

<b>Sanchez v Metropolitan Transp. Assn.</b>
2022 NY Slip Op 30946(U)
March 22, 2022
Supreme Court, New York County
Docket Number: Index No. 154390/2021
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE LOVE PART 63M**

*Justice*

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KARLA SANCHEZ,

Petitioner,

- v -

METROPOLITAN TRANSPORTATION ASSOCIATION,  
NEW YORK CITY TRANSIT AUTHORITY, L. 100. TWU  
LOCAL, UNION L

Respondent.

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**INDEX NO.** 154390/2021

**MOTION DATE** 10/15/2021

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, the instant Petition, Respondents Metropolitan Transportation Authority and New York City Transit Authority’s Cross-Motion to Dismiss and Respondent, Transport Workers Union Local 100’s Cross-Motion to Dismiss are resolved as follows:

Petitioner, Karla Sanchez (“Petitioner” or “Sanchez”) commenced the instant Petition seeking CPLR Article 78 relief by e-filing same on May 3, 2021, seeking to vacate her dismissal as a civil service employee by Respondents, Metropolitan Transportation Authority (“MTA”) and New York City Transit Authority (“NYCTA”) alleging that she was terminated without cause and further alleging that Respondent Transport Workers Union Local 100 (“TWU”) breached its duty of fair and lawful representation to her by not taking steps to stop her termination.

The Petition alleges as follows: Sanchez was a member of an MTA/NYCTA class, which started August 18, 2019 for subway train operator. Petitioner was a probationary civil service employee until her termination on January 13, 2021. Petitioner further alleges that said termination was due to “sex, race, ethnicity discrimination, retaliation, in that I was treated differently and

inferior to 50 males in my Respondent training class who passed probation, and graduated to employment , each with an inferior scholastic, work and attendance record than me.”

The Court notes that Petitioner’s Petition contains no specific allegations of any incidents where she was discriminated against on the basis of her race, sex, gender, or ethnicity. The Court further notes that the Petition is devoid of any supporting documentation. In support of their cross-motion, MTA and NYCTA submit numerous documents establishing that: 1. On September 11, 2019, Sanchez was late to work; 2. On June 4, 2020, Petitioner was given a “Final Warning” about her use of sick time, signed by Petitioner, highlighting 5 instances of sickness, totaling 11 days missed and that 4 of the 5 instances were after RDOs or scheduled days off. Said warning specifically highlights that the RTO probationary committee would review Petitioner’s attendance and determine if a 3 month extension of probation is warranted and that any further attendance issues will result in a definite extension of same and may result in termination; 3. In a memorandum signed by Petitioner, dated August 17, 2020, Petitioner’s probationary period was extended six months to March 11, 2021; 4. On October 25, 2020, Petitioner was late to work. On January 14, 2021, Petitioner was terminated as a probationary train operator. Petitioner and her union representative both signed the Probationary Employee Acknowledgement of Demotion/Termination.

MTA and NYCTA seek dismissal of the instant Petition as time-barred based upon Petitioner’s failure to serve this action within the time limits of CPLR 306-b. Pursuant to CPLR 306-b, Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause shall be made within one hundred twenty days after the commencement of the action or proceeding, provided that in an action or proceeding...where the applicable statute of limitations is four months or less, service

shall be made not later than fifteen days after the date on which the applicable statute of limitations expires. If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service. Where Petitioner is a probationary employee, the four-month statute of limitations for an article 78 proceeding runs from the date of termination, *See, Portlette v. Metropolitan Transportation Authority*, 25 A.D.3d 389 (1st Dept. 2006). While Petitioner timely filed the instant Petition on May 3, 2021, the Notice of Petition was not filed until July 19, 2021, and Petitioner has failed to file an affidavit of service relating to any of the respondents. Petitioner fails to oppose the MTA and NYCTA's cross-motion and it is well settled that when a party fails to attempt timely service, good cause will not exist to extend the time for said service, *See, Matter of Rimler v. City of New York*, 172 A.D.3d 868 (2nd Dept. 2019); *Cho v. Bovasso*, 166 A.D.3d 868 (2nd Dept. 2018); *Bumpus v. New York City Tr. Auth.*, 66 A.D.3d 26 (2nd Dept. 2009)]. As such, MTA and NYCTA are entitled to dismissal of the instant action.

Respondent, TWU also cross-moves for dismissal pursuant to CPLR 3211(a)(7). When considering a motion to dismiss under CPLR 3211(a)(7), a court must accept the factual allegations of the pleadings as true, affording the non-moving party the benefit of every possible favorable inference and determining "only whether the facts as alleged fit within any cognizable legal theory" (see *D.K. Prop., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 168 A.D.3d 505; *Weil Gotshal & Manges. LLP v. Fashion Boutique of Short Hills, Inc.*, 10 A.D.3d 267 [1st Dept. 2004], *Leon v. Martinez*, 84 N.Y.2d 83, 87-88[1994]).

In order to sustain a duty of fair representation claim, Petitioner must "prove both (1) that the employer breached a collective bargaining agreement and (2) that the union breached its duty

of fair representation vis-a-vis the union members.” *White v. White Rose Food*, 237 F.3d 174, 178 (2d Cir. 2001).

Pursuant to the Collective Bargaining Agreement between NYCTA and LOCAL 100, (the “CBA”), probationary employees are excluded from the definition of covered employees subject to grievance and arbitration procedures. Petitioner is unable to state a claim against TWU because the Petitioner was a Probationary employee. “The duty of fair representation is rooted in the bargaining agent's exclusive statutory authority to pursue grievances on behalf of covered employees under the CBA.” *Okpo v. City of New York*, 156 A.D.3d 587 (1st Dep’t 2017); *see also Matter of Civil Serv. Bar Assn., Local 237, Intl. Bhd. of Teamsters v. City of New York*, 64 N.Y.2d 188, 196 (1984).

ORDERED that Petitioner’s Petition is DENIED in its entirety; and it is further

ORDERED that Respondents Metropolitan Transportation Authority and New York City Transit Authority’s Cross-Motion to Dismiss and Respondent, Transport Workers Union Local 100’s Cross-Motion to Dismiss are GRANTED in their entirety; and it is further

ORDERED that the instant Petition is DISMISSED with prejudice.

3/22/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER