

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DOMTAR PAPER COMPANY LLC¹

and

Case 6-CA-35349

DONNA KLINE, AN INDIVIDUAL

Suzanne C. Bernett, Esq., of Pittsburgh, PA,
for the General Counsel.
Joseph C. Ragaglia, Esq., of Philadelphia, PA,
for the Respondent Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on March 13 and 14, 2007, in Johnsonburg, Pennsylvania, pursuant to an Amended Complaint and Notice of Hearing in the subject case (complaint) issued on February 2, 2007, by the Regional Director for Region 6 of the National Labor Relations Board (the Board). The underlying charge and amended charge were filed by Donna Kline (the Charging Party or Kline) alleging that Weyerhaeuser (the Respondent or Employer) has engaged in certain violations of Sections 8(a)(1) and (3) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it had committed any violations of the Act.

Issue

The complaint alleges that on July 26, 2006,² Kline reported safety concerns to the Respondent that related to the collective-bargaining agreement between the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local No. 10-701, AFL-CIO, CLC (the Union or Local 10-701) and the Employer. Thereafter, on August 7, the Respondent discharged Kline. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel³ and Respondent, I make the following

¹ On March 7, 2007, Weyerhaeuser and Domtar Inc. completed a stock exchange transaction to combine Weyerhaeuser's fine paper business and related assets with Domtar Inc. to create a new company called Domtar Paper Company LLC. The parties agree that Domtar Corporation is responsible to remedy any unfair labor practices, including reinstatement, found in Case 6-CA-35349 (Jt Exh. 1).

² All dates are in 2006 unless otherwise indicated.

³ The General Counsel's motion to correct the transcript is granted.

2. The Facts

5 Calla informed Kline that the Respondent intended to advertise to fill a number of paper machine positions at its facility in Johnsonburg, Pennsylvania. Since Kline wanted to continue her personal relationship with Calla and move near him, she decided to apply for the position when it was officially announced. On her employment application, she listed Calla as a reference. According to Calla, over 260 applicants applied for the positions and 60 were tested including Kline. Rimer apprised Calla that five applicants were selected for the positions including Kline who was the top scorer on the standardized tests and in the interview process. 10 Kline did not mention her relationship with Calla during the interview process nor was she asked about it.

15 Calla accompanied Kline to the general orientation that started on July 10, and suggested that she arrive early in order to select her assignment and be first in line for seniority purposes. Upon arriving at the facility, Calla introduced Kline to Rimer as his girlfriend in addition to introducing her to other management officials who were present at the new employee orientation. Thus, the Respondent learned early on about the relationship between Kline and Calla. During the orientation process, Kline volunteered that she had previously been involved as a union officer at her prior employer. 20

25 Between July 10 and July 14, Kline attended the required orientation sessions at the facility. She did not work on Saturday and Sunday, July 15 and 16. Kline reported to her assignment on the # 5 PM on Monday, July 17.

30 Benson is in charge of the day to day operation of the # 5 PM and oversees training of all new employees including permanent employees who transfer into the section. He estimated that since 2004, approximately 90-100 employees have undergone training. All employees, including probationary, are required to complete a qualification guide (qual guide) as part of their training experience (R Exh. 1).⁶

35 On Kline's first day of work, Benson informed her that she had 132 hours to complete the qual guide requirements that included the on the job training (OJT) portion of the helper position.⁷

40 Mellquist was designated by Benson to be Kline's principal first-line supervisor during her probationary period. He in turn, requested other more experienced employees including Steve Wenner and Jim Ahlberg, to assist Kline with her training and to initial each portion of the qual guide when the required task was completed.

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⁶ The qual guide provides documentation to aid the employee in meeting the minimum acceptable level of competence in the qualifications for the position. It is a comprehensive document of approximately 25 pages requiring that a supervisor or experienced trainer sign-off on numerous areas of responsibility that the employee must complete in learning the intricacies of the paper machine operation.

50 ⁷ I fully credit Benson's testimony that he told Kline about the 132 hour requirement to complete the qual guide during her first day of training. Contrary to the General Counsel's argument that Benson appeared quite nervous and uncomfortable while testifying, I find that he was a sincere and trustworthy witness, whose testimony has a ring of truth to it.

On July 25, Benson requested that Mellquist schedule a meeting with Kline to review her progress in completing the qual guide requirements and to receive feedback from Kline on how she was progressing in her training.

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The meeting was held at 3:30 p.m. on July 26, with Benson, Mellquist and Kline in attendance. Benson, in reviewing Kline's qual guide, immediately noticed that only approximately 20% of the requirements were completed and signed-off on. He informed Kline that substantially more of the requirements should have been completed since she had already used 104 hours of her 132 hour allotment. Benson decided to give Kline some target dates to try and get her qualified for the PM helper position. He directed Kline to concentrate on getting all tests completed and handed in by the end of the week on July 28. He also instructed Kline that her qual guide must be completed by Wednesday, August 2, in order to commence her OJT on August 3. Benson informed Kline that another meeting would be scheduled for Wednesday, August 2, to review her progress on these assigned tasks (R Exh. 2 and 3). Benson arranged for DeCarli to chair the meeting as he would be on vacation.

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During the morning of July 26, Kline was requested to attend the regularly held Team Leader Safety meeting by Mellquist and DeCarli. Kline and Wenner were the only two bargaining unit employees to attend the meeting (GC Exh. 7). DeCarli testified that he invited Kline to the meeting and requested her to prepare a list of safety concerns that she had observed during her first several weeks of employment hoping that a fresh set of eyes might uncover some areas of concern that the Respondent was not aware of.

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During the course of the meeting, Kline discussed a number of safety concerns that she had either personally experienced or had observed while working in and around the paper machine. She reported that when she was working in the basement by herself it was very hot and no one came to check on her status. Additionally, Kline informed those in attendance that she observed an employee standing on some paper while pushing it into the pulper with his feet and during a felt change she saw an employee in an awkward position that looked like it had the potential to become an accident. Wenner confirmed that Kline stated that she had safety concerns when working in the basement.

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DeCarli requested Mellquist to follow-up on some of the safety concerns that Kline raised at the meeting. Indeed, the Respondent counseled the employee who was standing on the paper while pushing it into the pulper with his feet. DeCarli knew that Kline was not in the basement alone as he observed employee Bob Coward accompany Kline to the basement when they both were assigned clean-up duties. DeCarli testified that Mellquist inquired of Coward if he left Kline alone in the basement. Coward reported to Mellquist that he was in the basement with Kline the entire time when they were cleaning up and although not directly beside her, he was always in the area (GC Exh. 19).

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Between July 26 and August 2, Kline continued her training program and sought to complete the requirements of the qual guide. On the morning of August 2, # 5 PM experienced a series of breakdowns that caused the machine to be inoperable for approximately 6 or 7 hours during the day. The breakdown of a paper machine is a significant event and all efforts are directed toward repairing it. Thus, employees are hard pressed to complete other tasks until the problem that caused the initial breakdown is corrected.

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On August 2, around 4 p.m. and after # 5 PM was up and running, DeCarli convened a second meeting in his office to evaluate Klein's progress. Present at the meeting in addition to DeCarli were Zehr and Kline. Prior to the meeting, DeCarli inquired of Zehr whether in his

opinion Kline was a good fit for the company. Zehr replied that he did not think so because Kline was having trouble completing the qual guide in a timely manner and she was tough to communicate with.

5 DeCarli started the meeting and noted that Kline had completed all tests by the deadline of July 28, and the test scores were entered into her qual guide. DeCarli asked Kline if the qual guide was done and Kline stated, "I don't know if it is done". DeCarli observed that the equipment identifications were not complete nor were the task demonstrations. DeCarli informed Kline that the qual guide was supposed to be completed by August 2, so she could start OJT on August 3. DeCarli estimated that the qual guide was 92% complete with the self OJT still not completed. Kline stated, "I can do the job". DeCarli informed Kline that the qual guide should have been completed in 132 training hours. DeCarli apprised Kline that as of July 31 she consumed 144 training hours and on August 2, 179 training hours had been used. Accordingly, DeCarli informed Kline that she is not meeting the expectations for her training. 10 DeCarli inquired of Kline whether she had talked to her team leader about getting the resources to get the qual guide done and Kline replied that she had different team leaders each week.⁸ 15

DeCarli ended the meeting by informing Kline that she had exceeded the training hours and did not complete the qual guide in the time set by Benson in the meeting held on July 26. He informed Kline that the Respondent would look into this further and determine where we will go from here and get back to her. 20

Zehr, who also attended the meeting, was instructed to take notes by DeCarli and his testimony and recitation of events that occurred at the meeting comports with that of DeCarli (R Exh. 5). 25

At the conclusion of the meeting, both DeCarli and Zehr observed that Kline appeared to be upset. Indeed, Kline admitted that she was upset. When she left DeCarli's office, Kline did not take her qual guide and pushed the door hard enough against the wall that caused it to bounce back while she exited the office. While Kline acknowledges that the office door opened with more resistance than anticipated, she asserts that she apologized to DeCarli for her actions. According to DeCarli and Zehr, no such apology was given. 30

By e-mail dated August 2, DeCarli forwarded his notes of the Kline meeting to Forrest (GC Exh. 10). 35

Kline completed the remaining 8% of the qual guide requirements late in the day on August 3. However, Mellquist noted on Kline's qual guide that she was late with its completion (R Exh. 1, p. 25). Effective August 4, Kline changed from the day shift to the night shift and commenced her OJT training on August 4 (GC Exh. 3). 40

During the morning of August 4, Forrest asked DeCarli about the training progress of Kline. DeCarli informed Forrest that she was not a good fit and should be terminated.

45 By e-mail dated August 4, Forrest sent a message to Detwiler stating that Kline is looking like an employee that we do not want to keep. Forrest noted that Kline was dragging through the qual guide and exceeding the number of hours for the PM helper position. He also noted that Kline left an August 2 meeting in DeCarli's office by banging the door open and that

50 ⁸ Kline admitted that before each work day started a meeting was convened by the team leader. Thus, she knew who to contact if help was needed.

5 Kline had asserted in the Team Leader safety meeting about working in the basement to clean up by herself where it was hot and dangerous. The written message ended by stating that we need to understand what the standard for termination is during an employee's probationary 60 day period. She is giving us the signals that she is going to be a problem employee. We can discuss this early next week (GC Exh. 10).

10 During the late morning of August 7, Forrest convened a meeting with DeCarli and Benson to seek their input about Kline one more time. Both DeCarli and Benson apprised Forrest that she was not a good fit especially since she had not timely completed the qual guide, exhibited an unprofessional attitude when leaving DeCarli's office on August 2, and was a difficult individual to communicate with. DeCarli and Benson also represented that Team Leaders Mellquist and Zehr concurred in this assessment. The notes taken by Forrest confirm the discussions that took place during the meeting (GC Exh. 11).

15 Forrest also met with Detwiler and Rimer in the early afternoon of August 7. All three of these high level officials reviewed the supervisory progress notes concerning Kline, and Forrest discussed the results of his earlier meeting with DeCarli and Benson. During this meeting it was also discussed whether the termination of Kline would impact on their ongoing collective-bargaining relationship with Calla and the Union. It was decided that the performance issues exhibited by Kline did not comport with the type of employee that should be retained and these issues must be addressed independently. Thus, it was decided that the termination must be effectuated despite the personal relationship that existed between Kline and Calla. It was decided to schedule the termination meeting for 4 p.m. that afternoon with Forrest, Jennifer Walton, and DeCarli present representing the Respondent. Benson contacted Kline at home and she was requested to come to the facility at 4 p.m. in advance of her scheduled 7 p.m. evening shift.

30 Forrest convened the meeting with Kline on August 7, and explained to her the reasons that she has not met the Respondent's expectations of a new employee. He listed a number of reasons including that Kline was unable to complete the qual guide in a timely manner and did not exhibit the necessary initiative having only completed 20% of the qual guide requirements after 90 hours of training. Additionally, he informed Kline that Benson had made her aware on her first day of employment that the qual guide had to be completed within 132 hours and in response to a question from DeCarli on August 2 if she had completed the qual guide, she responded that she did not know if it was completed. Additionally, Forrest said that her attitude involving the incident of the door slamming when she exited DeCarli's office and the untrue statement that she made at the safety meeting were further reasons for her termination. Kline was given an opportunity to ask questions or make comments but never stated that she did not have enough time to complete the qual guide and did not mention that the shutdown of # 5 PM on August 2 contributed in any way to her inability to finish the qual guide requirements. Forrest testified that Kline's performance and attitude were the primary reasons for the termination with the door slamming and the untrue statement made at the safety meeting being secondary reasons. The notes taken by Forrest, DeCarli and Walton of the termination meeting were introduced into the record (GC Exh. 11, 14, and R Exh. 6).

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3. Analysis

50 The Board has held that Section 7 protects "concerted activities for the purpose of collective bargaining or other mutual aid or protection." No union need be involved, any activity by a single employee may be protected if it seeks to initiate, induce or prepare for group action.

the job. Ultimately, the Union withdrew the grievance since it agreed that Haight could not perform the requirements of the job.

5 In a second grievance filed in September 2004, the Union alleged that laid off employee
Wenner met the requirements for a Journeyman position and with a reasonable amount of
training should be reinstated over less senior employees. In its first step response to the
grievance in late September 2004, the Respondent argued that Wenner did not meet the
10 qualifications to displace a junior employee in the journeyman position. They relied on the fact
that Wenner, in August 2004, requested and was permitted to take a test to determine if he had
the qualifications to displace a journeyman employee with less seniority than himself. DeCarli
administered the test and the results did not establish that Wenner possessed the required skills
to replace a less senior employee in the journeyman position. In November 2004, the
15 Respondent in its third step reply to the grievance confirmed that Wenner was placed on lay-off
status in November 2002, and that employees junior to him were retained in journeyman
positions.

 The underlying grievance was ultimately referred to arbitration by the Union. Calla
20 testified that he was looking forward to seeing DeCarli on the witness stand and the Union
taking his testimony apart since another supervisor intended to testify contrary to DeCarli that
Wenner did possess the necessary qualifications to assume the journeyman position.

 On July 26, the underlying grievance was settled and the parties agreed that it was non-
precedent setting. In part, Wenner was placed in the general maintenance section of the
25 Electrical & Instrumentation (E&I) department as an Intermediate "B" employee who after
moving up and spending 18 months in the Intermediate "A" classification as well as meeting
other requirements, could be promoted to the journeyman position (GC Exh. 6).

 The General Counsel argues that because DeCarli strongly opposed the position of the
30 Union in both grievances, he held a grudge against Calla and when the opportunity arose in
August 2006, used this animosity to get back at Calla by recommending the termination of his
girlfriend.

 I reject this argument for a number of reasons. First, I note that the underlying grievance
35 regarding Wenner was initially filed in September 2004 and the test administered by DeCarli
occurred in August 2004, a period of approximately two years prior to Kline's termination.
Second, it is axiomatic that parties who file grievances that are ultimately referred to arbitration
engage in robust debate and have firm differences of opinion as to the merits of the dispute.
40 Third, I note that the General Counsel has not alleged any independent 8(a)(1) conduct
including threats or interrogation involving DeCarli. Lastly, I note that Calla acknowledged
during his testimony that the parties have an overall good working relationship.

 For all of these reasons, I find that the General Counsel's theory that the Union's pursuit
of contractual grievances and the animosity developed between Calla and DeCarli contributed
45 to Kline's discharge has not been established.⁹

50 ⁹ The parties' collective-bargaining agreement raises safety issues in Articles 20 and 47.
However, neither Kline nor the Union filed any grievances concerning issues surrounding the
July 26 safety meeting.

c. Kline's Relationship with Calla

On July 10, at the general orientation, the Respondent became aware that a personal relationship existed between Kline and Calla. The record evidence establishes, and neither Kline nor Calla testified otherwise, that no supervisor involved in the decision to terminate Kline ever brought up the personal relationship during the probationary period between July 10 and August 7. The only mention of the relationship took place in a meeting held by Respondent's high level managers on August 7, when it was decided to terminate Kline. In this regard, Detwiler, Forrest, and Rimer raised the issue of whether the termination of Kline would strain the collective-bargaining relationship with the Union and be viewed in a negative manner by Calla. It was unanimously decided that the Respondent could not overlook Kline's performance deficiencies and that this issue must be addressed independently.

Based on the forgoing, and particularly relying on the record as a whole, I do not find that the personal relationship between Kline and Calla played any role in the reasons for Kline's termination from the Respondent.

d. The Termination

Kline's termination took place on the 29th day of her probationary period.¹⁰ The General Counsel argues that there was no reason for the Respondent not to have extended her training period up to and including the maximum 60 day period and to have done otherwise was pretextual. Additionally, the General Counsel notes that no probationary employee has been terminated at the Respondent for at least 30 years.

It should first be noted that the contractual provision of a 60 day probationary period for employees is a maximum and not a minimum. Indeed, the Respondent during the probationary period, may discipline, discharge, or transfer an employee as determined to be necessary.

I find that Kline's termination on August 7, was for legitimate business reasons unrelated to protected concerted activities/and or union activities for the following reasons.

First, I note that of the six employees that were hired around the same time as Kline to become paper machine helpers on the # 5 machine, Kline utilized the highest number of training hours (GC Exh. 20 and 21). Second, on July 26, Benson in reviewing Kline's qual guide immediately noticed that only approximately 20% of the requirements were completed and signed-off on. He informed Kline that substantially more of the requirements should have been completed since she had already used 104 hours of her 132 hour allotment. Third, on August 2, DeCarli asked Kline if the qual guide was done and Kline stated, "I don't know if it is done". DeCarli observed that the equipment identifications were not complete nor were the task demonstrations. DeCarli informed Kline that the qual guide was supposed to be completed by August 2, so she could start OJT on August 3. DeCarli estimated that the qual guide was 92% complete with the self OJT still not completed. DeCarli informed Kline that the qual guide should have been completed in 132 training hours. DeCarli apprised Kline that as of July 31 she consumed 144 training hours and on August 2, 179 training hours had been used.

¹⁰ While the General Counsel argues in brief that August 7 was Kline's 29th day of employment and one day before Kline would have become a member of the Union, the parties' collective-bargaining agreement provides that even if Kline had become a member of the Union, she still could have been terminated within the next 30 days.

Accordingly, DeCarli informed Kline that she is not meeting the expectations for her training. He ended the meeting by informing Kline that she had exceeded the training hours and did not complete the qual guide in the time set by Benson in the meeting held on July 26. Third, the decision to terminate Kline was not based just on the recommendation of DeCarli but rather enjoyed the unanimous agreement of both first line and mid-level managers. In this regard, Mellquist and Zehr both informed Benson and DeCarli of Kline's shortcomings including her deficiencies in not completing the qual guide in a timely manner and her lack of communication skills. When asked by DeCarli for his opinion prior to the August 2 meeting, Zehr stated that based on Kline's shortcomings in not completing the qual guide in a timely manner and her ineffective communication skills she was not a good fit for the company. Fourth, Forrest gave considerable thought and spent a great deal of time in weighing whether Kline should be terminated. He checked with DeCarli orally on August 4, met independently with Benson and DeCarli on August 7, held another meeting with Detwiler and Rimer later that day and then convened the termination meeting giving Kline the opportunity to ask questions or point out issues in dispute. Forrest credibly testified that Kline never stated that she did not have enough time to complete the qual guide and did not mention that the downtime of # 5 PM on August 2 in any way contributed to her inability to timely complete the qual guide.

For all of these reasons, and particularly noting that Kline's performance and attitude were the primary reasons for her termination, I find that its effectuation was undertaken for legitimate business reasons without reliance on Kline's protected concerted activities and/or because she invoked rights under the parties' collective-bargaining agreement or her relationship with Calla.¹¹

Therefore, I find that the Respondent did not violate Section 8(a)(1) and (3) of the Act as alleged in the complaint.¹²

Conclusions of Law

1. Domtar Paper Company LLC is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not engage in violations of Section 8(a)(1) and (3) of the Act.

¹¹ Contrary to the General Counsel's request, I adhere to my prior ruling of not admitting the Respondent's position statements into evidence for the reasons stated on the record. In this regard, the position statements were submitted during the course of the initial investigation at a time after the August 7 meeting in which the reasons for the termination were explained to Kline and are confirmed by Forrest's notes. Thus, even if the Respondent advanced additional reasons for the discharge after August 7, my responsibility is to evaluate whether the reasons articulated to Kline on the date of her termination were legitimate or based on Kline's protected conduct.

¹² If others disagree that antiunion sentiment was a motivating or substantial factor in the Respondent's termination decision, I would still find that the Respondent would have taken the same action even in the absence of the protected concerted or union activities.

