



Charging Party has been working in a limited capacity due to an on-the-job injury incurred on May 17, 1999, and a re-injury in or around May 2011. As of the August 2011, the Charging Party was medically limited to performing only the casing duties of her Letter Carrier position, amounting to approximately 4 hours of work per day. Those duties, and only those duties, comprised her Limited Duty Job Offer. Her remaining un-worked hours were compensated by the Department of Labor's Office of Workers' Compensation Programs.

In or around April, 2013, then-Manager Seabron Bowler, Jr., tasked the Charging Party with answering the Station's phones after she completed casing her route. According to Mr. Bowler, while these duties were not part of the Charging Party's official Limited Duty Job Offer, he exercised his discretion to allow her to perform them in order to compensate for the shortage of supervisors at the Station. The Pine Street Station requires at least four supervisors; however, only two supervisors and one acting supervisor were assigned there at this time. As such, the Charging Party was only to be utilized as a back-up when the supervisors were otherwise overburdened.

Mr. Bowler left Pine Street in June, 2013 and a new manager covered the Station for approximately four weeks. However, from early July 2013 through the latter part of August 2013, the Pine Street Station did not have an assigned manager. During that time Manager Customer Services Operations, Ravi Baniwal checked in periodically with the Station's supervisors, visiting Pine Street a few days a week. Noting the shortage of supervisors at the station, Mr. Baniwal detailed a fourth supervisor, John Yang, to Pine Street effective July 23, 2013.

During one of Mr. Baniwal's visits to the station he observed the Charging Party answering phones. Mr. Baniwal knew that the Charging Party was a Letter Carrier because,

some years prior, he had been her manager at another station. A few days later, he called over to the station, and the Charging Party again answered the phone. When the supervisor came to the phone Mr. Bainiwal asked why the office had a Carrier answering their phones. He was informed that it was because they were short on supervisors and Mr. Bowler had given her those duties. In response Mr. Bainiwal pointed out that John Yang had recently been detailed to the station providing them a full compliment of supervisors, so there should be no need to have a Carrier answering phones. He further instructed that the employee should be given a Limited Duty Job Offer consistent with her most recent medical restrictions which should not include answering the telephone.

On or about July 24, 2013, acting-Supervisor Sara Rosales observed the Charging Party lingering at the facility after she had completed her job duties. Rosales approached the Charging Party and asked her if anyone had told her that she was no longer needed to answer phones. The Charging Party replied that she had not been informed and asked who was going to do it if not her. Supervisor Rosales explained that it was a supervisor's job to answer the phones. The Charging Party went home and was compensated by OWCP for the remainder of the day.

## **II. ANALYSIS**

This case turns on whether Respondent had a right to reassess the work being performed by one of its Limited Duty employees and whether the work she was ultimately accorded constituted proper restoration under 5 C.F.R. §353.301 et seq. Only the Merit Systems Protection Board can make that determination. The General Counsel asserts that Respondent's actions were in retaliation for her testimony at the hearing of fellow employee Bradford Louis last June. However, even if the Board were to find that Respondent's actions were improperly

motivated, which it cannot, there can be no retaliation where the actions complained of are proper and just.

### **III. CONCLUSION**

The Board's jurisdiction over Respondent is conditional. Insofar as permitting the Board to decide matters which are reserved to the Merit Systems Protection Board is inconsistent with title 39, this case must be dismissed for lack of jurisdiction.

Dated: February 18, 2014

Respectfully submitted,



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Rebecca Horan  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing **Motion to Dismiss** were sent this 18th day of February, 2014, as follows:

National Labor Relations Board

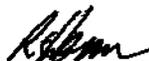
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