

CHRISTOPHER A. GRAY, Esq. 01468-2007
SCIARRA & CATRAMBONE, LLC
100 Horizon Center Blvd.
Hamilton, NJ 08691
Phone: (856) 888-7066
Fax: (973) 242-3118
Attorneys for Brian Pio

RECEIVED & FILED

NOV 24 2015

SUPERIOR COURT OF NEW JERSEY
SALEM COUNTY CIVIL PART

IN THE MATTER OF
BRIAN PIO
and the COUNTY OF
SALEM

:
: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION - SALEM COUNTY
:
: DOCKET NO.: L-219-15

:
: COMPLAINT IN LIEU of
: PREROGATIVE WRIT
:

Plaintiff/Appellant Corrections Officer Brian Pio ("PIO" or "Officer Pio") brings this matter as an appeal of a decision by his employer, Salem County (the "County" or "Salem"), located in the County of Salem, State of New Jersey, wherein Officer Pio alleges and says as follows:

PRELIMINARY STATEMENT

Officer Pio brings the Preoperative Writ challenging the imposition of a 1 day suspension issued as retaliation for blowing the whistle on Salem County's violation of N.J.A.C. 10A:31-4.4 and N.J.A.C. 10A:31-6.7. Salem County failed to maintain employment records in a secure manner and failed to investigate the loss or data breach of employee sensitive personal information as required to by law.

COUNT ONE
R. 4:69-1 Prerogative Writ Challenge via
N.J.S.A. 11A:2-16 for
REVIEW OF MINOR DISCIPLINARY CONVICTION IN
CIVIL SERVICE JURISDICTION

1. At all material times, Officer Pio, was employed by the County as a Corrections Officer for the Salem County Sheriff's Department.
2. Salem County is a Civil Service jurisdiction.
3. Pursuant to N.J.S.A. 11A:2016, the Salem County Disciplinary Policy requires appeals of Minor Discipline to be filed in the Superior Court.
4. The union representing the corrections officer attempted to negotiate with the County to have minor discipline appeals go to the arbitration venue.
5. The County refused to agree to allow arbitration for minor disciplinary matters.
6. Officer Pio was served with a preliminary notice of disciplinary action on July 6, 2015.
7. The preliminary notice of disciplinary action alleges that Officer Pio was insubordinate in an e-mail that was sent on June 12, 2015.
8. Prior to the June 12, 2015 e-mail, Officer Pio was made aware that the human resource department needed copies of Officer Pio's birth certificate, marriage certificate and the birth certificates of Officer Pio's children.

9. Officer Pio had provided the requested information over two years prior.
10. Officer Pio supplied the materials to human resources.
11. Officer Pio inquired of Captain Lape to find out what happened to the original documents that Officer Pio had produced to the County.
12. Captain Lape then sent an e-mail to Pio and a few other officers, including supervisors, demanding the documents be turned into human resources or face termination of health benefits.
13. Officer Pio, on June 12, 2015, after submitting his paperwork to human resources a second time, responded to the group e-mail questioning the status of the investigation into the loss of his personal sensitive data.
14. To the date of this filing the County has not conducted any investigation into the missing personal documents of Officer Pio and other officers.
15. On October 6, 2015 a minor disciplinary hearing committee convened and reviewed the Pio matter.
16. A recommendation of one of the panelists recommended that Salem County investigate the missing documents.
17. The Warden imposed a one day suspension for the alleged insubordinate e-mail and failed to address the security breach as is required by law.

18. Officer Pio seeks reversal of the County's findings.
19. Salem violated N.J.S.A. 11A:2-21 in imposing discipline without just cause and burden shifting.
20. The actions of Salem are retaliatory against the whistle blowing actions of Pio.

WHEREFORE, Officer Pio demands judgment against Salem County as follows:

- a. For an Order of the Court, reversing and vacating the 1 day suspension of Officer Pio, immediately rescinding the finding of guilt on the Charges against him, rescission of his suspension, reinstatement of forfeited time, awarding Officer Pio back pay, and all other requisite benefits, attorney's fees and costs allowed by law, and seniority lost due to his suspension.
- b. For such other, further, additional and different relief as this Court deems just and proper.

COUNT TWO

Salem County violated N.J.A.C. 10A:31-6.7
and N.J.A.C. 10A:31-4.4

21. Plaintiff hereby realleges and reiterated the preceding paragraphs as if restated in full.
22. Salem County is responsible for maintaining employee records in a safe and secure manner.
23. N.J.A.C. 10A:31-4.4 (d) requires

Pursuant to the Identity Theft Prevention Act at N.J.S.A. 56:11-44 et seq. and definitions relative to the security of personal information at N.J.S.A. 56:8-161, in order to prevent identity theft, adult county correctional facility staff shall be responsible for safeguarding "personal information" as this term is defined in N.J.A.C. 10A:31-1.3 and for complying with related rules at N.J.A.C. 10A:31-6.7.
24. Once alerted to a data breach the County failed to properly investigate the loss of personal information.
25. Captain Lape was told on two separate occasions of complaints of data breach and he failed to take appropriate remedial action as required under the law.
26. N.J.A.C. 10A:31-6.7 (A) requires:

Pursuant to the Identity Theft Prevention Act at N.J.S.A. 56:11-44 et seq. and definitions relative to security of personal information at N.J.S.A. 56:8-161, in order to prevent identity theft, adult county correctional facility staff shall be responsible for

safeguarding "personal information" as this term is defined in N.J.A.C. 10A:31-1.3. Additionally, adult county correctional facility staff shall be responsible for taking reasonable steps to ensure that all records containing personal information are not lost, stolen, inappropriately accessed or released and for complying with any related internal management procedures.

27. Salem County has not provided plaintiff with any information regarding the investigation into the loss of his personal information.
28. Upon information and belief, the County failed to take any actions to address the loss of personal information of Officer Pio and the other officers who were required to re-submit personal information to maintain their health benefits.

WHEREFORE, Officer Pio demands judgment against Salem County as follows:

- a. For an Order of the Court compelling the County of Salem to complete the required investigation into the loss of "personal information" and provide results of said investigation.
- b. For an Order of the Court dismissing the discipline imposed against Officer Pio for blowing the whistle about the failure of the county to investigate the data breach.
- c. For such other, further, additional and different relief as this Court deems just and proper.
- d. Awarding counsel fees for the filing of this application and defense of the disciplinary charges.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Christopher A. Gray, Esq., is hereby designated as counsel.

Respectfully submitted,
Sciarras & Catrambone, LLC
Attorney for Brian Pio

By: _____

Christopher A. Gray, Esq.

Dated: November 25, 2015

CERTIFICATION PURSUANT TO R. 4:5-1

The undersigned, of full age, hereby certifies as follows:

1. The matter in controversy is not the subject of any other pending action before the Superior Court of New Jersey.

2. No other action or arbitration proceeding is contemplated.

3. There are no other parties to be joined in this action at the present time.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the said statements made by me are willfully false, I am subject to punishment.

Dated: November 25, 2015

Christopher A. Gray, Esq.

CERTIFICATION OF VERIFICATION AND NON-COLLUSION

I am the attorney for the Plaintiff in the foregoing Complaint. The allegations of the Complaint are true to the best of my knowledge, information and belief. The said Complaint is made in truth and good faith and without collusion for the causes set forth herein.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: 

Christopher A. Gray, Esq.

Dated: November 25, 2015

CERTIFICATION REGARDING RECORD

I hereby certify that the Defendant is in possession of the complete record in this matter. They are in sole possession of the verbatim recording of the disciplinary matter. Demand is hereby made for production of the recording to Plaintiff so that a transcript may be ordered.

By: 

Christopher A. Gray, Esq.

Dated: November 25, 2015