IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LATOYA RILEY, Plaintiff, v. CSX TRANSPORTATION, INC., Defendant.	CIVIL ACTION FILE NO. 1:17-cv-004215-MHC-LTW

MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

This case is currently before the Court on a Motion for Summary Judgment filed by Defendant CSX Transportation, Inc. ("CSXT"). [Doc. 151]. For the reasons detailed below, the undersigned **RECOMMENDS** that the Motion for Summary Judgment be **GRANTED**. [Doc. 151].

FACTUAL BACKGROUND

During the relevant time, Plaintiff worked for Defendant as a train dispatcher, responsible for ensuring the safe and efficient movement of trains on Defendant's operating lines. [Doc. 172 ¶¶11–12]. Dispatchers "are in an extremely safety-sensitive role," entrusted with avoiding the potentially catastrophic train collisions that might occur if train movements are not planned correctly. [Id. ¶¶13–15]. Dispatchers report directly to the Chief Dispatcher. [Id. ¶26]. Jermaine Swafford was the Atlanta Division

Manager during the relevant time, responsible for resolving "railroad related incidents and administering discipline by enforcing the Individual Development and Personal Accountability Policy ("IDPAP")." [Id. ¶¶27–28]. Under IDPAP, violations of the Rules are classified as either Minor, Serious, or Major. [Id. ¶36]. A Major offense warrants "removal from service pending a formal hearing and possible dismissal from service for a single occurrence if proven." [Id.].

Certain terms of art are relevant in this case. A "mainline track is one which other trains and the public can access." [Id. ¶72]. An "EC-1" is a designation that dispatchers use to protect people and objects on the tracks, granting protection to individuals or trains using a particular portion of a track by preventing any other train from being directed to that location. [Id. ¶¶58–61]. Plaintiff was charged with a Major violation of Defendant's operating rules for failing to enter an EC-1 protection for an unattended train on a mainline track. [Id. ¶57]. On July 27, 2013, the train at issue had delivered coal to a power plant in Plaintiff's assigned area. See [Id. ¶65]. Employees from the plant told Plaintiff they had returned the train to the mainline track, at which point Plaintiff was supposed to place an EC-1 designation protecting the train. [Id. ¶¶68–69]. Plaintiff failed to do so, resulting in the train sitting on a busy mainline track unprotected for approximately 48 hours. [Id. ¶¶70–71]. Because Plaintiff failed to place an EC-1 designation, no one at CSXT knew the train was there, which could have

resulted in another train colliding with the unattended train and could have caused serious injury or death. [Id. ¶72].

The parties dispute precisely what happened next. Construing the facts in the light most favorable to Plaintiff, as the Court must do at this stage,[1] the sequence of events is as follows. On July 30, 2013, one of Plaintiff's superiors, Robert Golden, confronted Plaintiff about the unprotected train. See [Doc. 180 ¶¶5–7]. Golden took Plaintiff's written statement regarding the incident and informed her she was being suspended pending an investigation into the then-alleged violation. [Id. ¶¶9, 12]. While the ultimate "assessment" of the violation bears the name of the Chief Dispatcher—J.P. Garrett—as the referring manager, Plaintiff notes that Garrett admitted he "was actually at home on an off day" when the violation "was discovered." [Doc. 179-8 at 3]; [Doc. 154-1 at 138:12–13]. As will be discussed below, the dispute is immaterial. When Garrett returned to work, he was informed of the incident and "started to investigate." [Doc. 154-1 at 138:14–18]. The undisputed facts showed that Plaintiff failed to place an EC-1 protecting the unattended train on a mainline track, even though she knew the train had been placed there. See [Doc. 172 ¶¶65, 68–69, 70–72].

[1] See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); McCabe v. Sharrett, 12 F.3d 1558, 1560 (11th Cir. 1994); Reynolds v. Bridgestone/Firestone, Inc., 989 F.2d 465, 469 (11th Cir. 1993).

The input of an assessment into CSXT's Field Administration ("FA") system, alerts CSXT's FA that a rules violation may have occurred. [Id. ¶42]. The FA then determines if a charge letter is warranted and, if so, sends the letter to the manager named in the assessment—in this case, Garrett—and the manager in turn confirms the accuracy of the allegations regarding the incident and a date for an investigative hearing. [Id. ¶¶43–45]. An employee charged with a major violation is entitled to an investigative hearing. [Id. ¶48]. Although not adhering to all the formalities of a trial, the investigative hearing provides the charged employee with representation and an opportunity to present evidence, confront witnesses, and testify on her own behalf. See [Id. ¶¶49–51]. A transcript of the hearing is sent to the Division Manager—in this case, Swafford—who reviews the record and determines what discipline, if any, is warranted. See [Id. ¶¶52–54].

Plaintiff was sent a charge letter regarding the above-described incident, and her investigative hearing was held August 8, 2013. [Id. ¶¶74–75]. Garrett appeared as Defendant's witness and testified that Plaintiff violated certain operating rules regarding leaving unattended equipment and blocking tracks. [Id. ¶76]. After the hearing, Swafford reviewed the transcript and record evidence, and determined that Plaintiff's actions warranted dismissal. [Id. ¶¶77–78]. On August 23, 2013, Swafford sent Plaintiff a letter saying he "determined that [she] did indeed violate" the operating

rules at issue and that Plaintiff was being "**dismissed** in all capacities . . . effective immediately." [Doc. 151-17 at 2] (emphasis in original).

Plaintiff's union contested her termination by filing an arbitration claim under the Collective Bargaining Agreement ("CBA"). [Id. ¶86]. The arbitration board agreed Plaintiff violated the operating rules, but decided Plaintiff's termination was "too harsh" and gave her the "opportunity to return to work, with the understanding that the period of time between her termination on August 23, 2013 until her reinstatement to service shall constitute an unpaid disciplinary suspension." [Doc. 151-6 at 4]. Plaintiff was reinstated, although she was later furloughed in a series of undisputed events. [Doc.172 ¶¶89–113]. Prior to her termination in August 2013, Plaintiff never made any complaints of discrimination about Garrett or Swafford. [Id. ¶114].

LEGAL STANDARD

Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the initial responsibility of asserting the basis for her motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Apcoa, Inc. v. Fid. Nat'l Bank, 906 F.2d 610, 611 (11th Cir. 1990). The movant can discharge this burden by merely "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." Celotex,

477 U.S. at 325. After the movant has carried her burden, the non-moving party is then required to "go beyond the pleadings" and present competent evidence designating specific facts showing a genuine disputed issue for trial. Id. at 324.

While the court is to view all evidence and factual inferences in a light most favorable to the non-moving party, Nat'l Parks Conservation Ass'n v. Norton, 324 F.3d 1229, 1236 (11th Cir. 2003), "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986) (emphasis in original). A fact is material when it is identified as such by the controlling substantive law. Id. at 248.

Moreover, the non-movant "must do more than simply show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (citations omitted). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." Anderson, 477 U.S. at 249-50. To the extent one party's version of events "is blatantly contradicted by the record," the "court should not adopt

that version of the facts for purposes of ruling on a motion for summary judgment." Scott v. Harris, 550 U.S. 372, 379–81 (2007).

LEGAL ANALYSIS

Plaintiff brings three Counts against Defendant under two different statutes. [Doc. 86 at 231–37, ¶¶25–46].[2] First, Plaintiff alleges race discrimination and retaliation in violation of 42 U.S.C. § 1981. [Doc. 86 at 231–33, ¶¶25–30]. Second, Plaintiff alleges race discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.* ("Title VII"). [Id. at 233–34]. Third, Plaintiff alleges sex/gender discrimination and retaliation in violation of Title VII. [Id. at 234–35, ¶¶39–46]. Plaintiff concedes that Defendant is entitled to summary judgment on her retaliation claims and her sex/gender discrimination claim, and the Court agrees. [Doc. 173 at 2]; see also [Doc. 151-1]. Plaintiff's race discrimination claims under Title VII and § 1981 are subject to the same requirements of proof and use the same analytical framework, and as such the claims are discussed together. Chapter 7 Tr. v. Gate Gourmet, Inc., 683 F.3d 1249, 1256 (11th Cir. 2012).

[2] In December 2018, Plaintiff's case (Riley v. CSX Transp., Inc., N.D. Ga. Civil Action No. 1:17-cv-2861-MHC-LTW) was consolidated into the present case, which had been filed by two other Plaintiff's who have since settled their claims. See [Docs. 85, 148, 156]. Although Robert Golden is still listed as a Defendant on the docket, Plaintiff does not assert any claims against Golden. [Doc. 86 at 225–37].

Plaintiff implicitly concedes she has no direct evidence of discriminatory intent and that her claims are thus subject to the McDonnell Douglas[3] burden-shifting analysis. See [Doc. 173 at 4–5]. Under McDonnell Douglas, the plaintiff has the initial burden of establishing a prima facie case of discrimination. 411 U.S. at 802; see also Texas Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 252–53 (1981). If the plaintiff meets this burden, the defendant must articulate a legitimate, nondiscriminatory reason for the adverse employment action. McDonnell Douglas, 411 U.S. at 802; Burdine, 450 U.S. at 254; Chapman v. AI Transp., 229 F.3d 1012, 1024 (11th Cir. 2000) (*en banc*); Mitchell v. USBI Co., 186 F.3d 1352, 1354 (11th Cir. 1999). This burden is one of production, not persuasion, and is "exceedingly light." Turnes v. AmSouth Bank, N.A., 36 F.3d 1057, 1061 (11th Cir. 1994); Perryman v. Johnson Prod. Co., 698 F.2d 1138, 1141 (11th Cir. 1983). The plaintiff will then be given an opportunity to show that the defendant's proffered nondiscriminatory reason was merely a pretext for discriminatory intent. Burdine, 450 U.S. at 253; Chapman, 229 F.3d at 1024; Michell, 186 F.3d at 1354. The below analysis is divided according to the McDonnell Douglas burden-shifting framework.

[3] McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

I. Prima Facie Case

A prima facie case of discrimination requires the plaintiff to show: "(1) she is a member of a protected class; (2) she was subjected to adverse employment action; (3) her employer treated similarly situated employees more favorably; and (4) she was qualified to do the job." McCann v. Tillman, 526 F.3d 1370, 1373 (11th Cir. 2008) (quoting EEOC v. Joe's Stone Crab, Inc., 220 F.3d 1263, 1286 (11th Cir. 2000)). The only element in dispute is whether Defendant treated similarly situated employees more favorably. See [Doc. 173 at 5]. To be "similarly situated," an individual outside the plaintiff's protected class must be similar in "all material respects." Lewis v. City of Union City, Georgia, 918 F.3d 1213, 1227 (11th Cir. 2019). While the "similarly situated" analysis must occur "on a case-by-case basis," it generally requires that the alleged comparator: (1) "engaged in the same basic conduct (or misconduct) as the plaintiff;" (2) was "subject to the same employment policy, guideline, or rule as the plaintiff;" (3) was "under the jurisdiction of the same supervisor as the plaintiff;" and (4) "share[d] the plaintiff's employment or disciplinary history." Id. at 1227–28.

While Plaintiff suggests "there are dozens of examples of White Dispatchers who were not reported or assessed for clear and at times acknowledged rule violations," Plaintiff identifies only one comparator: Michelle Hollinhead. [Doc. 173 at 8–11]. It is undisputed that Plaintiff and Hollinhead had the same job and that they were subject

to the same rules and policies. [Doc. 180 ¶19].[4] Plaintiff asserts, without citation to any evidence, that she and "Hollinhead also had similar work histories." [Doc. 173 at 8]. Defendant maintains Hollinhead is not an appropriate comparator because Hollinhead's "purported disciplinary incident involved a different decisionmaker," but this fact is disputed. See [Doc. 179 at 8–9]; see also [Doc. 173 at 10]. On review of the record, the undersigned concludes that Plaintiff and Hollinhead are not similarly situated because they did not engage "in the same basic conduct (or misconduct)." See Lewis, 918 F.3d at 1227.

The only "evidence" Plaintiff proffers regarding Hollinhead's incident is *Plaintiff's* declaration and testimony. See [Doc. 173 at 9–11]. But a declaration used to oppose a motion for summary judgment "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). Plaintiff never explains how she learned, for example, that "a train crew communicated and told

[4] Defendant "objects" to this statement as containing "inadmissible evidence," without explanation. [Doc. 180 ¶19]. Defendant simply refers to its "Notice of Objections," which is just arguments and assertions that should have been included in the response to Plaintiff's Statement of Material Facts and/or Defendant's reply brief. Even if the Court were to consider the "Notice of Objections," Defendant nowhere explains how the substantive statement at issue is based on "inadmissible evidence." See [Doc. 181 at 10–13]; see also [Doc. 172-1 ¶27].

Hollinghead [*sic*] they were releasing EC-1 authority." See [Doc. 172-1 ¶28]. During her deposition, Plaintiff simply stated she "was working" when Hollinhead's incident occurred, but Plaintiff admitted she was working a different desk and did not review any records relating to Hollinhead's incident. [Doc. 152-1 at 126:6–20]. As such, the vast majority of Plaintiff's declaration and testimony regarding Hollinhead's incident is inadmissible because it is not based on personal knowledge and would not be admissible in evidence. Fed. R. Civ. P. 56(c)(2), (4).

Even if the Court were to consider the evidence, the undisputed facts show Hollinhead did not engage in the same basic conduct as Plaintiff. It appears that Plaintiff's entire argument is based on her assertion that both situations involved "releases" of EC-1 authority. See [Doc. 152-1 at 129:4–25]. As Garrett testified during Plaintiff's investigative hearing, Plaintiff's situation involved a train that was **transferred** to Plaintiff's care. [Doc. 179-1 ¶76]. Plaintiff was then supposed to **place** an EC-1 protection in the dispatching system, which Plaintiff did not do. [Id. ¶¶68, 70]. Instead, when the train crew said "this is EC-1, [number] 987720, going to release it back to you," Plaintiff thought the crew was releasing the EC-1 rather than releasing the now-unattended train. [Doc. 152-1 101:10–21]. Plaintiff did not understand that the crew left the now-unattended train they left on the mainline track even though the

crew also gave Plaintiff the mileposts where the train was left. See [Id. at 101:23–104:18].

During the investigative hearing, Garrett agreed that the train crew did not use "the proper terminology" and did not provide Plaintiff with all the information they were required to provide when leaving a train unattended. [Doc. 151-15 at 14–15]. But Garrett insisted that Plaintiff was still guilty of violating Defendant's operating procedures because she was "a qualified dispatcher on the [relevant] desk" and was "supposed to know" better. [Id. at 15]. The place where the train was left was a "single track mainline," meaning the train was necessarily left blocking a mainline track because "that's the only place you can leave it." [Id. at 16]. It is "the obligation of the train dispatcher to acquire [the necessary] information in the event that it is not provided." [Id. at 17]; see also [id. at 19]. Swafford found that Plaintiff violated Defendant's operating rules by releasing the EC-1 protection and leaving the train unprotected, and the arbitration board agreed that Plaintiff improperly "permitted a crew to 'release' an EC-1 track authority instead of having it 'transferred' back to her.'" [Doc. 151-5]; [Doc. 151-6 at 3–4].

Hollinhead's incident was materially different. Accepting Plaintiff's unsupported assertions, Hollinhead was told to release EC-1 authority for a train and did so. [Doc. 172-1 ¶¶28–29]. Later, Hollinhead granted EC-1 authority for another

train to use the same track, but that crew then called and complained a train was on the track blocking them. [Id. ¶¶30–32]. There are material facts that distinguish Hollinhead's incident from what occurred with the Plaintiff. Golden, the person Plaintiff maintains was responsible for deciding whether Hollinhead committed a violation, provided a declaration explaining that Hollinhead did not "mishandle[ ] an EC-1 authority." See [Doc. 179-7 ¶11].[5] In Hollinhead's case, the crew who contacted her to "release their EC-1 authority" had "cleared the mainline track." [Id. ¶17]. A second crew then properly requested and received EC-1 authority for that portion of the track. [Id. ¶18]. Unbeknownst to Hollinhead, the first crew then "came back out on the mainline track into dark territory while the second train with the proper EC-1 authority was also on the mainline track." [Id. ¶20]. The first crew was at fault because they "no longer had any EC-1 authority" and needed to "request another EC-1 authority before coming back out onto the mainline track." [Id. ¶19].

Thus, the fact that Plaintiff was punished and Hollinhead was not appears to be because Plaintiff engaged in misconduct, and Hollinhead did not. As such, Hollinhead is not a proper comparator. See Lewis, 918 F.3d at 1227. Plaintiff seemingly

[5] Although Plaintiff complains of Golden's declaration, Plaintiff deposed Golden but did not ask him any questions about his investigation into Hollinhead's incident. See [Doc. 177].

understands this flaw with her case and argues Defendant "places responsibility on the dispatcher regardless of culpability by the train crew." [Doc. 173 at 15]. Unfortunately, the only evidence Plaintiff cites does not support her position. Garrett testified Plaintiff was responsible "because the end result is that [a] train was left on the main track, and there was no protection provided for it." [Doc. 151-15 at 15]. In Hollinhead's situation, by contrast, there was no train "left on the main track" without protection. Instead, the train that had its protection released had "cleared the mainline track." [Doc. 179-7 ¶17]. The crew then "came back out on the mainline track" without informing Hollinhead and requesting authority. [Id. ¶20].

Garrett did not suggest that every dispatcher is liable for all misconduct engaged in by a train crew, even if the dispatcher has no knowledge of what the crew is doing. Nor does Plaintiff cite to any other evidence suggesting a "strict liability" policy. What Garrett said was that, based on the information Plaintiff had, "she [was] supposed to know" the train had been left on the mainline track, even if that information was incomplete. [Id. at 15–16]. Hollinhead, by contrast, had no basis for knowing or believing that the first crew would take their train back onto the mainline track without requesting EC-1 protection. Plaintiff's entire argument is based on her disagreement "with CSXT's conclusion and the arbitrator's conclusion that [her] situation was a transfer and not a release." See [Doc. 152-1 at 129:22–25]. The Court, however, is

"not "a super-personnel department" here to determine whether Plaintiff had sufficient information from which to know a train was being transferred to her and left unattended on a mainline track. Elrod v. Sears, Roebuck & Co., 939 F.2d 1466, 1470 (11th Cir. 1991) (quoting Mechnig v. Sears, Roebuck & Co., 864 F.2d 1359, 1365 (7th Cir. 1988)). Because the undisputed record shows Plaintiff's and Hollinhead's situations were materially different—Plaintiff engaged in misconduct and Hollinhead did not—Plaintiff cannot use Hollinhead as a comparator to establish a prima facie case of discrimination. See Lewis, 918 F.3d at 1227.

The use of a comparator, however, is not the only way for a plaintiff to prove a prima facie case of discrimination. King v. Ferguson Enterprises, Inc., 971 F. Supp. 2d 1200, 1216 (N.D. Ga. 2013). Plaintiff also references other conduct allegedly showing racial bias by Golden. [Doc. 173 at 11–12]. Defendant vehemently disputes that Golden was the one who "input the assessment" for Plaintiff's incident. [Doc. 179 at 7–9]. As mentioned above, their dispute is immaterial. Golden did not decide to terminate[6] Plaintiff. To get around this issue, Plaintiff relies on the "cat's paw theory,"

[6] Plaintiff also asserts, without citation to the record or to any authority, that her removal from service constituted an "adverse action[ ]." [Doc. 173 at 5]. Defendant maintains that the initiation of the investigation into Plaintiff's misconduct was not an adverse employment action. See [Doc. 179 at 6–7]. The undersigned need not resolve the question because, as will be discussed below, Plaintiff has not rebutted Defendant's legitimate, non-discriminatory reason for her removal from service.

but Plaintiff's argument falls short. See [Doc. 173 at 14–16]. Under certain circumstances, a plaintiff can establish that a discriminatory intent was the but-for cause of her termination, even if "the person who ultimately decided to take the adverse employment action was neutral and unbiased." Godwin v. WellStar Health Sys., Inc., 615 F. App'x 518, 528 (11th Cir. 2015). Plaintiff must show "that the decisionmaker followed the biased recommendation without independently investigating the" bases for the recommended employment action. Stimpson v. City of Tuscaloosa, 186 F.3d 1328, 1332 (11th Cir. 1999). Only when the decisionmaker acts as "a mere conduit," or "rubber stamp" giving "effect to the recommender's discriminatory animus," can the recommender's discriminatory animus can be imputed to the decisionmaker. Id.

Plaintiff contends that "Golden's decision to refer a dispatcher" for the kind of rule violation at issue "is the same as terminating them himself." [Doc. 173 at 15]. To support her position, Plaintiff cites Garrett's testimony and argues a "failure to give EC-1 protection is a violation regardless of culpability or negligence by third parties." [Id.]. As discussed above, this argument fails for several reasons. First, even if Plaintiff was "guilty" of a Major offense, neither Garrett nor anyone else suggested that would, *ipso facto*, lead to a termination. A Major offense simply meant "possible dismissal." [Doc. 172 ¶36]. Thus, contrary to Plaintiff's suggestion, assessing a Major offense is not "the same as terminate[ion]," and Plaintiff cites no evidence to support her position.

See [Doc. 173 at 15]. Relatedly, because Golden did not actually recommend Plaintiff be terminated, "there was no biased recommendation for [the decisionmaker] to blindly follow." Arean v. Cent. Fla. Investments, Inc., No. 8:10-CV-2244-T-33MAP, 2012 WL 1191651 at *7 n.4 (M.D. Fla. Apr. 10, 2012). Second, Plaintiff's only evidence is *Garrett's* interpretation of Defendant's policies. Garrett did not terminate Plaintiff—Swafford did. Plaintiff cites no evidence *Swafford* believed a "failure to give EC-1 protection is a violation regardless of culpability or negligence by third parties," nor is there any such evidence. See [Id.]; see also [Doc. 151-12]; see also [Doc. 155-1]. Third, Plaintiff misinterprets the cat's paw doctrine.

Plaintiff suggests the cat's paw doctrine applies any time a supervisor cites an employee for violation of a "no fault liability" policy. See [Doc. 173 at 15]. Plaintiff cannot succeed under the cat's paw theory by merely showing "her adverse employment action would not have occurred in the absence of the action taken by the individual . . . with the alleged unlawful animus." Godwin, 615 F. App'x at 529. Instead, Plaintiff must show "that the decisionmaker followed the biased recommendation **without independently investigating**." Stimpson, 186 F.3d at 1332 (emphasis added). The cat's paw doctrine only applies if the decisionmaker is a mere "rubber stamp" for a biased recommendation. Id. Plaintiff cannot succeed under the cat's paw theory by arguing her employment was terminated for committing an

admittedly terminable offense due to an alleged discriminatory animus. The fact that Swafford investigated the incident, determined that Plaintiff did in fact violate the operating procedures as alleged, and was the sole person who decided Plaintiff's conduct warranted termination means Plaintiff cannot impute Golden's alleged discriminatory animus to Swafford. See [Doc. 151-12 ¶¶14–18].

For the foregoing reasons, Plaintiff has not established a prima facie case of discrimination, and Defendant is entitled to summary judgment. Even assuming Plaintiff could make out a prima facie case, her claims would still fail because she admits to engaging in the misconduct that led to her removal from service and ultimate termination.

II. Legitimate, Non-Discriminatory Reason

As mentioned above, once a plaintiff has made a prima facie showing of discrimination, the defendant must articulate a legitimate, non-discriminatory reason for the adverse employment action. McDonnell Douglas, 411 U.S. at 802. Defendant asserts that the legitimate, nondiscriminatory reason for any adverse employment actions taken against Plaintiff was her "Major violation of CSXT's Rules," as discussed above. [Doc. 151-1 at 14–15]. Plaintiff does not dispute that her violation was a legitimate, non-discriminatory reason for her termination, but suggests Defendant "has not proffered a legitimate reason" for why an assessment was entered against her

leading Golden to "remove Plaintiff from service." [Doc. 173 at 16–17]. To the contrary, the reason an assessment was entered against Plaintiff and why she was removed from service appears to be the same reason why Plaintiff was terminated, because Plaintiff committed a Major violation of Defendant's operating procedures. Plaintiff does not dispute that a Major violation is a legitimate, non-discriminatory reason for an assessment and removal from service. See [Doc. 172 ¶36]. The evidence meets Defendant's "exceedingly light" burden of showing a legitimate, non-discriminatory reason for any adverse employment action against Plaintiff. See Turnes, 36 F.3d at 1061; Perryman, 698 F.2d at 1141. The burden then shifts back to Plaintiff to show Defendant's proffered reason was merely a pretext for discriminatory intent. Burdine, 450 U.S. at 253; Chapman, 229 F.3d at 1024; Michell, 186 F.3d at 1354.

III. Pretext

Plaintiff never argues Defendant's legitimate, non-discriminatory reason for the adverse employment actions against her were pretextual. Plaintiff only once mentions "Pretext", in the heading of one subsection. See [Doc. 173 at 16–17]. In that single paragraph, which lacks evidence and legal authority, Plaintiff does not argue Defendant's legitimate, non-discriminatory reason was pretextual. [Id.]. Instead, as mentioned above, Plaintiff simply questions whether Defendant proffered a reason for Golden to "remove Plaintiff from service or assess her." [Id.]. Defendant maintains

that the reason for the assessment was Plaintiff "released the protection (EC-1)" on a train "[t]hereby leaving it unprotected on the mainline." [Doc. 179-8 at 3]. Such a violation endangered the "safety of field personnel or the public" and thus warranted "removal from service pending a formal hearing." [Doc. 172 ¶36]; see also [id. ¶72]. That kind of violation justified termination, even "for a single occurrence." [Id. ¶36].

Thus, Plaintiff does not meaningfully dispute that she was assessed, removed from service, and terminated for the committing the alleged violation. See [Doc. 180 ¶4]. At best, Plaintiff suggests that Hollinhead and other unspecified individuals also committed misconduct. But as discussed above, Plaintiff presents no competent evidence that anyone else engaged in any actual misconduct, like Plaintiff did. Moreover, Plaintiff cannot show pretext unless she shows "*both* that [Defendant's] reason was false, *and* that discrimination was the real reason" for the adverse employment actions. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515 (1993) (emphasis in original). By effectively admitting that she engaged in the misconduct alleged, Plaintiff has not shown that Defendant's "reason was false." See id. As discussed above, Plaintiff has not shown discrimination was the real reason for the adverse employment action(s). Accordingly, Plaintiff's race discrimination claims under both Title VII and § 1983 fail as a matter of law.

CONCLUSION

Based on the foregoing, the undersigned **RECOMMENDS** that the Motion for Summary Judgment ([Doc. 151]) be **GRANTED**. Since this is a final Report and Recommendation and there are no other matters pending before this Court, the Clerk is directed to terminate the reference to the undersigned.

SO ORDERED AND REPORTED AND RECOMMENDED, this 16 day of April, 2021.

LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE