

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D31582  
O/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - May 6, 2011

WILLIAM F. MASTRO, J.P.  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS  
JEFFREY A. COHEN, JJ.

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2009-05866

DECISION & ORDER

Roberta Miller, appellant-respondent,  
v Nassau County Civil Service Commission,  
et al., respondents-appellants.

(Index No. 28936/92)

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Louis D. Stober, Jr., LLC, Garden City, N.Y., for appellant-respondent.

John Ciampoli, County Attorney, Mineola, N.Y. (Dennis J. Saffran and Daniel K. Valentino of counsel), for respondents-appellants.

In an action, inter alia, for reinstatement to employment and to recover back pay, the plaintiff appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Lally, J.), entered May 15, 2009, as, sua sponte, set aside a jury verdict in her favor as contrary to the weight of the evidence and directed a new trial, and the defendants cross-appeal, as limited by their brief, from so much of the same order as denied that branch of their motion which was pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint to the extent that it asserts a cause of action to recover damages based on the plaintiff's claim that she was laid off in bad faith.

ORDERED that on the Court's own motion, the plaintiff's notice of appeal is deemed to be an application for leave to appeal, and leave to appeal is granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order is affirmed insofar as appealed from; and it is further,

June 7, 2011

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ORDERED that the order is reversed insofar as cross-appealed from, on the law, and that branch of the defendants' motion which was pursuant to CPLR 4401 for judgment as a matter of law dismissing the complaint to the extent that it asserts a cause of action to recover damages based on the plaintiff's claim that she was laid off in bad faith is granted; and it is further,

ORDERED that one bill of costs is awarded to the defendants.

The Supreme Court should have granted that branch of the defendants' motion which was pursuant to CPLR 4401 for judgment as matter of law dismissing the complaint to the extent that it asserts a cause of action to recover damages based on the plaintiff's claim that she was laid off in bad faith. A finding by the jury that the plaintiff was singled out for layoff due to her political affiliation could only have been reached by the jury based upon speculation, rather than logical inferences drawn from the evidence (*see Matter of Linney v City of Plattsburgh*, 49 AD3d 1020).

The parties' remaining contentions either are without merit or have been rendered academic in light of our determination.

MASTRO, J.P., LEVENTHAL, CHAMBERS and COHEN, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court