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Memo

To: Roy Daniel

From: Denise Robinson Lewis, Director HR

Date: December 5, 2005

Subject: **Minor Disciplinary Hearing Report**

Attached is the Hearing Officer's decision and recommendations resulting from your disciplinary hearing that was held on November 16, 2005. The Hearing Officer concluded that the charge of NJAC4A:2-2.3 (a) 9. Discrimination that affects equal employment opportunities (as defined in New Jersey Administrative Code 4A:7-1.1), including sexual harassment, was not supported. The Hearing Officer indicated that the specification of the charge, "The response was in violation of the University's *Policy of Appropriate Use of Information Systems and Computer Ethics (WPUNJ Employee Handbook)* as it was not part of his University work responsibilities" was supported. It is the recommendation of the Hearing Officer that the verbal reprimand is sufficient.

The letter of reprimand will be removed from your personnel file.

Enclosure

c: L. Bogdon
A. Boucher
W. Blauvelt
K. Hernandez
File

Final Notice of *Minor* Disciplinary Action (CWA)

STATE OF NEW JERSEY

INSTRUCTIONS: This notice must be served on a permanent career employee; an intermittent employee when entering the career service; a provisional employee with six (6) months of State service after a hearing or meeting if the employee receives a suspension or fine of less than five (5) days. If the employee does not request or does not appear at the hearing or meeting, this notice must be served as the final action. A copy of this notice must be sent to the Department of Personnel for record purposes and may be served on the employee by personal service or certified, registered or regular mail.

FROM:	Department	Division, Institution or Agency William Paterson University of NJ	Date 12/05/05
	State Payroll Number	Address 300 Pompton Road, Wayne, NJ 07470	
TO:	Name of Employee Roy Daniel	Title Professional Services Specialist III, Comp Svcs	Social Security Number
	Street [REDACTED]	City, State & Zip Code [REDACTED]	

1. On 06/30/05 you were served with a Preliminary Notice of Disciplinary Action (CWA) and notified of the pending disciplinary action:

- You requested a hearing or meeting which was held on November 16, 2005
- You did not request a hearing or meeting.
- You requested a hearing or meeting and did not appear at the designated time and place.

The following charge(s) was dismissed:

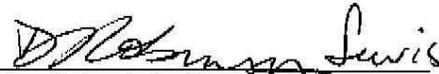
NJAC 4A:2-2.3 General Causes:
(a) An employee may be subject to discipline for:
9. Discrimination that affects equal employment opportunities (as defined in New Jersey Administrative Code 4A:7-1.1), including sexual harassment

The following charge(s) was sustained:

- If checked, charges are continued on the attached page. If checked, specifications are continued on the attached page.

2. The following disciplinary action has been taken:

- Official written reprimand issued on _____
- Suspension for _____ days, beginning _____ and ending: _____
- Fine \$ _____ Which is equal to _____ Days pay Other disciplinary action: (explain on attached page)
Amount #

SIGNATURE  TITLE Director Human Resources
(Appointing Authority or authorized agent)

3. Method OF SERVICE (Check one)	<input checked="" type="checkbox"/> PERSONAL SERVICE	NAME AND TITLE OF SERVER Guinera Curry, Personnel Assistant	DATE SERVED 12/05/05
	<input type="checkbox"/> CERTIFIED OR REGISTERED MAIL	Give date of receipt by employee or agent as shown on return receipt postal card and the receipt number:	

4. **APPEAL PROCEDURE:** If you elect to appeal the action your request must be submitted to the the appropriate Communications Workers of America (CWA) Local. The CWA Local will forward a written notice of appeal to the Governor's Office of Employee Relations (OER) with a copy to the appointing authority or its designee. Such appeals will be considered timely if received by OER within **twenty (20) calendar days** of your receipt of the this final notice. Appeals sent directly to the Office of Employee Relations and/or the appointing authority or its designee will not be forwarded to CWA for processing and may impact the timeliness of your appeal.

Note: An official written reprimand cannot be appealed beyond the Department hearing or meeting.

Hearing Officer's Report and Recommendation

1. Name of Employee: Mr. Roy (Jihad) Daniel
2. Title: Professional Services Specialist 3, Computer Services
3. Date of Hearing: November 16, 2005
4. Charges and Specifications: Discrimination that affects equal employment opportunities (as defined in NJ Administrative Code 4A:7-1.1), including sexual harassment. A complaint filed in the Office of Employment Equity and Diversity of March 10, 2005 states that you violated the University's non-discrimination policy as a result of your response to an email of March 7, 2005. Your response sent by email on March 8, 2005 stated in part, "Do not send me any mail about 'Connie and Sally' and 'Adam and Steve.' These are perversions..." The complainant stated that the message "sounded threatening." Additionally, she stated "I don't want to feel threatened at my place of work when I send out announcements of events that address lesbian issues. An investigation into the complaint was conducted and has concluded. The investigator concluded that you violated the *Interim State of New Jersey Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace* by your use of the word "perversion", a "derogatory or demeaning" term used in your email to refer to gay or lesbian individuals. The response was also in violation of the University's Policy of Appropriate Use of Information Systems and Computer Ethics (William Paterson University Employee Handbook) as it was not part of your University work responsibilities.
5. Action Recommended: Removal of Letter of Reprimand from Mr. Daniel's personnel file.
6. Parties Present:
 - a. For Employee:
Roy (Jihad) Daniel, Employee
Kathleen Hernandez, CWA Union Representative
John Polk, CWA Union Representative
 - b. For the University:
Denise Robinson Lewis, Management Representative
Leonard Bogdon, Management Representative, consultant
Arlene Holpp Scala, Associate Professor and Chairperson, Dept. of Women's Studies

7. Evidence Presented:

M 1- Announcement (email) of March 7, 2005
 M 2- email of March 8, 2005 from Jihad Daniel
 M 3- Example of employee email format
 M 4- Example of a student email format
 M 5- Memo of March 23, 2005 to Daniel from Sims
 M6- WPUNJ Computing Policies and Guidelines

U 1- Employee Assessment Review
 U 2- Email of March 24, 2005 from Daniel to Sims
 U 3- Web site page from SPLC
 U 4- Letter from US Department of Education

8. Summary of Presentation by University:

Denise Robinson Lewis- Gave a brief opening statement about the nature of the case.

Witness- Arlene Holpp Scala, Associate Professor and Chairperson of Women's Studies. Dr. Scala stated that the department recognizes Women's History Month every March. An Announcement was sent out by email (M-1) about a film, "Ruthie and Connie: Every Room in the House, a lesbian relationship." The last phrase was added for clarification. She received only one response to this announcement from Mr. Daniel (M-2). She was upset emotionally and intellectually by it. She found the phrase "do not send me..." to be threatening. Scala indicated that this made the university environment hostile to her. It was sent to her personally, not to the University. "Perversion" is a negative hostile term toward lesbians and gays, as well as "Connie and Sally and Adam and Steve." She said that the further statement about the absence of God is homophobic. She is aware of the impact of statements like these; she is very conversant with homophobia. It usually starts with language and sometimes moves on to action, even violence. As a result of the newspaper articles, she received a great deal of hate mail from around the country. (Further information about those letters was ruled irrelevant by the hearing officer after objection by CWA representative.)

Kathleen Hernandez, CWA- Cross-examination: She established Dr. Scala did not have statistics to support the statement that words will lead to actions. The university announcement (M-1) says "do not hit reply." Mail TO: scalaa@wpunj.edu." She asked "Doesn't it make sense that if someone has an opinion on this email that they would reply to you?" Scala said, Yes, but she wouldn't expect discriminatory comments. Scala said that she understands that some people think that homosexuality is wrong because of their religious beliefs. She also believes that Mr. Daniel's statement is an opinion, but not the part about "do not send me..." Scala said that the word perversion is referring to something outside of the norm. Hernandez asked what is the statistic on percentage of homosexual people? Scala said it is about 10%. Hernandez says that if 90% refer to the norm, this could be considered a common meaning. Scala's perception and the research

shows that “pervert” or “perversion” is a homophobic term. Scala considered this term to be hate speech, and at WP hate speech is prohibited.

Robinson Lewis- redirect: How did you know that this was an employee email? Scala said it was a different format from student email. M-3 exhibit shows email format for Daniel indicating that he is an employee. M-4 is an example of a student email format.

9. Summary of presentation by Union:

Hernandez- Gave a brief opening statement.

Witness Jihad (Roy = legal name) Daniel- He has worked for Network and Hardware Services since 1991. He is also a student. He confirmed that he has never been reprimanded before and had no problems on Employee Assessment Reviews (U-1). Hernandez pointed out these areas on the review: Teamwork and Organizational Citizenship- in both areas there is a rating of Pass indicating that he had not had any problems in these areas. He said that although he has both employee and student email accounts, he does not use the student email. In reference to the email (M-1): He saw this and responded “without malice aforethought.” He thought this was his freedom of expression. He said he responded to Scala rather than the Announcement board because he didn’t know you could respond to the board. He saw that you could respond to the person; he didn’t know her. He asked that he not be sent further emails about these “perversions.” In his religion, and the other two major religions, this is a perversion. “God said this, if you believe in God. It is in both the Bible and Koran.” U-2 was introduced, an email from Daniel to John Sims with copies to Pres. Speert and Provost Sesay. It explains his beliefs and his defense. He said that John Sims from Equity and Diversity met him casually and said they were going to charge him. He said he had no intent to threaten or harass Dr. Scala and he did not send her any other messages.

In his Communications classes they had been studying First Amendment rights and the Constitution. He was replying from that perspective. U-3 is a page from the web site of the Student Press Law Center regarding students’ First Amendment rights. Daniel found this web site in the process of taking a COMM course. U-4 is a letter from the US Dept. of Education, Office of Civil Rights that someone gave to Daniel when this case began. He said when he was hired he did attend a class on Sexual Harassment.

Hernandez asked if Daniel considers homosexuality to be outside of the norm. He said, “yes, because sexual relationships are supposed to be for procreation.” He didn’t think his email was derogatory or threatening. He was using the names like Adam and Steve just to refer to the behavior that he didn’t want to hear about. He thought people would say, OK he doesn’t agree with me, so I won’t send anymore emails to him.

Robinson-Lewis- cross-examination: “What were your work hours that day?” Daniel said that he came in around 6am but started work at 7am. When he comes in, he goes downstairs and checks the Server. Then he checks some print output and then his emails to see if there are any reported problems. He was asked if he is working then and he said

“Yes, but I don’t put that down as work time.” He is an hourly worker and is not paid from 6-7am. He is on tuition waiver as an employee benefit. He said again that at that time he was taking classes that covered the Constitution and First Amendment rights, so that was on his mind. Robinson Lewis asked if he taken any classes (undergrad or grad) in which homosexuality was mentioned. He said Yes and that he addressed his opinions in a paper but did not say anything in class.

On the morning of March 8th when he sent the initial email, his intent was just to get it cut off- he never thought about it being personal. If he had known that “this lady” would be upset, he wouldn’t have done it. When asked again about his use of the word “perversion” he said that he believes in God, and that God said in at least two of his books that this is what it is, so that is his belief because he believes in God. God’s concerns come first before other people’s opinions. He said that the homosexual community has been here for years, and they have never heard from him.

Robinson Lewis said that in reference to the U-2 document of March 24th, that Ms. Hernandez said that Daniel was not given any opportunity to respond to the charges. M-5 was introduced. Paragraph two says, “If you would like to respond to the complaint or submit any information...” Daniel said that is why he wrote the letter of March 24th, but that he was never given an opportunity to be interviewed. The first paragraph refers to a meeting. Daniel said there was no meeting on March 14th. He ran into John Sims- there was no formal meeting- and Daniel said “you can’t be serious about this issue.” Sims said “yes, you are being charged.” Robinson Lewis asked if he is aware of Information Systems, Network and Hardware Services, Computing Guidelines. He said he was generally, but didn’t know them verbatim. Those guidelines (M-6) refer to unsolicited email or junk mail that people might find objectionable. The section on “Policy-Appropriate Use” talks about respecting the rights of other computer users. Daniel said he is never disrespectful to individuals or the university community in general.

Hernandez- redirect: She asked, “Was your intent that you go on a ‘Do Not Call list’?” Daniel said it was. She asked, “Did John Sims ever call you or write to you to have a meeting?” Daniel said, “No. I happened to be in his office because I know some people there and he talked to me and I thought he was kidding, but then he said that he was serious. But there was no formal meeting.”

Robinson Lewis- redirect: “Are you still getting announcements from the University or are you on a Do Not Call List?” Daniel said he still gets the announcements but now the announcements are “codified” and you get the title and you can choose to open it or not. This was not the case before. Now he doesn’t open email like that.

Hernandez- clarification: About the issue of whether he is an employee or student. “You are of the opinion that at the time you were answering in a student mode?” Daniel said yes, because the ideas learned in class opened a whole new world to him and they were uppermost in his mind. His religion says he is never to be an aggressor.

Robinson Lewis- clarification: Wanted to clarify his work hours with Mr. Bogdon. Each day Daniel comes in and monitors the computing environment and reports that to Mr. Bogdon around 6:15 or 6:30am. If he comes in at 6 he usually goes home between 2 and 3, but there is no time clock.

10. Summation by Management:

“Mr. Daniel has made much of his position as a student. We say, however, that what he did in email was in his role as employee. Even his student role is as an employee benefit. He is an employee first and foremost. We believe he violated our policies and procedures when he replied to Dr. Scala. He said he did not intend to be disrespectful but felt he had to respond because of his religious beliefs. In general, the average person thinks of the word ‘perversion’ as derogatory. He is aware that policies exist about email. He said he did not intend to be disrespectful, but Dr. Scala said she feels her rights were being abridged by the response, and she felt threatened. We cannot permit or encourage this violation of university policy. Yes, there is free speech, but we must give respect to co-workers. If the message had said only, ‘Do not send me these emails’, that would have been okay, but he didn’t stop there. So, the reprimand should be upheld.”

11. Summation by Employee Union Representative:

“We have established that he is student and employee and a religious man. Harassment is a pattern, not one incident. There is no pattern. He believes he only shared his opinion, and because he has religious beliefs, that was why he explained that in the email. He clearly stated his intent. There are many issues that people disagree on. You are entitled to your point of view, especially in a non-threatening manner. There are many definitions of ‘perversion.’ ‘Not of the norm’ is one definition in Webster’s Dictionary. Dr. Scala has a negative interpretation and she is entitled to that. He didn’t try to stop her right to send out such emails- he just requested that he not receive them. He has an unblemished record and good evaluations. Marring his record this way is wrong. Also, Equity and Diversity did not issue any report that was introduced.”

12. Findings of Fact:

- a. Mr. Daniel is both an employee and a student at WPUNJ.
- b. Dr. Scala sent an email message to all employees, including Mr. Daniel.
- c. Mr. Daniel sent a message by his employee email, in his role as employee, to Dr. Scala using language that upset her.
- d. The University has a Policy on Misuse of Information Technology Resources Privileges.

13. Discussion and Recommended Decision:

- a. By the preponderance of credible evidence, Management **has not supported the first specification of the charge:** The charge that Mr. Daniel violated the state code “Discrimination that affects equal employment opportunities (as defined in NJ

Administrative Code 4A:7-1.1), including sexual harassment", and the *Interim State of New Jersey Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace* by his use of the word "perversion", a "derogatory or demeaning" term used in his email to refer to gay or lesbian individuals is not supported.

Mr. Daniel's use of the word "perversion", although it may be upsetting to some, does not appear to have caused any discriminatory actions. The way in which the email was worded, the message did not sound like hate speech. Mr. Daniel expressed a religious belief and quoted from religious works to which he subscribes. There was only one email sent, with no prior or subsequent contact with Dr. Scala, so no pattern of harassment exists. In addition, one email message of this type does not, in my opinion, cause a hostile work environment.

b. By the preponderance of credible evidence, Management **has supported the second specification of the charge:** The response was in violation of the University's Policy of Appropriate Use of Information Systems and Computer Ethics (WPUNJ Employee Handbook) as it was not part of his University work responsibilities.

By sending his message via employee email during what could legitimately be considered work time, Mr. Daniel violated the specific criterion, "Misuse of Computing and Information Resources and Privileges includes... using the University's computer resources...to transmit...information which contains defamatory, false, inaccurate, abusive, profane, threatening, racially offensive, or **otherwise biased**" language (in WPUNJ web site, Information Systems). Although Mr. Daniel is free to hold, and may be free to express, his opinions of homosexuality, he is not free to express them by employee email.

c. Mitigating Factors:

1. Mr. Daniel has an unblemished employee record.
2. This single violation of employee email was made without any apparent ill-intent. The intent seems to have been just to have such email announcements stopped.

d. Recommendation:

The disciplinary action of an Official Reprimand is not supported by this Hearing Officer. The letter of reprimand should be removed from Mr. Daniel's personnel file. He has already been verbally reprimanded for his conduct, and that is sufficient.

DATE: December 1, 2005


Sandra DeYoung, Hearing Officer