

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

UNITED STATES POSTAL SERVICE

And

Case 20-CA-111346

OPHELIA SOSA, an Individual

COUNSEL FOR THE GENERAL COUNSEL'S REPLY TO RESPONDENT'S
MOTION TO DISMISS

I. Preliminary Statement

On February 18, 2014¹, Respondent filed a Motion to Dismiss the complaint in the above case, claiming that the National Labor Relations Board (the Board) lacks jurisdiction in the matter. Respondent's Motion is not based in fact or law, and thus, Respondent's Motion to Dismiss should be DENIED.

II. Respondent's Motion to Dismiss is Not Supported by Law

Respondent argues that the Board should dismiss the complaint in connection with the above charge because the Board lacks jurisdiction over the matter, asserting it belongs before the Merit Systems Protection Board (MSPB). The Postal Service contends that only MSPB has the authority to reassess the work being performed by

¹ All dates herein refer to calendar year 2014 unless otherwise indicated.

Limited Duty employee Ms. Ophelia Sosa (Sosa) and subsequently assign her work constituting proper restoration under 5 C.F.R. §353.301 et seq. Notably, Respondent fails to cite a single case to support its claim.

The Postal Reorganization Act of 1970 (PRA), 39 U.S.C. § 101, et seq., made the Postal Service the only federal entity covered by the National Labor Relations Act (Act) and subject to the Board's jurisdiction. The PRA authorized the Board, among other things, to enforce the Act's unfair labor practice provisions to protect the Postal Service's employees. Thus, as a general matter, MSPB does not have jurisdiction over adverse actions taken against the employees of the Postal Service in retaliation for their union, protected, concerted activities, or participation in Board proceedings. The narrow exception is found in The Postal Service Employees Appeal Rights Act, Pub.L. No. 100-90, 101 Stat. 673 (1987) (codified as amended at 39 U.S.C. § 1005(a)(4) (1994)), which grants authority to MSPB to consider appeals from adverse personnel actions, including reductions in pay or grade, filed by a postal service employee who is in the position of a confidential employee, supervisor, or a management employee in the Postal Service.² A postal service employee must either fall within the MSPB's jurisdiction or the Board's jurisdiction, and the boundary between the MSPB and Board's jurisdiction divides the class of all postal service employees into two distinct and mutually exclusive subgroups.³

The complaint here alleges that Respondent violated Sections 8(a)(1) and 8(a)(4) of the Act, by 1) removing Sosa from her telephone answering duties, thereby reducing her job hours; 2) implementing a new job offer that further reduced Sosa's work hours; and 3) threatening Sosa with discipline if she refused a new job offer that changed her job

² *Bolton v. MPSP*, 154 F.3d 1313, 1316 (Fed Cir. 1998); *McCandless v. MSPB*, 996 F.2d 1193, 1199 (Fed Cir. 1993).

³ *Bolton*, 154 F.3d 1313 at 1320.

duties and reduced her work hours, all in retaliation for Sosa's union activities and her testimony at an unfair labor practice hearing before the Board in Cases 20-CA-065948, 20-CA-094161, and 20-CA-104400.

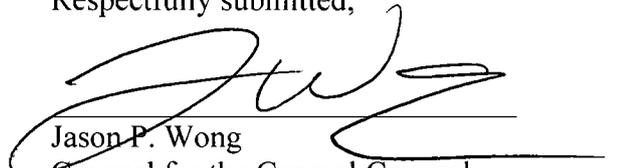
By this motion, Respondent inserts a red herring in an otherwise clear case in which the Board is properly exercising its jurisdiction. Indeed, MSPB may have the authority and jurisdiction over restoration rights, but that isn't the issue before the judge in this proceeding. Rather, the issue in the instant case is whether Respondent removed certain work duties and reduced Ophelia Sosa's work hours because of her testimony in the NLRB hearing involving Mr. Bradford Louis (NLRB Cases 20-CA-065948, 20-CA-094161, and 20-CA-104400). Only the Board has jurisdiction over this unfair labor practice case. First, as an employee covered by a collective-bargaining agreement (National Association of Letter Carriers), Sosa is subject to the Act's jurisdiction under the PRA. Second, Sosa is not a confidential, supervisory, or managerial employee, which would grant MSPB jurisdiction over Sosa's case. Third, because this charge alleges a Section 8(a)(4) violation, logically, the Board is the only entity who could be charged with enforcing its own provisions protecting employees who participate in its processes, as Sosa did when she testified in the earlier Board proceeding. Finally, the Board has asserted jurisdiction over Respondent in other cases in which alleged discriminatee had medical restrictions and required light duty and where Respondent allegedly assigned the employee duties contrary to their medical restrictions in retaliation for their union or other protected activity and/or because they filed charges with the Board.⁴

⁴ See, for example, *USPS*, 338 NLRB 1052 (2003).

Accordingly, for the above reasons, the General Counsel respectfully requests that the Board DENY Respondent's Motion to Dismiss.

Dated at San Francisco, California this 24th day of February, 2014.

Respectfully submitted,



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AFFIDAVIT OF SERVICE OF: Counsel for the General Counsel's Reply to Respondent's Motion to Dismiss

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on February 24, 2014, I served the above-entitled document(s) by electronic or regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

REBECCA R. HORAN, ESQ.
UNITED STATES POSTAL SERVICE
LAW DEPARTMENT - NLRB UNIT
1720 MARKET ST RM 2400
SAINT LOUIS, MO 63155-9915

ELECTRONIC MAIL

OPHELIA SOSA
7875 MICHIGAN AVE
OAKLAND, CA 94605-3038

REGULAR MAIL

February 24, 2014

Date

Susie Louie, Designated Agent of NLRB

Name



Signature