

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
BRENDA PATTERSON,
Complainant

v.

DOCKET NO. 12-BEM-02939

AHOLD USA, INC.,
Respondent

Appearances:

Kevin C. Merritt, Esq. and Paul F. Kelly, Esq. for Brenda Patterson
Daniel B. Klein, Esq. and Kelsey P. Montgomery, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 24, 2012, Brenda Patterson, who is African-American, filed a complaint with this Commission charging Respondent with discrimination on the basis of her race and color, in violation of M.G.L.c.151B sec.4(1) The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on March 7-10 & 14, 2016. After careful consideration of the entire record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Brenda Patterson resides in Boston, Massachusetts. Complainant graduated from high school in 1969 or 1970. In 1971 she began working for Stop & Shop as a data processing clerk in what was then known as the personnel department. At the time, Stop and Shop operated a food business (Stop & Shop) and a retail business (Bradlees).¹ (T. 65, 250) For the majority of her 40 year tenure with Stop & Shop, Complainant worked at the corporate headquarters in Quincy, Massachusetts.

2. Respondent Ahold, a multi-national food retailer, acquired Stop & Shop sometime before 2004. (T. 379)

3. The personnel department later became known as Human Resources (“HR”) and Complainant worked in a sub-division of the department called Human Resources Information Systems (“HRIS”) that dealt with HR data management. (T. 288, 319, 453)

4. In approximately 1975, Complainant was promoted to the position of “191 Processor,” where she processed promotions, demotions and similar changes in employees’ status. (T. 66-67)

5. In the 1990s, Complainant was promoted to the position of “Group Head,” which involved non-supervisory oversight of processors, vacation clerks, sick leave clerks and bereavement clerks as well as some processing. Complainant was able to perform the duties of all the positions she oversaw and performed the processing duties when the clerks were on vacation. (T. 67-70). Complainant processed changes in employee status for the employees under her and provided feedback on their performance to management. (T. 139-140)

¹ Bradlees was sold by Stop & Shop in the 1990s.

6. In the 1990s, Complainant processed the employment promotions, demotions and similar changes for store detectives, and in that position, she trained on the PeopleSoft system (T. 70-71)

7. In 2005, Respondent underwent one of many re-organizations. At that time, Complainant began processing changes in employee status for the corporate employees and clerical employees of Stop and Shop New England. (T. 72-73)

8. As a result of the 2005 reorganization, processors' pay grade increased from seven to eight and they received a one dollar increase in pay. Complainant did not receive a grade or pay increase at the time. Complainant raised the issue with her then manager, who agreed to look into the matter, but then left the company. Complainant's new manager promoted Complainant to Grade 8 in 2009, but without a pay increase. When Complainant questioned her then manager about a raise, the response was, "One battle at a time." This manager left Respondent and Complainant never received an increase in pay. (T.76)

Early 2010

9. Prior to 2010, Stop & Shop and Giant of Carlisle, two separate companies, were subsidiaries of Respondent. Stop & Shop was the parent company of Giant of Landover, a grocery retailer based in Landover, Maryland. (T. 323) Giant of Landover was unrelated to Giant of Carlisle. (T. 323, 466) Stop & Shop's corporate headquarters were located in Quincy, Massachusetts. Giant of Carlisle's corporate headquarters were located in Carlisle, Pennsylvania.

10. As of 2010, Complainant was a corporate processor in HRIS in Quincy, MA, where she utilized a computer system called Cyborg and processed the employment changes of employees in the Stop & Shop corporate offices. (T. 288, 319, 453) Complainant received an

overall rating of “2” or “Above Expectations” in her performance appraisals for 2008, 2009 and 2010. Complainant was a good worker and easy to work with. (Testimony of MacDougall at 302-303)

11. Other employees of HRIS in Quincy in 2010 included Lisa Martignetti, R. C.², Anna MacDougall, Heather Drake and Donna Vallatini,³ all of whom are white.

12. Martignetti was a verifications clerk and performed some processing. She also compiled some earnings reports, performed filing and scanning. (T. 384-385; 803-805)

13. Roseanne Carlo and Anna McDougall were processors who processed the job changes for Stop & Shop New England store employees.

14. M. C. (white) was the director of HRIS. Judi Whitten (white) was an HRIS manager and was Complainant’s direct supervisor.

15. Maria Silvestri (white) has worked for Respondent since 2009. She has been Vice President of Human Resources since 2007.⁴ She handles all compensation and benefits issues, training, development and staffing. In 2010-2011, Silvestri reported directly to the Executive Vice President of Human Resources, Kathy Russello (white). Four HR directors, including Taunya Williams-Garrett (black), reported to Silvestri.

16. Anna MacDougall was a longtime employee who had previously processed job changes for unionized store employees and managers. Complainant trained MacDougall with regard to processing the pay of certain employees and when MacDougall was out, Complainant also assisted a secretary to perform certain of McDougall’s duties. (T. 80-82)

² With some exceptions, employees who did not testify at the public hearing are identified by their initials for privacy reasons.

³ Vallatini has worked for Respondent since 2001. In 2010 she was a database administrator. In this position she reviewed reports and performed research and troubleshooting of discrepancies in a program used by HRIS. She also did auditing and ran weekly reports and worked with Cyborg. Vallatini held the database administrator position until the reorganization, when her position was eliminated. (T. 641-643)

⁴ Silvestri is currently responsible for all of Respondent’s corporate entities in Quincy and Carlisle, PA and its IT organization in Greenville, North Carolina. (T. 440-450)

17. Alex Vespa (white) worked in Respondent's benefits department from October 2007 until he was laid off in early 2011. (T. 715-17) Vespa did not work in HRIS and did no processing while employed in the benefits position.

Reorganization 2010-2011

18. During 2010 and 2011, Respondent underwent another re-organization.⁵ The CEO of Stop & Shop resigned and the Giant-Carlisle CEO assumed oversight of Carlisle and Stop & Shop. (T. 466-7) Respondent removed corporate support functions, such as HRIS, from Stop & Shop and Giant-Carlisle, and Respondent assumed those functions. (T. 325, 466-7) Respondent then provided consolidated support services to four newly formed divisions: Stop & Shop New England; Stop & Shop New York Metro; Giant-Carlisle and Giant-Landover. (T. 323) Respondent retained its two corporate headquarters in Carlisle, Pennsylvania and Quincy, Massachusetts. (T. 325)

19. Prior to the reorganization, Stop & Shop assigned two processors to perform data entry for each market's store associates; two for New England, two for New York Metro, and two for Giant-Landover and two for Stop and Shop corporate employees (Complainant and Martignetti). Giant-Carlisle also had five processors (called HRIS Specialists), assigned to both its corporate office employees and store employees for a total of 13 processors. (Jt. 20 at 4)

20. During the reorganization, Complainant's workload increased and she was busy processing voluminous job changes as employees transferred between locations or were terminated.

21. Silvestri was a member of the steering committee which established the process Respondent would be using for reorganizing and a timeline for the process. Silvestri testified

⁵ Since 2004, the company has reorganized every 18 months to two years. (Testimony of Williams-Garrett at 380-381)

that the steering committee updated Respondent's Executive Board on their progress. (T. 453-454)

22. The steering committee drew up job descriptions and every position in Respondent (approximately 2,000) was reviewed to determine whether it should be eliminated, downgraded, upgraded, relocated or maintained. (T. 327, 332, 454-455)

23. The criteria used by Respondent to determine which current employees would fill the positions were: skills and abilities, mobility, incumbency and a numerical assessment determined by the employees' supervisor by taking the individual's last two years' overall performance appraisal rating and the most recent year's competencies and rating them on a scale of 1 to 5, with 1 being the best. Seniority was not a factor. (Testimony of Silvestri at T. 454-7)

24. In late 2010 or early 2011, as part of the reorganization Respondent decided to switch from the Cyborg HRIS system to PeopleSoft, a more advanced, web-based and flexible system whereby employees entered their own human resources information directly into the system. (T. 333, 515-19) Stop & Shop had been using Cyborg for approximately 20 years, while Giant-Carlisle used another system.

25. In approximately March 2011, while the reorganization was on-going, Respondent recruited and hired Anne Bastianelli as Director of HRIS in order to implement a transition of Respondent's HR data from the Cyborg system to PeopleSoft. Bastianelli had been in charge of a transition to PeopleSoft at a prior position. The PeopleSoft system would require certain HRIS employees to perform more analytical work to ensure the information was entered correctly. (Testimony of Bastianelli at 518-519, 524-6; T. 82-3; 279-281, 333, 382, 458-459)

26. HRIS was the last department to reorganize. (T. 519) Within a month of her hire, Bastianelli was informed by upper management that she would have to reorganize HRIS and lay off approximately 10 of the 33 people she supervised. (T. 522-524; 571-579)

27. As part of the reorganization process, employees received surveys asking whether they were willing to relocate. Complainant indicated on the survey that she was not willing to relocate because her direct supervisor Judi Whitten had reassured her that her job would remain in Quincy.⁶ (T. 85-87)

28. Bastianelli and Russello made the decisions regarding the number of HRIS employees needed and which jobs would be located in Quincy and which were going to Carlisle. (Testimony of Silvestri)

29. The re-organized HRIS group would consist of 10 processors and five analysts, in addition to several supervisory positions. (Jt. Ex. 20 at 2; T. 521, 524-27) The newly created analyst positions were to be filled by subject matter experts in the systems that supported HRIS who would analyze data trends and process requests for data analysis and reports, among other duties. (Jt. Ex. 20 at 2)

30. After an organizational design was adopted and job descriptions were created, renewed or revised, Respondent selected current employees to fill the positions within the new organizational design. Management decisions were then communicated to employees. (T. 327-28) Bastianelli and Williams-Garrett were primarily in charge of carrying out the reorganization within HRIS, which completed its “staffing and selection” process in July 2011. (T. 337-38)

31. Bastianelli testified that she “held Taunya’s hand” (referring to HR director Williams-Garrett) through the staffing and selection process because she would not otherwise

⁶ Complainant testified that she received two surveys, one before and one after Bastianelli was hired. On the first survey, Complainant checked off that she was willing to relocate, but left blank the portion of the survey that asked specifically whether she would relocate to Carlisle or any other of Respondent’s locations.

have known how to gather and interpret the staff's surveys and assessments in order to follow Respondent's process for reorganizing. (T. 587)

32. Bastianelli and Williams-Garrett decided to assign the 10 processors as follows; two processors for each new division's store employees (two for Stop & Shop-New England, two for Stop & Shop-New York Metro, two for Giant-Landover and two for Giant-Carlisle) and two corporate processors to be based in Carlisle, where most of the corporate and HR positions would be located after the reorganization, including the new supervisor of corporate processing. (Jt. Ex. 20 at 4. T. 341-44; 406, 531; 601) As a result, Respondent eliminated three processor positions.

33. The two Quincy-based corporate processing positions held by Complainant and Lisa Martignetti⁷ were eliminated and their responsibilities were incorporated into two new corporate processor positions located in Carlisle.

34. S. A. and V. C. (both of whom are white) were selected for the two corporate processor positions based in Carlisle because they were incumbents, had the best assessment scores and were located in Carlisle. (T. 436, 534; Jt. 20 at 4) A third HRIS specialist for Giant-Carlisle, who is white, was not selected because her assessment score was lower and she was ultimately terminated from Respondent. (Id; T. 339-41, 530, 534-5)

35. For the Giant-Landover Division, Respondent selected processors based on incumbencies. Because there were three incumbents, the two with the best assessment scores, T. W. (black) and C.S., (white) were chosen and the third person, C. W. (white) was not selected and later obtained another job within Respondent (Jt. 20 at 4-6; Garrett-Williams at 376-77; Bastianelli at 562)

⁷ Complainant stated that Martignetti was not a corporate processor. Her title was verifications clerk and she did some processing.

36. Roseanne Carlo, one of the two processors assigned to Stop & Shop-New England, remained in one of the New England processor positions because she was an incumbent. (Jt. 20 at 5; T. 354-56) The other New England processor, Anna MacDougall, planned to retire at the end of August 2011. (T. 599-601)

37. In July 2011, Heather Drake,⁸ a database administrator/auditor whose position had been eliminated,⁹ was placed in the New England processor position to be vacated by MacDougall. According to Respondent's witnesses, Drake was selected for the position because she had the best assessment score among the pool of candidates and had relevant experience and systems skills. (Jt. 20 at 5; T. 356-57; 759-61;764)

38. In late July 2011, Bastianelli and Williams-Garrett met with each associate to inform them whether they were selected for a position. (T. 334-38, 528-29) Five HRIS associates were told that their jobs were eliminated, that they had not been placed in other jobs and that they would be terminated unless they found another job within Respondent. (T. 335-37, 339, 357-58, 529-30; Jt. 20 at 4-5) The five HRIS associates who were "displaced" after completion of the "staffing and selection process" were Complainant, a processor; Lisa Martignetti, a verification clerk; J. C. and Donna Vallatini, a database administrator, all in Quincy and Terry Wilson in Carlisle. (T. 96-97; 680-681)

39. On Thursday, July 21, 2011, Bastianelli and Williams-Garrett met with Complainant and informed her that her position was being eliminated and her duties were to be transferred to Carlisle, PA. She was told that she was not selected for one of the Carlisle positions because she did not wish to relocate. They told her that her employment would terminate on December 30, 2011. (Stip. Fact. No. 7; T. 148, 345, 535-37) Williams-Garrett presented Complainant with a

⁸ Drake worked for Stop & Shop and Respondent for 38 years in various positions, including as a processor from 1999-2003. She retired in 2015. (T. 753; 755-758; 760-761; T. 766-767; 770; 772-773)

⁹ Her job responsibilities were moved to a new analyst position staffed by Pam Bayliss in Carlisle.

letter detailing the elimination of her position and her separation date. The letter stated that she would not be eligible for severance pay if she left Respondent prior to December 30, 2011.

Bastianelli and Williams-Garrett encouraged Complainant to apply for posted positions and said they would support her through the process. (T. 349; 150-151;536-7; J-3)

40. After learning that her job had been eliminated, Complainant asked Bastianelli if she could move into MacDougall's position and was told that she could not apply for the position. Complainant had long known that MacDougall was retiring and did not know that Drake had already been selected for the position as part of the reorganization. (Testimony of Complainant)

41. On Friday, July 22, 2011, Complainant told Bastianelli that she would be willing to relocate to Carlisle. (T. 91, 152; 537-38) Bastianelli told her there was no open corporate processor position and to speak with Williams-Garrett. (T. 537-38) The same day Complainant told Williams-Garrett that she would be willing to relocate. Williams-Garrett told her that it was too late because they had already made all the staffing and selection decisions and Bastianelli was traveling to Carlisle the following Monday, July 25, to tell S. A. and V. C that they had been selected for the corporate processor positions. (T. 350-52, 538-39)

42. According to Bastianelli, Complainant would not have been selected over S. A. or V. C. even if she had been willing to relocate to Carlisle because her performance assessment score was lower than theirs. (Jt. 20 at 4; T. 439, 539-40) Williams-Garrett told Complainant that if she wanted to relocate to Pennsylvania she could apply for another open position there. Complainant did not want to go to Carlisle for any position other than her present position and she did not apply for another position in Carlisle.¹⁰ (T. 93; 350-52, 538)

¹⁰ Following the selection of S.A. and V.C., Complainant was sent to Carlisle to train them on the Cyborg system; S.A. and V.C. also came to Quincy for training with Complainant.

43. In the month before MacDougall's retirement, MacDougall trained Drake with regard to processing for union contracts and provided her with written notebooks she kept that contained information specific to the job functions. (Testimony of MacDougall)

Payroll Positions

44. Respondent had kept two payroll positions open until the HRIS employees learned of their status. The two open positions were lower paying than the processor positions and would be located in Freetown, MA, about 30 miles away from Quincy. (T. 93-4, 161-65, 359-60; 543-44)

45. Martignetti and J. C. applied and were hired for the payroll positions.¹¹ After their hire, they remained in Quincy until approximately mid-October, when the jobs moved to Freetown, MA. (Testimony of Vallatini at 682-683)

46. Complainant and Vallatini did not apply for the payroll positions. Complainant testified that she did not to apply for a payroll position because she assumed Martignetti and J. C. would get the positions. She assumed she would not be hired for a payroll job that she had never performed, as she had already been rejected in favor of Drake for a processing job that she had performed for 40 years. (T. 98-99)

47. Williams-Garrett testified that she encouraged Complainant to apply for a payroll position and believed she would have been selected because Complainant worked closely with payroll and was familiar with its operation. Williams-Garrett did not discuss any other open positions with Complainant. (T. 360-61)

Analyst Positions

48. Of the five newly created analyst positions, the three non-PeopleSoft positions were filled with existing employees, including Judi Whitten,¹² (Jt. 20 at 2-3) The credible testimony of

¹¹ The record does not reflect the date of their application and hire.)

Complainant and Bastianelli was that while Whitten was purportedly “staffed” into an analyst position, she did not want the position and never actually performed the job because she was “transitioning” and “looking for another job.” (T.174-175; T. 631-633) Six months later, in around January 2012, Whitten took another position within Respondent, creating an open analyst position. (See Finding of Fact #64)

49. The two remaining analyst positions requiring PeopleSoft skills were externally posted. (Jt. 20 at 2-3. T. 361-3; 421, 423;526-27; 541-42) In August, 2011, Bastianelli told her team that she was seeking to fill the two analyst vacancies with external candidates because no internal candidates had the necessary PeopleSoft skills and she told Complainant and the others not to apply for the positions. (T. 282-83, 541-3; Jt. 20 at 2; T. 362-63; 550-51)

50. Complainant nevertheless asked Bastianelli about applying for the analyst position. She told Bastianelli that many years earlier she had trained for a year on PeopleSoft and performed data entry using PeopleSoft. (T. 141, 145, 282-83, 545-46) Bastianelli testified that PeopleSoft had changed significantly over the more than 20 years since Complainant last used it and her experience was not current or analytical in nature. Complainant offered to attend training on PeopleSoft, however, according to Bastianelli, training would not have provided Complainant with the subject matter expertise needed to perform the analyst role. (T. 545-547) Complainant testified that she also asked recruiter S. D. (black) about the analyst job and S. D. told her she couldn’t apply for it and sent her back to Bastianelli. (T. 106-7)

51. On a Friday night in early September 2011, Russello called Bastianelli to inform her that Respondent had decided not to switch its HRIS system to PeopleSoft after all. Bastianelli

¹² The others were Trisha Loring and Pam Bayliss. Bayliss went to Carlisle where she assumed Drake’s former duties. (T. 764)

was not happy with the decision. (T. 547-48)¹³ The following Monday, at a weekly meeting, Bastianelli informed her team that the changeover to PeopleSoft was not going forward.

52. Respondent then reduced the number of open analyst positions from two to one and dropped the PeopleSoft requirement from the posted analyst job description.¹⁴ (T. 549-551) Bastianelli did not inform her team that the PeopleSoft requirements for the position had been dropped. (Jt. 20 at 2, T. 362, 364-65, 421-23, 549-51) Complainant testified credibly that she was not aware of the re-posted analyst position and did not submit an application for the position.

53. Donna Vallatini,¹⁵ whose job was to end in mid-October, testified that she searched the Respondent's job postings daily, discovered the analyst posting online and decided to apply. She did not have PeopleSoft skills, and did not recall whether the job posting contained a requirement of PeopleSoft skills at the time of her application. Vallatini told no one at work that she was applying for the position, even though she and Martignetti had been close friends for ten years and she had previously told Martignetti that she was not applying for the position. Vallatini was the only internal candidate to apply for the analyst position.

54. On September 13, 2011, Vallatini brought her completed application to Bastianelli for her signature and verification of her most recent performance rating¹⁶ and she was offered the analyst position on September 29, 2011. (T. 366,552-55; 641-643; 650-53; J. 2; Jt. 22.)

55. On Friday, September 30, Complainant and Martignetti learned that Vallatini received the analyst job because Complainant had processed the paperwork for her job change.

¹³ Bastianelli, who had been recruited and hired specifically for her expertise in PeopleSoft, called Respondent's decision to abandon the planned conversion to PeopleSoft a "bait and switch" by Respondent.

¹⁴ The only analyst position posting in the record states a "people soft" requirement. (J-20)

¹⁵ Vallatini testified that she did not apply for one of the payroll positions because it was too far from home.

¹⁶ The signature of a supervisor and the latest evaluation rating were required on an internal job application

Martignetti,¹⁷ who had been best friends with for Vallatini for a decade, felt betrayed by Vallatini for not telling her about applying for the job. When Vallatini came to work on September 30, Martignetti angrily confronted her about having gone behind her back to get the position. Complainant and Martignetti testified that Vallatini responded that Bastianelli told her to apply for the position. I credit their testimony.

56. Bastianelli denied telling Vallatini to apply for the position. Bastianelli and Vallatini each testified that they had never discussed the position before Vallatini applied for it. (T. 551-553; 652-653) I do not credit their testimony. I find that Bastianelli told Vallatini about the position and draw the reasonable inference that Bastianelli intentionally did not disclose the change in the analyst position to her team in order to prevent Complainant, who was the only remaining laid off HRIS employee, from applying and to preserve the position for Vallatini.

57. On November 17, 2011, Complainant met with Williams-Garrett who provided her with a final copy of the Separation and Release Agreement and the Older Workers Benefits Protection Act check-list and an Estimated Severance Benefits Information form. (Stip. Fact No. 8; T. 186; 369-71) Respondent was offering Complainant 12 weeks' severance pay totaling \$11,424. (Jt. Ex. 4)

58. On December 19, 2011, Complainant completed an application for the position of Merchandising Administrative Support within the merchandizing department. (Jt. 17; T. 108-11; 372; 559) Bastianelli signed off on the application and incorrectly verified Complainant's last performance rating, by initially checking off the category "Meets Job Requirements." Complainant, whose last rating was "Exceeds," brought the error to the attention of Bastianelli, who corrected her mistake. (T. 110-13, 189, 559-61) Complainant submitted the application to recruiter S.D.

¹⁷ Martignetti had already accepted the payroll position, but was still working out of Quincy.

59. Complainant testified that another HR recruiter asked her to submit her signed severance agreement. Complainant told the recruiter that she did not approve of the agreement and would not sign it. She stated that she told the recruiter that she was somewhat dubious about her chances for a obtaining an alternate job because Bastianelli did not even know her rating and had turned her down for positions she had asked about. (T. 115-117)

60. Complainant took a week's vacation from December 21 to 28. She worked on December 29 and December 30, 2011.¹⁸ (T. 192-93; 195-96)

61. On December 29 or 30, 2011, Complainant contacted the recruiter and explained that she had submitted an application for a merchandizing position to S.D. and was waiting to hear back regarding this position. I find that Complainant was indicating that she still had a reasonable expectation of employment with Respondent and held out hope that her employment would not end. December 30 was Complainant's last day of work.

62. According to Williams-Garrett, who was not involved in the interview process for the merchandizing position, the successful candidate had previous merchandising experience, which Complainant did not have. (T. 371-372) Bastianelli was not the hiring manager for the position. (T. 188, 561)

63. In around mid-January, 2011, Williams-Garrett called Complainant to follow up because she had not received a copy of Complainant's signed separation agreement. Complainant testified that Williams-Garrett told her, "You know the drill. We'll call you if something comes up." Williams-Garrett denied making such a statement and testified that Respondent had no policy of calling back laid off employees to their prior or similar roles. (T. 374-376) Complainant told Williams-Garrett that she would not sign the papers because it was not about the money; she needed a job. (T. 116-118)

¹⁸ Complainant filed her MCAD complaint 300 days after December 30, 2011.

64. Complainant testified credibly that she was aware of numerous instances where Respondent recalled employees back from lay-off and named an individual from HR who had been recalled after a lay-off, but did not return to Respondent. I credit Complainant's testimony.

Analyst Position Opens Up

65. In late January 2012, Judi Whitten left the analyst job after six months for another position on Respondent's Oracle team. (Jt. 20; T. 631-32) Whitten's move created an open analyst position which Respondent then posted internally and externally. (T. 563; 630-631) The unrebutted testimony of Complainant and Bastianelli was that Whitten never performed the analyst job and I find that Whitten was essentially a place-holder for the position until transferring to the Oracle team.

66. Drake, who in August 2011 had been placed in the New England processor position vacated by MacDougall, testified that a manager from Giant-Landover called to tell her about the analyst opening vacated by Whitten and urged her to apply. Drake applied for the analyst position after exactly six months in the New England processor position and was offered the analyst position in February 2012. Employees of Respondent were required to remain in a position for at least six months before transferring to another position. (T. 563, 773-75, 776-77; 791; T. 6)

Stop and Shop New England Processor Position Opens Up

67. Drake's transfer to an analyst position in February, 2012 created an opening for the Stop & Shop New England processor position (previously performed by MacDougall) In February 2012, Respondent posted the New England processor position internally and externally. (Jt. 20 at 6; T. 563-64) Multiple internal and external candidates applied for the job. While the

job remained open, Drake performed both the processor and analyst jobs.¹⁹ (Jt. 20 at 6-7; T. 564-65, 778)

68. In February 2012, Complainant learned of the New England processor position. (T. 120, 132; T. 201-05)

69. On February 28, 2012, in an email exchange, Martignetti asked Complainant whether she was going to apply for the processor position or another vacant position, and Complainant responded that she did not think so. (T. 12-21; 201-02; Jt.Ex. 10) Complainant did not apply for the position.

70. In April 2012, Alex Vespa, who had stayed in touch with former colleagues in Respondent's benefits department since his lay-off a year earlier, received a call from a former co-worker informing him about the open New England processor position. Vespa had no processing experience at Respondent, but had done some processing at a subsequent job. Vespa was interested in returning to full-time employment at Respondent. Vespa applied online for the position in around mid-April 2012, interviewed in early May²⁰ and submitted a hard copy application on May 30, 2012. (Jt. 7; Jt. 8; T. 714-21) In June 2012, Respondent offered Vespa the position, which he began on June 12, 2012. He continued to work in the position at the time of the public hearing.

71. Bastianelli testified that she was not the hiring manager for the processor position, did not know Vespa beforehand and stated they had never spoken prior to his starting the job. (T. 565-566)

¹⁹ Drake testified that employees were required to remain in the same job for at least six months before moving to another position. Her application for the analyst position was dated six months after she was placed in the processor position.

²⁰ At his deposition, Vespa testified that he interviewed with Bastianelli. At the public hearing, he testified that his deposition testimony was incorrect and he had interviewed with someone else.

72. Vespa testified that he had a “learning curve” and needed training to perform the processing position, and relied on more senior employees. In addition, Respondent flew in an employee from New York in order to train him. (T. 743-744)

73. Complainant later learned from MacDougall, who kept in touch with her former co-workers after her retirement, that Vespa was going to get the job or was already performing the job.

74. MacDougall testified that she later visited the Quincy location and observed Vespa working at the processor position and told Complainant he had been hired.

75. At the time of her termination, Complainant earned approximately \$51,496 per year. (Jt. Ex. 17)

76. Following her termination, Complainant collected unemployment compensation for one year, totaling \$28,600. (T. 221)

77. In 2013, Complainant began working on an as-needed basis at Kit Clark Senior Services, an adult day health care program. The position subsequently became permanent and for the past two years, Complainant has worked 30 hours per week at a current rate of \$10.40 per hour. She continued to be employed at Kit Clark at the time of the public hearing.

78. In 2013, Complainant’s gross earned income was \$9,509. In 2014, Complainant’s gross earned income was \$17,163. In 2015, Complainant’s gross earnings were \$16,614. From January 1, 2016 through March 14, 2016 (approximately 10 weeks) Complainant’s gross earnings were \$3,120, based on 30 hours per week @\$10.40 per hour. (30 hours x \$10.40 x 10 wks.) (T. 223; Jt. Exs. 11, 17, 18, 19) Complainant’s total gross earnings from 2013 to the time of the public hearing equal \$46,406. ($\$9,509 + 17,163 + 16,614 + 3,120 = \$46,406$)

79. Complainant, who was 59 at the time of her lay-off, testified that she continued to inquire about a job with Respondent because she had "seven years left." (T. 238) I find this statement indicates Complainant's intention to work until age 66.

80. Had Complainant remained at her position at Respondent, assuming a salary of 51,496 and 3% increase in wages each year she would have earned, through the date of the public hearing the sum of \$231,853.

81. Had Complainant remained at her job at Respondent until the age of 66 in June 2018, assuming a salary of \$51,496 and assuming a 3% increase in yearly wages from the date of the public hearing until June 2018, her front pay totals \$117,764.06.

82. Complainant testified that despite her hard work, the people she worked with for 40 years did not treat her as worthy. She processed documents on a daily basis containing the words "equal opportunity" and but felt Respondent did not provide her with equal opportunity. She stated that while Respondent turned down her offer to pay for her own training, the company was willing to re-hire Vespa and to train him. (T. 125-126) Complainant testified that over the many years she was employed by Respondent she had seen the company find jobs for other people and knew that Respondent could find a job for her. She believed up until the end of her employment that Respondent would find a job for her. Complainant was upset that Drake, who did not want the processing job, was given the job instead of her. She was upset that Vespa, who left Respondent prior to his scheduled last day and did not honor his commitment, was hired into a job that she could have performed. She testified that in view of her 40 years of hard work and loyalty to the company, she expected, at the very least, that Respondent would have told the truth about its hiring process. She felt she was treated adversely by Respondent in relation to a number of her white co-workers. I credit her testimony.