Massachusetts General Laws Chapter 149 section 185(b)(2))

28. Plaintiff repeats and incorporates by reference herein each and every paragraph of this Complaint.

29. The plaintiff Ronald W. Nickle disclosed information to the Department of Public Utilities State Safety Oversight, the Massachusetts Department of Labor Standards, the Federal Transit Authority, and the Federal Railroad Administration public bodies regarding MBTA activities he reasonably believed posed a risk to public safety.

30. The MBTA was aware Nickle provided information to those public bodies during their inquiries into the MBTA activities Nickle reasonably believed posed a risk to public safety.

31. The MBTA terminated Nickle after and due to his providing information to the inquiries being conducted by those public bodies into MBTA activities Nickle reasonably believed posed a risk to public safety.

32. The MBTA's termination of Nickle was a retaliatory action in violation of Section 185(b)(2) of Massachusetts General Laws Chapter 149.

33. Nickle has suffered damages as a result of the MBTA's retaliatory action in violation of Section 185(b)(2) of Massachusetts General Laws Chapter 149.

COUNT TWO

(Retaliatory action in violation of Massachusetts General Laws Chapter 149 section 185(b)(1))

34. Plaintiff repeats and incorporates by reference herein each and every paragraph of this Complaint.

35. The plaintiff Ronald W. Nickle disclosed or threatened to disclose to MBTA supervisors or to public bodies activities he reasonably believed posed a risk to public safety.

36. The MBTA was aware Nickle had disclosed or threatened to disclose to MBTA supervisors or to public bodies activities he reasonably believed posed a risk to public safety.

37. Nickle brought the attention of MBTA supervisors to the activities he reasonably believed posed a risk to public safety by giving them written notice of those activities and affording them a reasonable opportunity to correct those activities.

38. The MBTA terminated Nickle after and due to his disclosing or threatening to disclose to MBTA supervisors or to public bodies activities he reasonably believed posed a risk to public safety.

39. The MBTA's termination of Nickle was a retaliatory action in violation of Section 185(b)(1) of Massachusetts General Laws Chapter 149.

40. Nickle has suffered damages as a result of the MBTA's retaliatory action in violation of Section 185(b)(1) of Massachusetts General Laws Chapter 149.

JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

WHEREFORE, Nickle requests that this Court enter judgment in his favor as follows:

- (i) reinstating the plaintiff to the position of MBTA Chief Safety Officer or an equivalent position, with full fringe benefits;
- (ii) compensating the plaintiff for three times his lost wages, benefits, and other remuneration, with interest thereon;

- (iii) awarding compensatory damages, including emotional distress damages, with prejudgment interest;
- (iv) ordering payment of attorney's fees and costs;
- (v) granting such other and further remedies as are available in common law tort actions; and
- (vi) granting such other and further relief as the Court deems mete and just.

Dated: March 17, 2021

RONALD W. NICKLE,
By his attorneys,



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