

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

SUFFOLK, ss.

Suffolk Superior Court
Civil Action Number: 21-0633

KENNY ORCEL
Plaintiff

v.

COMMONWEALTH OF MASSACHUSETTS,
MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY
Defendant

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2021 MAR 18 1A 10:57
MICHAEL JOSEPH DONOVAN
CLERK / MAGISTRATE

COMPLAINT

I. INTRODUCTION

1. This is an action under M.G.L. chapter 30 section 59 and M.G.L. chapter 149 section 148, for wages owed after reinstatement from suspension, and for failure to timely pay those wages owed. The action is brought by Kenny Orcel, a former Sergeant in the Massachusetts Bay Transportation Authority ("MBTA") Police Department. Mr. Orcel was indicted in March 2019, he was then suspended without pay from his employment, the indictment was dismissed by a nolle prosequi in April 2020, and Mr. Orcel was then reinstated to his position as a Sergeant with the MBTA Police Department, but the MBTA has refused to pay him the pay he is owed for the 14 month period of his suspension, in violation of M.G.L. chapter 30 section 59. This failure is also a violation of the Wage Payment law, M.G.L. chapter 149 section 148, entitling Mr. Orcel to triple damages and attorneys fees.

II. JURISDICTION AND VENUE

2. Jurisdiction over this matter lies in this Court pursuant to M.G.L. Chapter 212 section 3 and M.G.L. Chapter 149 section 150. The amount in dispute exceeds \$100,000.00, prior to any trebling of damages.

3. Venue in this Court is proper because the illegal employment practices complained of herein occurred in Boston, Suffolk County, Massachusetts.

4. On 11/20/20, Mr. Orcel filed a complaint with the Massachusetts Attorney General's Fair Labor Division regarding the unpaid wages set forth in this complaint. On 11/23/20, The Attorney General's Fair Labor Division issued a Private Right of Action Letter to Mr. Orcel with regard to the complaint of unpaid wages he had filed. Mr. Orcel has therefore exhausted his administrative remedies regarding his claims under M.G.L. chapter 149 section 148.

III. THE PARTIES

5. Kenny Orcel is a resident of Chelmsford, Middlesex County, Massachusetts. At all times relevant to this complaint, he was an employee of the Commonwealth of Massachusetts. Prior to being a employee of the Commonwealth of Massachusetts, Mr. Orcel served for 22 years in the U.S. Army, and retired from the U.S. Army with an honorable discharge.

6. Defendant MBTA is a political subdivision of the Commonwealth of Massachusetts pursuant to M.G.L. c.161A §2, with a principal place of business in Boston, Suffolk County, Massachusetts. The Commonwealth of Massachusetts, MBTA was Plaintiff's employer for all purposes of M.G.L. Chapter 30 section 59, and M.G.L. Chapter 149 section 148

IV. FACTUAL BACKGROUND

7. Kenny Orcel started working as a police officer with the MBTA Police Department in 2008. In June 2017, Mr. Orcel was promoted to the rank of sergeant.

8. During July 26, 2018 and continuing through the early morning of July 27, 2018, an MBTA patrol officer had occasion to remove an individual from an MBTA subway car, after the subway had reached its last stop and was being put out of service. In the course of removing this individual from the Ashmont MBTA station, the patrol officer struck

this individual several times in his leg with his baton. After the individual was removed from the Ashmont station, later that evening he was arrested by the patrol officer.

9. The patrol officer wrote in an arrest report he filed that the individual had assaulted him and that there was probable cause to arrest the individual.

10. After reviewing videos of the incident as well as arrest reports and questioning individuals involved, it was determined by MBTA Police Department managers and supervisors that Mr. Orcel had acted improperly in relation to his supervisory duties over the patrol officer regarding the arrest report which had been filed.

11. The actions of the patrol officer, Mr. Orcel and another supervisory officer were brought to the attention of the Suffolk County District Attorney's Office.

12. On March 6, 2019, a Suffolk County Grand Jury indicted Mr. Orcel for allegedly having engaged in the crime of false reporting by a public employee (MGL chapter 268 section 6A) and allegedly being an accessory after-the-fact to assault by means of a dangerous weapon (MGL chapter 274 section 4). Essentially, Mr. Orcel was being charged with having attempted to cover up the improper actions of the patrol officer under his supervision.

13. On or about March 7, 2019, Mr. Orcel's employment was suspended by the MBTA Police Department, and his pay was stopped.

14. Mr. Orcel pleaded not guilty to the indictment.

15. On April 6, 2020, Mr. Orcel's case was closed when the District Attorney's Office filed a nolle prosequi in the case.

16. As a result of the nolle prosequi, the criminal proceedings against Mr. Orcel were terminated without a finding or verdict of guilty on any of the charges on which he had been indicted.

17. Mr. Orcel returned to work at the MBTA Police Department in April 2020. In April 2020 Mr. Orcel's pay was continued, until the termination of his employment in July 2020.

18. Through his union representative, Mr. Orcel requested that he be paid his salary from the time of his suspension in March 2019 through the resumption of his employment in April 2020. The response from the MBTA Manager to the union representative, was that Mr. Orcel would have to file a lawsuit in order to be paid.

19. In previous situations in which MBTA Police Officers were suspended due to criminal indictments and their salaries not paid, but then returned to duty when there had been no finding or verdict of guilty, the officers were paid the salary they would have received during the time that they had been suspended.

20. Mr. Orcel has never been paid the monies he would have earned in salary from the time of his suspension in March 2019 through his reinstatement in April 2020.

21. The monies owed to Mr. Orcel for the 14 months of his suspension total at least \$101,388.

COUNT I
AGAINST COMMONWEALTH OF MASSACHUSETTS, MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY FOR VIOLATION OF
MGL CHAPTER 30 SECTION 59

22. Plaintiff realleges and incorporates by reference as if fully stated herein paragraphs 1-21 above.

23. Pursuant to MGL chapter 30 section 59, an employee of the Commonwealth whose employment has been suspended during the pendency of an indictment for misconduct in office, and whose pay was suspended during the pendency of such indictment, is to receive all compensation or salary due to him or her for the period of his or her suspension, if the criminal proceedings against that person were terminated without a finding or verdict of guilty on any of the charges on which he or she was indicted. Mr. Orcel meets all of the requirements for payment of his wages and compensation during the period of his suspension and the suspension of his pay, as set forth in this statute.

24. By failing and refusing to pay Plaintiff the salary he would have earned during the time that his employment was suspended between March 2019 and April 2020, Defendant has violated M.G.L. Chapter 30 section 59.

25. The money owed by Defendant to Plaintiff under M.G.L. Chapter 30 section 59 totals at least \$101,388.

WHEREFORE, Plaintiff demands that this Court enter Judgment in his favor and against Defendant, in an amount to be determined by this Court, including monies to compensate him for lost pay, interest, costs, and such other and further relief that this Court deems just and proper.

COUNT II
AGAINST COMMONWEALTH OF MASSACHUSETTS, MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY FOR VIOLATION OF
MGL CHAPTER 149 SECTION 148 AND 150

26. Plaintiff realleges and incorporates by reference as if fully stated herein paragraphs 1-25 above.

27. Plaintiff's employment as a police officer constitutes employment by Defendant as a "workman" pursuant to M.G.L. chapter 149 section 148, and is otherwise covered by M.G.L. chapter 149 section 148.

28. As is set forth in paragraphs 12-21 and 23-25 above, Defendant has failed to pay Plaintiff at least \$101,388.00 in wages he is owed.

29. By failing to pay Plaintiff the wages he was owed pursuant to M.G.L. chapter 30 section 59, Defendant has violated M.G.L. chapter 149 section 148.

WHEREFORE, Plaintiff demands that this Court enter Judgment in his favor and against Defendant Commonwealth of Massachusetts, Massachusetts Bay Transportation Authority, in an amount to be determined by this Court, including monies to compensate him for interest, costs, lost wages, treble damages, attorneys fees, and such other and further relief that this Court deems just and proper.

KENNY ORCEL
By his Attorney,



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