

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

HUMAN SERVICES PROJECTS, INC.
d/b/a TEEN TRIUMPH,

Respondent,

and

Case 32-CA-25262

JAKE WALLACE, An Individual,

Charging Party.

RESPONDENT'S ANSWER TO CHARGING PARTY'S EXCEPTION

I. QUESTIONS RAISED BY THE CHARGING PARTY

The Charging Party, (hereinafter Wallace), failed to file exceptions as required by Section 102.46, but instead "cut and pasted" the Acting General Counsel's Post Trial Brief to the Administrative Law Judge (hereinafter ALJ). It appears from the brief filed by Wallace, that he takes "exception" with the following findings of the ALJ: (1.) Wallace engaged in post discharge misconduct which made him ineligible for reinstatement; and (2.) Wallace was only entitled to backpay until November 16, 2010. (ALJ Decision p. 6, lines 8-10, 30-31 & 41-47.)

However, the evidence proves that Wallace was disqualified from reinstatement and not entitled to backpay past November 16, 2010, because he engaged in several acts of post-termination misconduct. Following his termination for insubordination on June 11, 2010, Wallace became violent, aggressive and threatened Respondent's Chief Financial Officer, Craig

Fredericks, with bodily harm. Moreover, Wallace assaulted Kay Tiffany on November 16, 2010, as she exited the U.S. post office on Robin Hood Drive. The principal question to be addressed by Wallace's brief is whether he engaged in post-termination misconduct sufficient to render him unfit for further service, and thereby precluding him from reinstatement and full backpay.

The Administrative Law Judge (hereinafter "ALJ") found that, "subsequent to his discharge Wallace threatened Respondent's bookkeeper Tiffany . . . [and] . . . coupled with Wallace's threatening behavior towards Craig Fredericks on the day of discharge, in my opinion makes Wallace ineligible for reinstatement." (ALJ Decision p. 6, lines 8-10.) The ALJ's finding is correct and supported by the evidence, and the cut off date of November 16, 2010, the date Wallace assaulted Kay Tiffany in the post office parking lot, is the correct cut off day for backpay purposes.

Because Respondent is a state licensed nonprofit corporation that operates several residential group homes which serve adjudicated youths with varying behavioral challenges, including adjudicated sex offenders and probationary juveniles, child care workers such as Wallace who exhibit a propensity for threatening, aggressive and abusive behavior, pose a significant danger to the children served by Respondent. Thus, Wallace should be denied reinstatement and disallowed backpay after November 16, 2010, because the evidence proves that his post-discharge actions are of such a character as to render him unfit for further service.

II. THE EVIDENCE IN THIS MATTER PROVES THAT WALLACE ENGAGED IN POST-TERMINATION MISCONDUCT ON JUNE 11, 2010, AND NOVEMBER 16, 2010, THAT RENDERS HIM UNFIT FOR FURTHER SERVICE, THUS, WARRANTING THE DENIAL OF REINSTATEMENT AND FULL BACKPAY

After being asked several times to vacate Respondent's premises, Wallace became

enraged and threatened Craig Fredericks with bodily harm. (Official Transcript of Proceedings, hereinafter “Tr.”, pp. 310-312, 392-393.) It is well settled that in cases where the employer is relying on egregious post-discharge misconduct by a terminated employee to relieve it from the obligation of reinstatement and backpay, “[t]he board looks at the nature of the misconduct and denies reinstatement in those flagrant cases ‘in which the misconduct is violent or of such character as to render the employees unfit for further service.’” (*C-Town*, 281 NLRB 458, 458 (1986); *Hadco Aluminum & Metal Corp.*, 331 NLRB 518, 520 (2000); *Family Nursing Home & Rehabilitation Center, Inc.*, 295 NLRB 923, 923 (1989).)

Moreover, “some post-discharge conduct, including verbal threats, may be sufficiently egregious to bar reinstatement and toll backpay as of the date of the conduct.” (*Hadco Aluminum*, supra, 331 NLRB at 520.) In *Hadco Aluminum & Metal Corp.*, the Board adopted the ALJ’s recommendation that reinstatement be denied and backpay cut off to a prior employee as a result of his post-discharge misconduct in threatening another employee over the phone with bodily harm. (*Hadco Aluminum*, supra, 331 NLRB at 518.) In *Family Nursing Home & Rehabilitation Center, Inc.*, the Board adopted the ALJ’s recommendation that no reinstatement and backpay be provided to a prior employee based on her misconduct immediately following her discharge, and her assault against the respondent’s director of nursing. (*Family Nursing Home*, supra, 295 NLRB at 923.)

Conversely, the instant matter is not one where a discharged employee simply made statements disparaging Respondent’s services, facilities, management practices or Respondent’s officials. Wallace should be denied reinstatement and backpay after November 16, 2010, because the evidence proves that his post-discharge actions were of such a character as to render him unfit

for further service. Following his termination from Respondent, Wallace was instructed several times by the Fredericks' to vacate Respondent's premises. (Tr. pp. 310-312, 392-393.) Instead of vacating the premises, Wallace ignored the Fredericks and started down the hallway to the conference room where the other Heather House employees were meeting. (Tr. pp. 310-312, 392-393.)

Craig Fredericks followed after Wallace and instructed him again to vacate Respondent's premises as he no longer was an employee, and Wallace turned to Craig Fredericks and said in a threatening manner "I'm not leaving, and if you expect me to leave, you're going to have to come and make me leave this facility," and gestured towards Craig Fredericks to come and fight. (Tr. pp. 310-312, 392-393.) Fearing for his safety, Craig Fredericks instructed the receptionist to contact the police department. (Tr. pp. 311-312.)

Thereafter, Wallace ran down the hallway to the conference room where the Heather House staff were meeting and slammed the conference room door shut. (Tr. pp. 392-393.) Marti Fredericks followed after Wallace and opened the door to the conference room and instructed the Heather House Staff to return to the main conference room. (Tr. p. 393.) Wallace refused to leave Respondent's premises as instructed, and followed the Heather House staff to the main conference room and sat down. (Tr. p. 393.)

Shortly thereafter, a uniformed police officer from the Stockton Police Department arrived and spoke to Marti Fredericks. (Tr. p. 394.) The police officer approached Wallace and instructed him to leave the premises, and Wallace refused. (Tr. pp. 102-107, 394.) Thereafter, the officer reached for his baton, instructed Wallace to stand up, handcuffed Wallace, and escorted him to the officer's patrol vehicle. (Tr. pp. 106-107, 394.) Several minutes passed when

the officer returned and indicated to Marti Fredericks that Wallace refused to leave the premises, even after the officer asked Wallace if he would get in his vehicle and leave if the handcuffs were removed. (Tr. pp. 106-107, 395.) Because Marti Fredericks refused to make a citizen's arrest, the police officer spent the next twenty minutes attempting to convince Wallace to leave the premises, and finally was left with no other choice but to arrest Wallace. (Tr. pp. 106-107, 395.)

As a result of Wallace's aggressive and threatening conduct following his termination, Respondent sought and was granted a restraining order on July 14, 2010, requiring Wallace to stay 100 yards away from Respondent, the Fredericks, all six group homes and staff, and the private school run by Respondent. (Exhibits R-3 and R-4.) Thus, Wallace is legally prohibited by lawful State Court Order from being 100 yards of Respondent's facilities and employees. (Exhibits R-3 and R-4.)

Furthermore, on November 16, 2010, Wallace approached Kay Tiffany while she exited the U.S. post office on Robin Hood Drive and began to scream profanities at her. (Tr. pp. 117-118, 201-205.) In an effort to get away from Wallace, Ms. Tiffany quickly walked to her vehicle but Wallace followed behind her and continued his profanity laced tirade. (Tr. pp. 117, 201-205.) Wallace continued to yell profanities at Ms. Tiffany calling her "a criminal and fucking bookkeeper", and as she attempted to close her vehicle door, Wallace grabbed the door and would not let go. (Tr. Pp. 203-204.) Finally, after nearly a minute of struggling to close her door, Wallace let go, and Ms. Tiffany was able to close her door and drive back to Respondent's office. (Tr. pp. 204-207.) The incident with Wallace left Ms. Tiffany scared and fearful for her safety, thus, she requested help from Respondent in seeking an restraining order against Wallace. (Tr. pp. 205-207; Exhibit R-5.)

There is little doubt that Wallace's post-termination misconduct disqualifies him from being re-instated by Respondent and from receiving full backpay. The uncontroverted testimony of Kay Tiffany, Craig Fredericks and Marti Fredericks, proves that Wallace physically threatened supervisors and staff, used loud, foul and obscene language, behaved in a belligerent manner detrimental to Respondent's business and public image. (Tr. pp. 201-215, 296-313, 381-396.) It is also clear that Wallace's threatening and aggressive behavior disqualifies him from reinstatement with Respondent, because allowing such behavior to be exhibited in front of, and towards, the children served by Respondent, is a significant compromise to their safety and well being.

The evidence proves that Wallace is unfit for further service, and the ALJ correctly concluded that Wallace should not be reinstated. The ALJ used the date of November 16, 2010, the date Wallace assaulted Kay Tiffany in the post office parking lot, as the correct backpay cut off date. Because Wallace physically threatened Craig Fredericks with bodily injury on June 11, 2010, and assaulted Kay Tiffany on November 16, 2010, and because Wallace's aggressive and threatening behavior can not be allowed to come into contact with the children served by Respondent, his post-termination misconduct renders him unfit for further service, and Wallace should be denied reinstatement and full backpay.

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III. CONCLUSION

Thus, for the reasons set forth above Respondent requests that the Board affirm the ALJ's decision and not modify the ALJ's findings of fact, conclusions of law and the proposed remedies and recommended order.

Date: October 24, 2011

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CERTIFICATE OF SERVICE BY MAIL
OR BY OVERNIGHT UNITED PARCEL SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

I am employed in the County of San Joaquin, State of California. I am over the age of 18 and not a party to the within action. My business address is 6 El Dorado South, Suite 315, Stockton, CA 95202.

On October 24, 2011, I served the following:

RESPONDENT'S ANSWER TO CHARGING PARTY'S EXCEPTION

By enclosing a true copy thereof in an appropriate sealed envelope, addressed to each interested party as stated on the attached mailing list.

BY MAIL:

I deposited each such sealed envelope, with postage thereon fully prepaid, in the United States mail at Stockton, California.

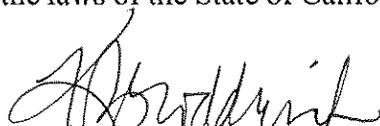
Pursuant to ordinary business practice, I caused said envelope to be collected and placed for deposit in the United States Postal Service at Stockton, California. I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing. It is collected and deposited with the United States Postal Service, with postage thereon fully prepaid, on the same day in the ordinary course of business.

BY UNITED PARCEL SERVICE:

I deposited each sealed United Parcel Service envelope for overnight delivery, with United Parcel Service delivery fees fully prepaid or provided for, in a United Parcel depository at Stockton, California.

Executed on October 24, 2011, at Stockton, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


KIMBERLY BRODDRICK

1 UNITED STATES OF AMERICA
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4 HUMAN SERVICES PROJECTS, INC. V. JAKE WALLACE
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CERTIFICATE OF SERVICE

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