



EFiled: May 31 2017 08:12AM HAST
Transaction ID 60663840
Case No. 17-CE-01-896

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

ROBERT JOSEPH ADAMS,

Complainant,

and

DEPARTMENT OF
TRANSPORTATION, Airports Division,
Maui District, State of Hawaii,

Respondent.

CASE NO. 17-CE-01-896

DECISION NO. 489

FINDINGS OF FACT, CONCLUSIONS OF
LAW; DECISION AND FINAL ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW; DECISION AND FINAL ORDER

Part I: Finding of Facts

On April 28, 2017, ROBERT JOSEPH ADAMS (Complainant), filed a Prohibited Practice Complaint with the HAWAII LABOR RELATIONS BOARD (Board.) The Complaint alleged that he was wrongfully terminated from his position, by letter from Marvin A. Moniz, Maui District Airport Manager, dated April 7, 2017, as a Janitor II from the Airports Division—Maui District of the Department of Transportation, State of Hawaii.

On April 28, 2017, the Board filed NOTICE TO RESPONDENT OF PROHIBITED PRACTICE COMPLAINT; NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING ON THE MERITS OF THE PROHIBITED PRACTICE COMPLAINT.

On May 3, 2017, the Complainant filed with the Board his prehearing statement pursuant to the deadline set forth in the Board's Notice of Prehearing Conference.

On May 4, 2017, the Respondent, DEPARTMENT OF TRANSPORTATION, Airports Division, Maui District, State of Hawaii filed with the Board its answer to the Prohibited Practice Complaint filed on April 27, 2017.

On May 4, 2017, the Respondent filed with the Board its prehearing conference statement pursuant to the deadline set forth in the Board's Notice of Prehearing Conference.

On May 9, 2017 at 9:00 a.m., the Board held a Prehearing Conference in the Board's Hearing Room, 434, at 830 Punchbowl Street, Honolulu, Hawaii 96813. Claire Chinn, Deputy Attorney General, entered her appearance on behalf of the Respondent, State of Hawaii, Department of Transportation on the record. The Board took note that at 9:10 a.m. the Complainant, John Joseph Adams, was not present at the prehearing conference. He did receive notice of the Prehearing Conference in the Board's April 28, 2017 Notice of Prehearing Conference, and filed a Prehearing statement by the deadline set forth in the Notice. The Complainant called the Board Office on May 8, 2017 to indicate that he would not be attending the Prehearing Conference. The Complainant did not notice or file a motion with the Board seeking a continuance of the Prehearing Conference. The Complainant made no arrangements with the Board to participate in the prehearing conference via telephone conference call. After reiterating the deadlines set forth in the April 28, 2017 Notice of Hearing on the Merits, the Prehearing Conference was adjourned.

On May 10, 2017, the Board Filed SECOND NOTICE OF HEARING ON THE MERITS OF THE PROHIBITED PRACTICE COMPLAINT; DEADLINES FOR DISPOSITIVE MOTIONS, ISSUANCE OF SUBPOENAS, FILING AND EXCHANGE OF WITNESS LISTS AND EXHIBITS. The Second Notice restated and reaffirmed the date, time, and location of the Hearing on the Merits to be May 25, 2017 at 9:30 a.m., in the Board's Hearing Room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii 96813, and stated, *inter alia*, "All parties have the right to appear in person and to be represented by counsel or any other representative. A party, representative, or witness must appear in person at a hearing on the merits." (*Emphasis added*)

On May 15, 2017, the Respondent filed with the Board RESPONDENT STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION'S MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF CRAIG T. DELA CRUZ; EXHIBITS A - D; CERTIFICATE OF SERVICE.

On May 25, 2017, at 9:30 a.m. the Board convened the Hearing on the Merits. Claire Chinn, Deputy Attorney General, entered her appearance on behalf of the Respondent, State of Hawaii, Department of Transportation on the record. The Complainant, John Joseph Adams, was not present at the Hearing on the Merits.

Part II: Conclusions of Law

Hawaii Revised Statutes (HRS) §§89-5(i)(3) & (4), provides that the Board shall have the authority to resolve controversies under this chapter, conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such action with respect thereto as it deems necessary and proper (emphases added).

Pursuant HRS §89-5 and §91-12, the Board has the authority to take those actions through decisions and orders.

Furthermore, pursuant to HRS § 91-10(5), which is part of the Hawaii Administrative Procedures Act codified in HRS chapter 91 and governing contested cases, “the party initiating the proceeding shall have the burden of proof, including the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.” Accordingly, Complainant had the burden of proof and burden of persuasion in this matter. By failing to appear and prosecute his case after due notice of the hearing date, time, and location, Complainant has failed to meet his burdens under the Hawaii Administrative Procedures Act, and dismissal is therefore appropriate.

Additionally, the Hawaii Intermediate Court of Appeals has held:

A plaintiff who brings an action against a party clearly and unquestionably has the duty to proceed with the cause in a diligent fashion. Plaintiffs who fail to prosecute their causes of action in accordance with this rule can be subject to dismissal. In deciding whether to grant a motion to dismiss for failure to prosecute, the court also considers the degree of prejudice that enures to the defendant caused by the plaintiff’s delay. . . .

Ellis v. Harland Bartholomew & Assocs., 1 Haw. App. 420, 427, 620 P.2d 744, 749 (1980) (internal citations omitted). Although in the present case the Board dismisses the Complaint *sua sponte*¹ rather than by motion, the Board also finds that HRS § 377-9(b), which is made applicable to prohibited practice proceedings by HRS § 89-14², requires the Board to hold a hearing on the merits of a prohibited practice complaint no more than forty days after the filing of the complaint³. By failing to appear at the hearing on May 25, 2017, Complainant has rendered it impossible for the Board to comply with the requirements of HRS § 377-9(b) that the hearing be held no more than forty days after the filing of the Complaint.⁴

¹ “The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” Link v. Wabash R.R. Co., 370 U.S. 626, 630-31, 82 S. Ct. 1386, 1388-89 (1962), *cited with approval* by Compass Dev. V. Blevins, 10 Haw. App. 388, 395, 876 P.2d 1335, 1339 (1994).

² HRS § 89-14 provides in relevant part, “[a]ny controversy concerning prohibited practices may be submitted to the [B]oard in the same manner and with the same effect as provided in section 377-9[.]”

³ HRS § 377-9(b) provides in relevant part, “[t]he [B]oard shall fix a time for the hearing on the complaint, which shall be not less than ten nor more than forty days after the filing of the complaint or amendment thereof[.]”

⁴ The Board also notes that HRS § 89-5.1 provides in relevant part, “in any hearing conducted by the [B]oard, all parties shall be given written notice of the hearing by first class mail or by electronic service through a company designated by the [B]oard *at least fifteen days before the scheduled date of the hearing* (emphasis added). Accordingly, because the Complaint was filed on April 27, 2017, and the fortieth day after the filing of the complaint is June 6, 2017, and the Board is required to provide at least fifteen days’ notice prior to a hearing, the Board could not reschedule the hearing following Complainant’s failure to appear on May 25, 2017, and still comply with the requirements of HRS § 377-9(b).

DECISION AND FINAL ORDER

THEREFORE, the Board finds, *sua sponte*, that the Complainant has failed to prosecute the Prohibited Practice Complaint and dismisses the instant complaint. Further, the Board dismisses the Respondent's MOTION TO DISMISS PROHIBITED PRACTICE COMPLAINT OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT on the grounds of being moot.⁵ The case is now closed.

Dated: Honolulu, Hawaii, May 26, 2107

HAWAII LABOR RELATIONS BOARD



Sesnita A. D. Moepono

SESNITA A. D. MOEPONO, MEMBER

J. N. Musto

J N. MUSTO, MEMBER

Copy sent to:

John Joseph Adams, *pro se*
Claire W.S. Chinn, Deputy Attorney General

⁵ Mootness occurs when events have so affected the relations between the parties that the two conditions for justiciability – adverse interest and effective remedy – have been compromised. See, Lathrop v. Sakatani, 111 Hawaii 307, 312-13, 141 P.3d 480, 485-86 (2006).