

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

In the Matter Of:

DALTON SCHOOLS, INC. d/b/a
THE DALTON SCHOOL,

Respondent,

Case 02-CA-138611

-and-

Oral Argument Requested

DAVID BRUNE, An Individual

Charging Party.

RESPONDENT THE DALTON SCHOOLS, INC.'s d/b/a THE DALTON SCHOOL
ANSWERING BRIEF IN RESPONSE TO COUNSEL FOR THE GENERAL
COUNSEL'S LIMITED CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW
JUDGE'S DECISION

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d/b/a The Dalton School

Respondent Dalton Schools, Inc. d/b/a The Dalton School (“Respondent” or “The Dalton School”), pursuant to Section 102.46(f)(1) of the National Labor Relation Board’s Rules and Regulations, submits the following answer to Counsel for the General Counsel’s Limited Cross-Exceptions to the Administrative Law Judge’s Decision, dated August 21, 2015.

ARGUMENT

The ALJ Properly Denied the Charging Party’s Request for Reimbursement from The Dalton School for Search-for-Work and Work-Related Expenses

The General Counsel requested in its post-hearing brief (“Brune Post-Hearing Brief”) that Administrative Law Judge Arthur J. Amchan (the “ALJ”) order The Dalton School to reimburse Mr. Brune for all search-for-work and work-related expenses. Brune Post-Hearing Brief, p. 39 - 41. In the ALJ decision dated June 1, 2015, however, the ALJ declined to recommend that The Dalton School reimburse Mr. Brune for these expenses. See ALJD 11:n.14. In his decision, the ALJ noted that “there is no Board precedent for such a remedy. It is up to the Board, not this judge to decide whether to change existing Board law.” Id. Counsel for the General Counsel now takes exception to the ALJ’s recommendation on this matter.

Counsel for the General Counsel’s argument is misplaced, as the ALJ properly denied Mr. Brune’s request for reimbursement of expenses incurred while seeking interim employment. As noted by the ALJ, there exists no Board precedent for such a remedy. Id. To the contrary, “[t]he law is settled” that expenses incurred in connection with seeking new employment “are properly deducted from interim earnings.” Aircraft & Helicopter Leasing, 227 N.L.R.B. 644, 649 (1976). The Board has for decades applied this longstanding principle. See, e.g., The Bauer Group, Inc., 337 N.L.R.B. 395, 400 (2002) (“[I]nterim expenses are deducted from interim earnings, they are not added to gross backpay.”). The ALJ is not empowered to alter current Board law. Rather, “[i]t is the responsibility of the ALJ to apply Board precedent which the

Supreme Court or the Board has not overruled.” Int’l Bhd of Teamsters, Local No. 507, AFL-CIO, 306 N.L.R.B. 118, 144 (1992) (describing this as a “familiar principle”). As there is currently no Board precedent supporting Counsel for the General Counsel’s desired remedy, the ALJ had no authority to himself create such a remedy.

Counsel for the General Counsel further claims that the Board’s current approach on this issue runs contrary to the Board’s general remedial principle of making employees whole. This is plainly untrue, as the Board has expressly recognized that its approach on this issue was specifically developed to *serve* the remedial principle of making employees whole. See Norton Health Care, Inc., 350 N.L.R.B. 648 (2007). In Norton, the Board first noted that travel expenses a discriminatee incurs in maintaining interim employment are properly deducted from interim earnings. Id. The Board further noted that “[t]his result logically flows from the broader precept that in compliance proceedings, the Board attempts to reconstruct as much as possible, the economic life of each claimant and place him in the same financial position he would have enjoyed but for the illegal discrimination.” Id. (internal quotations omitted). Thus, contrary to Counsel for the General Counsel’s assertions, the Board’s current approach on this matter aligns entirely with the Board’s general remedial principles of making employees whole.

The ALJ properly applied current Board law to the extent he denied Mr. Brune’s request for reimbursement of expenses incurred while seeking interim employment. Counsel for the General Counsel’s exception on this issue is misplaced and unwarranted.

Date: September 4, 2015
New York, New York

Respectfully submitted,

/s/ Raquel O. Alvarenga

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CERTIFICATE OF SERVICE

This is to certify that I have served a true and correct copy of **RESPONDENT THE DALTON SCHOOLS, INC.'s d/b/a THE DALTON SCHOOL ANSWERING BRIEF IN RESPONSE TO COUNSEL FOR THE GENERAL COUNSEL'S LIMITED CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION** in Case No. 02-CA-138611 via electronic filing through the National Labor Relations Board's website, www.NLRB.gov, upon:

Karen P. Fernbach
Regional Director
National Labor Relations Board
26 Federal Plaza Ste 3614
New York, NY 10278-3699

RESPONDENT THE DALTON SCHOOLS, INC.'s d/b/a THE DALTON SCHOOL ANSWERING BRIEF IN RESPONSE TO COUNSEL FOR THE GENERAL COUNSEL'S LIMITED CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION was also served, via electronic mail, upon Counsel for the General Counsel, as follows:

Rebecca A. Leaf
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RESPONDENT THE DALTON SCHOOLS, INC.'s d/b/a THE DALTON SCHOOL ANSWERING BRIEF IN RESPONSE TO COUNSEL FOR THE GENERAL COUNSEL'S LIMITED CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION was also served, via electronic mail, upon counsel of record for the Charging Party, as follows:

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Dated: New York, New York
September 4, 2015

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