

National Workers Association, Autumn Ballew as an individual and Kasey Massey as an individual respectively file acceptions to Judge Keltner Locke's ruling regarding case numbers 10-CA-085934, 10-CA-088882 and 10-CA-087199.

Exceptions to Decision

1. Regarding case #10-CA-088882, we respectfully appeal Administrative Judge Locke's failure to find that respondent's promulgation and implementation of the overly broadly work rule #4 was unlawful and violated Section 8(A)1 of the act. JD – page 26 line number 34
2. Regarding case #10-CA-085934, we respectfully appeal Administrative Judge Locke's failure to find that respondent's discharge of Autumn Ballew on 07/17/2012 was unlawful and violated Section 8(A)3 of the act. JD – page 1 paragraph 1 "Statement of the case" JD – pages 40 – 45
3. Regarding case #10-CA-087199, we respectfully appeal Administrative Judge Locke's failure to find that respondent's discharge of Katie Massey on 04/19/2012 was unlawful and violated Section 8(A)3 of the act. JD – page 1 paragraph 1 "Statement of the case" JD – page 38 line 34
4. We respectfully appeal Administrative Judge Locke's failure to acknowledge the legitimacy of the National Workers Association and the knowledge of the union that the respondent denied.

In Solidarity,

Autumn S. Ballew

Katie Massey

The National Workers Association

Before the Honorable Members of the National Labor Relations Board

Appeal Case Numbers 10-CA-085934, 10-CA-088882

Copper River Grill of Boiling Springs, LLC

and

Autumn Ballew, an Individual

Dishcharge of Autumn Ballew JD-pg 38-46

In regards to the aboved referenced case numbers, Adminstrative Law Judge Locke ruled that the dishcharge of Autumn Ballew did not violate the act and work rule #4 was lawful. However evidence and witness testimony shows different. In regards to Case Number 10-CA-088882 the termination of Autumn Ballew, under work rule #4. It has been settled that work rule #4 was "overly broad and unlawful." A. Ballew was terminated persuant to this rule therefore her termination was unlawful. *Claremont Resort and Spa 344NLRB832 (2005)* states "that a workrule prohibiting a negative conversation was unlawful and termination persuant to the rule was therefore unlawful, according to the NLRA Sect 8(a)1." *Kinder Care Learning Centers 855 F.2d 861* states "...rules can be reasonably understood by employees as restricting their rights to discuss with each other and outsiders their terms and conditions of employment and therefore unlawful on that basis." *Luthern Heritage Village/Lavonia 343NLRB646, University Medical Center 3551318 (2001)* General Counsel Jasper Brown stated in his brief JD-pg22, L15 "with respect to work rule #4 , Respondent's broad prohibitions against displaying a negative attitude that is disruptive to other staff or has a negative impact on guest and actions which threaten smooth operation, clearly encompass employees' concerted communication or conduct protesting terms and conditions of employment." The defense failed to show any evidence that work #4 was even violated by A. Ballew. A.Ballew also denied ever making any derogatory statement. Defense witness Josh Walker, general manager, testified the he never investigated the statement from R. Mahan that A. Ballew had ever made the statement of "Fuck Copper River Grill". Mahan testified that the statement was made infront of the "Ames". Walker never questioned these well-known customers. Mahan had obvious animosity towards A. Ballew and all of her allegations were discredited by the defense's own witnesses. A Ballew testified that she was fired for a customer complaint and her affidavit states that the customer complaint involved the derogatory statement. The defense argued that this statement was made infront of a customer , which they could not produce for testimony or written statement. Nicholas Soria testified that his complaint was that A. Ballew was "texting". Soria's statement (*exhibit #6*) was written months after A Ballew's termination. *Exhibit #16* - Ashley Albrecht, a current employee at the time of trial,

received a warning for calling a customer an "Asshole" in the presence of a manager and remained employed - testified J Walker. Copper River Grill enforced the tattoo policy, being late, smoking policy, not claiming enough tips, solely on A Ballew only months prior to her termination. (*Waterbury Community Antenna INC 587 F.2d 90, 97-98 (1978)*). Defense witnesses J Hardin and Chenice Porter, testified that these policies were not enforced and they failed to follow the policies themselves and received verbal or no discipline. Clearly A. Ballew, employee of 5 years, was discriminated against in this regard, with no evidence why. Copper River Grill testified that A Ballew was fired pursuant to work rule #4, even if this rule had been deemed lawful by the NLRB, an overwhelming lack of evidence questions that a violation of this rule ever occurred.

Validity and Knowledge of the Union

A. Ballew, K. Ballew, and K. Massey were the original founders of the National Workers Association (2011). All three started with no knowledge of Unions or Labor Laws, just seeking better wages and working conditions. As the evidence shows a dedicated group of employees was engaged in concerted activity with the full intention to form an independent union, with respect to NLRA Section 7, and was seeking to collectively bargain with the employer in good faith. The National Workers Association made many attempts to deliver a formal request to bargain to the corporate office. All of the notifications were ignored or refused. It was faxed with proof of delivery (which was entered into evidence); it was mailed by regular and certified mail; and eventually was hand delivered to management staff W Lawrence. J. Walker testified that K. Ballew "sat a letter down in front of Will Lawrence, he was prosecuted shortly after that." Witness testimony shows that K Ballew was a regular patron for years after his termination, without issue previous to concerted activity. No other witness beside W. Lawrence provided testimony of any disturbance, altercation, or any interruptions of commerce to the company involving K. Ballew. After K. Ballew's arrest, without disruption, he continued to exercise his right to be on the property. During K. Ballew's trespass hearing he chose to use represent himself using Supreme Court decision 151-101, Babcock and Wilcox vs NLRB. Kevins presented a case openly telling the judge of his concerted activity and the National Workers Association's intentions to become an independent union. W. Lawrence, A. Worthington and A. Ballew were also present at the courthouse. It is clear that management and corporate representatives were fully aware of concerted activity and of organizing attempts. A showing of interest circulated for months before 30% could be obtained due to the high turnover rate in the restaurant. During those months, informational flyers and flyers about meetings were being distributed (exhibit #14). J. Hardin, Victoria Ballard, R. Mahan, A. Ballew, K. Massey, Zach Daniel all testified to knowing about the union. A. Ballew, K. Massey, Victoria Ballard all testified that W. Lawrence questioned them about their intentions, JD-pg7, L10-25. Judge Locke himself stated "respondent violated Sect 8(a)1 of the act when its supervisor asked an employee" (V. Ballard)" JD-pg12, L 25-45." to keep him informed about the union organizing campaigning, which Lawrence did not deny JD-pg14, L 25-30." If in fact there was no organizing campaigning, why would he ask about it?

TIMELINE:

JAN 2012 - showing of interest begins getting signatures

FEB 2012 - Flyers are being distributed and meetings are being held

MARCH 2012 - W. Lawrence questions A. Ballew and K. Massey about attempts

APRIL 2012 - K. Massey is fired

April 2012 - W. Lawrence asked V. Ballard to keep him informed

MAY 4th 2012 - Formal Bargaining Request Faxed

MAY 6th 2012 - K. Ballew is arrested

MAY 2012 - K. Ballew's Trespass Hearing

JULY 2012 - A. BALLEW is fired

JULY 2012 - Charges are filed with the NLRB

In closing, we respectfully ask the Honorable Members of the National Labor Relations Board to consider the undeniable evidence of concerted activity and unlawful acts including interrogation, discrimination and discharge by the respondent Copper River Grill LLC. It is obvious the company discriminated against, harassed and attacked the livelihood of A. Ballew and K. Massey. Copper River Grill distorted the facts and used exaggerated questionable situations and enforced rules to assert justification for their acts and to extinguish all concerted activity. With the most respect, we believe that Administrative Law Judge Keltner Locke, was fooled by the sole testimony of W. Lawrence claiming no knowledge of any and all events including questioning employees known to be involved in concerted activity, fabricating disturbances by K. Ballew without a single collaborative witness. We believe Judge Locke misjudged our lawful intentions and was blinded by the respondent's successful attempt to diminish work ethic and demean the character of the charging parties.

THE NATIONAL WORKERS ASSOCIATION
BEFORE THE HONORABLE MEMBERS OF THE
NATIONAL LABOR RELATIONS BOARD
APPEAL CASE NUMBER 10-CA-087199

Copper River Grill of Boiling Springs, LLC

AND

Katie Massey, an individual

Discharge of Katie Massey – JD – pages 30 – 38

In regards to the above referenced case, we respectfully appeal the decision of Administrative Law Judge Keltner Locke. The evidence shows that K. Massey, a long time employee of Copper River Grill was discriminated against and unlawfully fired. Defense witness J. Walker, owner operator of the Boiling Springs store, testified that K. Massey was a good employee, and that was his reasoning for hiring her back. The defense argued that K. Massey was fired for not following a verbal policy "ring it before you bring it". Several defense witnesses testified to using the "place hold method". This is a common practice to hold an empty seat and to ring in drinks later if needed. After being asked by Judge Locke if it was "possible for someone to order a tea after dinner", J. Walker answered "No". When in fact this does happen frequently in the restaurant industry. Testimony shows that as a server sometimes it is not realistic to ring in your drinks before you take them to the customer. Chenice Porter testified that two different employees used this same method to ring in drinks. The two employees had also been recently counseled repeatedly by management and continue to stay employed at Copper River Grill. *Intercontinental MFG Co. Inc 201NLRB694 (discharging senior employees for violation of a rule and keeping the employees with less seniority)*. Defense witness Z. Daniel and J. Walker testified that no other employee, besides K. Massey, was fired for this reason. (*Waterberry Community Antenna Inc vs NLRB 587 F.2d 90.*) Exhibit #7 shows that all drinks were rang in before the check was presented to the customer, the company received no loss. Stepp testified that K. Massey was indeed busy and when the audit was preformed and that K. Massey had no knowledge of the audit being performed. Clearly K. Massey was adapting to a busy restaurant environment and delivered her drinks to the customer first. The company used a verbal rule already in place but not enforced to justify K. Massey's termination. We believe that K. Massey was discriminated against and unlawfully fired under the NLRA Sect. 8(a)3.