

Western Clinical Laboratory, Inc. and United Association of Clinical Laboratory Technologists of Northern California, affiliated with Service Employees International Union Local 22, AFL-CIO Western Clinical Laboratory, Inc. and Service Employees International Union Local 22, AFL-CIO

Western Clinical Laboratory, Inc. and Geraldine N. Mastin. Cases 20-CA-9521, 20-CA-9627, 20-CA-9680, 20-CA-10104, 20-CA-10119 and 20-CA-10165

May 9, 1979

SUPPLEMENTAL DECISION

BY CHAIRMAN FANNING AND MEMBERS PENELLO
AND TRUESDALE

The National Labor Relations Board issued a Decision and Order in this proceeding on July 27, 1976, finding that Respondent had violated Section 8(a)(1), (3), and (4) of the National Labor Relations Act, as amended, and ordering Respondent to offer Monte Young reinstatement to his former job as a medical technologist at Respondent's Roseville location.¹ On March 2, 1978, the United States Court of Appeals for the Ninth Circuit affirmed the Board's finding as to the violations found, but vacated the portion of the Board's Order reinstating Young, and remanded that portion of the proceeding to the Board to determine if Young is competent to perform the job from which he was discharged. The court enforced the remainder of the Board's Order.² The Board notified the parties on July 26, 1978, that it had decided to accept the remand and that they could file statements of position. Thereafter, a statement was filed by the General Counsel.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The court agreed with the Administrative Law Judge and the Board that the record supported the findings that the 1974 evaluations given to Young were discriminatorily motivated, as was his constructive discharge, rejecting Respondent's contention that Young was fired for incompetence. However, the court was of the view that this determination did not settle the issue of whether Young was in fact incompetent. Given the importance of the work performed by medical technologists, the court determined that it should not order the reinstatement of Young if the credited evidence leaves substantial doubt that

Young is competent to perform the work. It therefore remanded the proceeding to the Board to determine from the record Young's competence as a medical technologist. After reexamining the record, we are of the opinion that the evidence does not leave substantial doubt as to Young's competency, and that he is entitled to reinstatement to his former job with Respondent.

In support of its contention that Young was incompetent, Respondent relied to a great extent on the evaluation prepared in September 1974 by his supervisors, Williamson, Oda, and Hueners. However, both the Board and the court found that this evaluation was discriminatorily motivated. In addition, the evidence presented at the hearing by Respondent does not, in our opinion, support the evaluation. Oda did not testify, so we are at a loss to know specifically what input he had in the evaluation. Hueners did not work evenings with Young, and little of his testimony was based on personal observation. His testimony concerning Young's failure to complete tests, which were left for the day shift, the inability of Young to handle emergency situations, and Young's making clerical errors completely lacked specificity and was unpersuasive. Further, nothing in his testimony showed that Young was incompetent to perform as a technologist, or that his presence in the job presented a danger to patients, a situation the court obviously wished to avoid.

Nor do we find at all persuasive the testimony of Williamson concerning his reasons for giving Young a poor evaluation or concerning Young's ability as a medical technologist. As noted in the Administrative Law Judge's Decision, the discriminatory motive behind Young's 1974 evaluation was evidenced by Williamson's remark indicating that Young should have expected a poor evaluation after engaging in union activities. Further, Williamson's testimony shows no support for the poor evaluation he gave Young. Although he evaluated Young as not following chemistry instructions, and testified that Young made recurrent errors in bacteriology and blood banking, he later admitted to a lack of knowledge of such errors. Although he was highly critical of clerical errors made by Young, the record shows that all technologists make these errors, and nothing indicates a propensity on Young's part to excel in this area. While Williamson (and other of Respondent's witnesses), made much of the fact that Young did more hematology than other work in the lab, a condition they represent precludes his being a competent general technologist, the record shows that most of the technologists, especially on the night shift, gravitate toward one special area of their general field and work primarily in that area. Also, Williamson admittedly never spoke to Young of this alleged fault. Wil-

¹ 225 NLRB 725.

² 571 F.2d 457.

Williamson also testified that technologist Lee complained of Young's work, yet Lee testified that he had not spoken to Williamson of Young.

Of more significance is the fact that Williamson's evaluation of Young is in direct conflict with the high praise he showered on him in a December 1973 evaluation prepared for Roseville Hospital. In that evaluation, Williamson not only praised Young's work as outstanding, but also went so far as to recommend him for a promotion to a supervisory position. It is our opinion, as it was that of the Administrative Law Judge, that the December 1973 evaluation of Young more accurately reflects Young's ability and competence than does the September 1974 evaluation of Williamson's testimony in this case.

Respondent also presented evidence from another employee, Lee, a technologist with 22 years' experience, concerning Young's work. Although Lee testified that Young did not have the ability that Lee thought a technologist with Young's experience should have, that he had to cover for Young's doing incomplete tests perhaps three or four times in a year's time, and that Young sometimes became "up-tight" in stressful emergency situations, his testimony principally reflected his resentment toward both Young and employee Gillespie because he felt that they did not carry as great a share of the workload at night as he. Lee did admit that he and other technologists made the same kind of clerical errors for which he faulted Young and that Young did not try to avoid work. Further, in each category of the "Quality of Work" section of Western Clinical's evaluation forms, Lee rated Young as "average," thus not incompetent.

In contrast to Lee's somewhat critical opinion of Young's work, Alves, an experienced technologist who also had worked with Young at Roseville Hospital, testified that he had always had complete confidence in the accuracy of Young's work, and that he never noticed Young having difficulty with the work. Further, he testified that Young did not limit himself to working in hematology, corroborating Young's own testimony in this regard.

Although Respondent makes much of Young's alleged poor score on the "12 slide" test, we place no reliance on that test as a measure of his competence. In late September, Young was given the bad evaluation and told that he would be evaluated again in 30 days and, if he did not improve, he would be terminated. Nearly 30 days later, while Young was performing stressful stat work, he was required to drop

his work and, alone, take the test in the doctor's office, as part of his evaluation. Respondent's attempt to compare Young's poor score to the allegedly superior scores of four technologists at another lab, or to Lee's performance on the test, is meaningless. The four technologists at Grass Valley were asked to take the test in their spare time at their normal work stations. There was no pressure put on them such as Young had, and there is no evidence that they did not collaborate on the test or other aids. Similarly, Lee, a technologist with vast experience, was under no pressure (certainly not the threat of discharge as was Young), when he took the test.

In the circumstances surrounding Young's being tested, we find the results of the test of no value in judging his competence.

In our opinion, Respondent presented no reliable evidence that Young was incompetent in his work. On the other hand, there is unbiased evidence showing that he was not only competent, but a good technologist. Williamson's 1973 evaluation of Young not only reflects this opinion, but it also contradicts testimony that Dr. Keenan and Williamson were concerned with Young's ability from the time of his hire. Similarly, a September 25 memorandum from the emergency room staff praising the speed and efficiency of Young's work and the September 26 letter from an emergency room physician to Dr. Keenan not only attest to the high opinion of the speed and accuracy of Young's work held by those who relied on his work on a day-to-day basis, but also belies Dr. Keenan's testimony concerning complaints from the emergency room concerning Young.

Finally, we credit the testimony of Young which, in our opinion, shows that he was a concerned technologist who realized the importance of speed and accuracy in his work and strove to achieve greater proficiency. Although he did more work in hematology, he did not limit himself to this area, and attempted to further his knowledge of all aspects of his work. Further, prior to his engaging in union activities, no one had questioned his competency or criticized his performance in his job.

Based on all of the foregoing, we conclude that Young possesses the competency required of a medical technologist to perform the job from which he was constructively discharged. We therefore adhere to our Order (225 NLRB at 726), in which we ordered Young reinstated to his former position, and made whole for his losses.