

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.**

**BRANCH 4779, NATIONAL ASSOCIATION OF
LETTER CARRIERS (NALC), AFL-CIO
(UNITED STATES POSTAL SERVICE)**

Respondent

and

CASE 07-CB-155726

**VALERIE JUNE WINIESDORFFER,
an Individual**

Charging Party Winiesdorffer

and

CASE 07-CB-156115

ELIZABETH BOSSICK, an Individual

Charging Party Bossick

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.46 of the Board's Rules and Regulations, Counsel for the General Counsel excepts to the Administrative Law Judge's decision (ALJD), including factual findings, conclusions of law and recommended dismissal as specified below:

1. The Administrative Law Judge (ALJ) erroneously allowed irrelevant testimony as to the subjective nature of the text from Respondent at trial over the continued objections of the General Counsel and found that: "At some point, the four

friends started using a photograph of professional wrestling manager “Paul Bearer” in their text-messages, as a caricature representing Postmaster Taurence. (Tr. 54–55, 88; R. Exh. 1–5). This was an “inside joke” amongst the four friends. (Tr. 84) Whenever they sent a text message with the photo of Paul Bearer, the words in the text message represented the imaginary words being spoken by Postmaster Taurence, (Tr. 55–58, 89) much like a cartoon character’s words appear in a speech bubble.” (ALJD p. 3, lines 22-27).

2. In allowing this irrelevant testimony as to the subjective nature of the text from Respondent at trial over the continued objections of the General Counsel, the ALJ further found that: “These texts, using Bearer as a caricature for Taurence, generally painted the Postmaster in a bad light—as a boss who would pile on work for no reason or who thought that employees were lazy. Thus, in one April 2015 group text message, under the picture of Paul Bearer, Wilson wrote to his friends “Terry. Have Shaw pivot tomorrow no matter what the mail volume is.” (R. Exh. 4). Willbanks explained this text as a fictional instruction from Postmaster Taurence, to their front line supervisor named Terry, to have Shaw carry a heavier load of mail (“pivot”) on his route—but still complete the route in 8 hours.” (ALJD p. 3, lines 29-35).

3. The ALJ erroneously allowed over the continued objections of the General Counsel testimony as to the subjective nature of these irrelevant texts and referenced that testimony: “In another April 2015 group text message under the photograph of Paul Bearer, Willbanks texted the group saying “I bet Shaw was done by 3. I got something for him next inspection. Plantar Fasciitis or not!” (R. Exh. 2) Both Willbanks and Tocco

testified this text was meant to tease Shaw, who regularly complained his feet hurt due to plantar fasciitis, that Postmaster Taurence would give him extra mail to complete on his route after the next inspection.” And “In a May 2015 group text message under the picture of Paul Bearer, Kris Shaw wrote “These GPS scanners will finally prove what thieving scumbags you carriers are.” (R. Exh. 3). Again, both Willbanks and Tocco explained that this text was a joke—this time referencing the use of GPS scanners to follow the letter carriers throughout the day and the Postmaster’s perceived belief that the letter carriers were fooling around instead of working.” (ALJD p. 4 lines 1-14) .

4. The ALJ erroneously allowed over the continued objections of the General Counsel testimony as to the subjective nature of these irrelevant texts and referenced that testimony “Employee Mark Tocco credibly testified that when he received the text, he interpreted it to mean that, because Bossick was no longer a supervisor and was now back to carrying mail, Postmaster Taurence was going to treat her like an ordinary letter carrier and would “come after her” if she tried to use sick leave.” (ALJD p. 4, lines 38-41).

5. The ALJ erroneously took judicial notice of William Moody, an obscure wrestler from the 1980s, who is not commonly known, and cited *United States v. Saccoccia*, 58 F.3d 754, 776 n. 16 (1st Cir. 1995). He stated that “Paul Bearer (a play on pallbearer) was the stage name used by William Moody who died in 2013. Wrestling manager Bearer wore a black suit and cake-white face makeup. He had died-black hair, moustache, and eyebrows, and carried around an urn of cremated ashes from which he would -conjure up supernatural powers for his primary client—the 6’10” wrestler known as the Undertaker. See <http://www.nytimes.com/2013/03/12/arts/television/william->

moody-58-pro-wrestlings-paul-bearer-dies.html (last accessed on February 29, 2016).

Pursuant to Fed. R. Evid. 201 I take judicial notice of this fictional persona. *United States v. Saccoccia*, 58 F.3d 754, 776, n.16 (1st Cir. 1995) (court takes judicial notice that fictional character Juan Valdez is a prominent persona in coffee advertisements, “[c]lad in a serape and sombrero and accompanied by his faithful donkey, Valdez regularly appears in supermarkets and private kitchens to remind consumers of the virtues of Columbian coffee”).” (ALJD p. 3, footnote 5).

6. The ALJ erroneously relied on self-serving testimony from Willbanks unsupported by corroboration from Wilson and found “Then, unbeknownst to Willbanks, Wilson forwarded to Bossick a screenshot of Willbanks’s text saying “I am forwarding a text from Willi he [sic] just sent me.” (ALJD p. 5, lines 2-4).

7. The ALJ erroneously relied on irrelevant testimony and found that: “the June 15 text message cannot be divorced from the context by which it was sent from Willbanks to his friends and then forwarded from Wilson to Bossick. Under the circumstances surrounding Bossick’s receipt of the message, the objective facts do not support a finding that the Union unlawfully threatened Bossick with physical harm or threatened to refuse to represent her, as alleged in the Complaint.” (ALJD p. 6, line 6-10).

8. The ALJ erroneously relied on irrelevant information and found that: “Significantly, Willbanks did not send the text message to Bossick; he sent it to his three friends who knew the words in the text message referenced a hypothetical statement by Postmaster Taurence. Willbanks was predicting to his friends that, since Bossick was no

longer an acting supervisor, Postmaster Taurence would treat her like any other employee and would target her for reprisals if she became injured or sick.” (ALJD p. 6, lines 12-16,

9. The ALJ erroneously found that “Thereafter, it was Wilson, without Willbanks’s knowledge, who forwarded a screen-shot of the message to Bossick. Although Wilson did not testify at trial, it appears from the context in which the message was forwarded that Wilson was also upset with Willbanks and the Union over the outcome of the CCA grievance. He was trying to paint Willbanks in a bad light—implying to Bossick that the words in the text message were Willbanks’ and not the hypothetical words of Postmaster Taurence. However, Wilson knew otherwise.” (ALJD p. 6, lines 18 - 23).

10. The ALJ erroneously found that: “The General Counsel’s citation (Br. 8) to *NLRB v. Homemaker Shops*, 724 F.2d 535, 549–50 (6th Cir. 1984) does not warrant a different finding. In *Homemaker Shops*, the court noted that the “mere existence of friendly relations between a supervisor and an employee does not preclude a finding” of a violation. *Id.* at 550. Here, because Wilson, Tocco, and Shaw knew the words in the text message referenced conjectural words from Postmaster Taurence— there is no threat in violation of 8(b)(1)(A). For the same reason, the General Counsel’s citation (Br. 8) to *Masters, Mates & Pilots (Marine Transport)*, 301 NLRB 526, 532 (1991) is unavailing.” (ALJD p. 6, footnote 10).

11. The ALJ erroneously found that: “The objective meaning of the text message cannot change simply because a screen-shot of the message was forwarded by Wilson to Bossick without explanation. *Cf. ManorCare of Kingston PA, LLC*, 360

NLRB No. 93 slip op. at 1 (2014). Moreover, even if the meaning of the text message did change when it was forwarded by Wilson, it becomes the equivalent of Wilson telling Bossick that Union President Willbanks is going to target her.” (ALJD p.6, line 25 - 29).

12. The ALJ erroneously found that: “However, Wilson is neither an agent nor a representative of the Union; thus, Wilson’s words cannot be attributed to Respondent. *Price Brothers Co.*, 211 NLRB 822, 822–23 (1974) (union not responsible for statement made by an individual who initiated a false rumor that the union had voted to kill a worker expressing antiunion views as there was no evidence that the threat was attributable to the union); *Mastec North America, Inc.*, 356 NLRB 809, 809 (2011) (statements made by 35 individual employees were not attributable to the union as they had neither actual nor apparent authority to speak on behalf of the union); *SSC Corp.*, 317 NLRB 542, 546 (1995) (no violation where unidentified men threatened pro-union employee with bodily harm and property damage if he testified at Board hearing where the evidence did not show the individuals making the threat were agents of the employer).” (ALJD p. 6, lines 29-39).

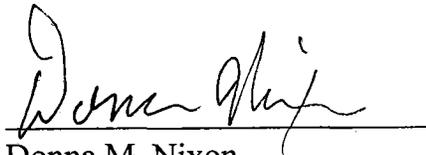
13. The ALJ erroneously found that: “The fact that Bossick or Winiesdorffer misinterpreted the original text and subjectively believed the Union was threatening Bossick in the text message is not controlling; the subjective state of mind of the hearer/reader is irrelevant. *See, e.g., G. H. Hess, Inc.*, 82 NLRB, 463 fn. 3 (1949); *Masonic Homes of California*, 258 NLRB 41, 41 fn. 4 (1981); *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 963 (2004).” (ALJD p. 6 -7, lines 25 - 3).

14. The ALJ erroneously found that “As such, considering all the circumstances, including the context in which the text message was originally sent by Willbanks and ultimately received by Bossick, there is no violation.” (ALJD p. 7, lines 3 - 5).

15. The ALJ erroneously found that “Accordingly, I find that Respondent did not violate Section 8(b)(1)(A) as alleged, and I recommend dismissal of the complaint.” (ALJD p. 7, lines 7-8).

16. The General Counsel takes exception to the ALJ’s failure to find that Respondent’s dissemination of the text to employee/members is a violation of Section 8(b)(1)(A) of the Act, and to his recommendation that the Consolidated Complaint be dismissed. (ALJD p. 7, line 23).

Dated at Detroit, Michigan this 20th day of April 2016.



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