

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

CENTRAL KY BRANCH 361, NATIONAL
ASSOCIATION OF LETTER CARRIERS
AFL-CIO (NALC)
(UNITED STATES POSTAL SERVICE)

and

Case 09-CB-202214

LESLIE DENISE WELLS, AN INDIVIDUAL

**COUNSEL FOR THE GENERAL COUNSEL'S
REPLY BRIEF TO RESPONDENT'S ANSWERING BRIEF
TO THE EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

I. INTRODUCTION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel hereby submits its reply to Respondent's Answering Brief to the Counsel for the General Counsel's Exceptions to the Administrative Law Judge's Decision. For the reasons set forth herein, and in view of the General Counsel's June 1, 2018 Limited Exceptions, Respondent's arguments should be rejected and the General Counsel's Exceptions should be granted.

II. RESPONDENT'S ANSWERING BRIEF DOES NOT RAISE ISSUES
WARRANTING DENIAL OF THE EXCEPTIONS.

The Exceptions clearly set forth the Administrative Law Judge's error in finding that Respondent's conduct and decisions were based on a reasonable interpretation of the applicable collective-bargaining agreements and a good-faith evaluation of the merits of the grievances. As articulated in the Exceptions, Respondent's conduct consisted of months of inaction rather than any evaluation of the merits of Charging Party Leslie Wells' complaints and requests that

grievances be filed. Respondent simply relies on its conduct months after Wells began complaining and seeking assistance to support its claim that it conducted any evaluation of the merits of Wells' complaints.

In its answering brief, Respondent goes to great length to argue that it is a mischaracterization to argue that any inaction occurred or that it was something more than negligence (Resp. Answering Brief pp. 6-7). Wells initially apprised Respondent of her concerns and requested assistance in March 2017 ^{1/}, but Respondent waited until June to address the situation. While conceding that Wells could not have been requesting that the Respondent file a grievance on her behalf for being worked past her medical restrictions after she was already removed on May 27, Respondent maintains that the Judge did not specify precisely when Wells made the request. (Resp. Answering Brief pp. 6-7). ^{2/} However, contrary to Respondent's assertion, the Judge's findings are based on credited testimonies of Wells and not in isolation. The Judge credited Wells' testimonies that beginning from the first week in March through March 31, she informed Whitcomb on several occasions that she was being worked past her reduced schedule and requested that he file a grievance on her behalf. (Tr. 152, 153, 154, 160, 161, 172, 173, 174) Judge Gollin noted that Whitcomb's work station was about 4 feet from Wells' work station (ALJD p. 5, ll. 20-21). Judge Gollin also found that Wells and Whitcomb spoke to one another on a daily basis. (ALJD p. 5, ll. 20-24) Although Judge Gollin erroneously concluded that Whitcomb never committed to file a grievance on behalf of Wells, the record evidence makes clear that Wells began complaining to Whitcomb

^{1/} All dates herein are in 2017 unless otherwise noted.

^{2/} References to the Administrative Law Judge's Decision will be designated as (ALJD ---, ll. ---); the transcript will be designated as (Tr.--); General Counsel's Exhibits will be designated as (G.C. Ex---); Respondent's Exhibits will be designated as (Resp.- Ex--); Respondent Answering Brief will be designated as (Resp. Answering Brief .--) and Joint Exhibits will be designated as (Jt. Ex---).

about being forced to work past her reduced schedule on March 2 and asked him to file a grievance (ALJD p 5, ll. 20-23, p. 10, ll. 27-28; Tr. 182, 183, 184, 191, 201, 202, 209).

Moreover, Wells testified that when Whitcomb failed to follow through on his promises to file a grievance on her behalf, she contacted Respondent's Vice-President David Blackburn on March 15, and said she was being forced to work past her restrictions. Judge Gollin found that Wells spoke with Blackburn about these matters and asked for his assistance. (ALJD p. 10, ll. 39-40; G.C.Ex.6, pp. 4, 19, 20, 21, 22; Tr. 162, 211, 216, 217, 285)

In addition to contacting Blackburn, the Judge credited that Wells contacted International Union Business Representative David Mudd and Steward Linda Dunn about her situation, contacts and the inactions of Whitcomb and Blackburn. (G.C. Ex. 6, p. 4; Tr. 163, 164) Respondent takes issue with the assertion that Dunn was a steward at the time that Wells contacted her to complain about Whitcomb and Blackburn's inaction.^{3/} Respondent attempts to further minimize her conversations with Mudd by denying that Mudd was its agent (Resp. Answering Brief p. 10)

Regardless of the agency status of Mudd and Dunn, their credited testimony bolsters Wells' account that she repeatedly sought assistance from Respondent starting in early March. In this connection, the same day Wells contacted Blackburn, she contacted Mudd and reiterated that she was being forced to work beyond her reduced work schedule. (G.C. Ex. 6, pp. 2, 4; Tr. 155, 156, 157, 163) She also told Mudd that she had apprised Blackburn of the situation and requested that he file a grievance on her behalf. (Tr. 163) She called Dunn on March 7 and 15

^{3/} To the contrary, the Judge found that Wells called and texted Dunn who worked with Wells at the Brentwood facility where Dunn had been a union steward (ALJD p. 5, Tr. 61-62) Additionally, the evidence reveals that Dunn was compensated for her service as steward for the period from January through the end of March when she vacated the position due to some work-related injury. (Tr. 44, 48, 49, 81, 83, 85) Thus, the Judge's statement that she had been a union steward would only have been in reference to the fact that she was no longer a steward at the end of March.

and expressed her frustration with Respondent's failure to seriously address her concerns about her work schedule. (G.C. Ex. 6, p. 4; Tr. 163, 164) In response thereto, according to Wells, Dunn exclaimed, "you still don't have a grievance filed?," to which she replied "no." (Tr. 164) Dunn then encouraged Wells to contact Mudd if she had not already done so. (Tr. 164) In its answering brief, Respondent makes mockery of Dunn's exclamation and asserts it did not amount to a promise to file a grievance. (Resp. Answering Brief p. 11) While that may be true, Dunn's exclamation was an expression of disbelief as to the lapse of time since Wells began seeking assistance from Whitcomb. It was also an acknowledgement of Respondent's inaction, which she communicated to Whitcomb during a union meeting. (ALJD p. 5, fn. 7)

The Judge's Decision and record fully support the conclusion that despite Wells' repeated complaints and requests for grievances from early March through late May, Respondent took no action, made no evaluation and gave no consideration regarding the merits of the complaints during that time period. Although the Judge discredits Wells' assertions that Whitcomb and Blackburn replied that they would file grievances, Respondent essentially took no action in response to Wells' requests and/or concerns until June 9 and offered no reason for such inaction. Filing subsequent grievances does not excuse Respondent's failure to act lawfully with respect to prior complaints and requests for grievances over the preceding 3 months. (Resp. Ex. 12, Tr. 491, 492, 496)

Finally, Respondent's attempts to portray Wells' complaints as frivolous and without any arguable support in the collective-bargaining agreements are misplaced. It asserts that references to "other assignments" in the National Agreement do not fall within the contractual regular duty, light duty, and limited duty assignments. (ALJD p. 12, Tr. 124, Resp. Answering Brief p. 12) However, the Employer and Wells understood precisely what "other assignments"

consisted of as Wells testified that after submitting medical restrictions to the Employer on March 1, she was informed that a light duty assignment was not available. (G.C. Ex. 2; Tr. 122-124) Nevertheless, the Employer granted Wells an “other assignment” by placing her on a reduced schedule. (ALJD p. 12; G.C. Ex. 2; Tr. 124, 260, 261, 299-300) The Employer’s subsequent assignment of work contrary to the medical restrictions warranting this reduced schedule, and it’s subsequent removal of Wells from this schedule, is hardly frivolous or clearly without any reasonable claim under the collective-bargaining agreement.

III. CONCLUSION

For the reasons above, as well as those articulated in the June 1, 2018 Exceptions, the Counsel for the General Counsel submits that the decision of the Administrative Law Judge should be reversed and that the Board find that Respondent violated Section 8(b)(1)(A) of the Act.

Dated at Cincinnati, Ohio this 29th day of June 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

June 29, 2018.

I, hereby certify that I served the attached Counsel for the General Counsel's Brief to the Administrative Law Judge on all parties by mailing true copies thereof by electronic mail and/or regular mail today to the following at the addresses listed below.

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