



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 12  
201 E Kennedy Blvd Ste 530  
Tampa, FL 33602-5824

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (813)228-2641  
Fax: (813)228-2874

November 8, 2019



Re: Seabulk Towing, Inc.  
Case 12-CA-246922

American Maritime Officers (Seabulk  
Towing, Inc.)  
Case 12-CB-246952

Dear [REDACTED]:

The Region has carefully investigated and considered your charges filed against Seabulk Towing, Inc. (the Employer) and American Maritime Officers (the Union), alleging violations under Section 8 of the National Labor Relations Act (the Act).

**Decision to Dismiss:** Case 12-CB-246952 and to Partially Dismiss Case 12-CA-246922: For the reasons set forth below, I have concluded that further proceedings are not warranted on your charge filed against the Union in Case 12-CB-246952, and I am dismissing that charge in its entirety. The charge in Case 12-CB-246952 alleges that since on or about April 9, 2019, the Union has refused to process your grievances regarding hazard pay, transfer and discharge for arbitrary or discriminatory reasons or in bad faith, in violation of Section 8(b)(1)(A) of the Act.

I have also concluded, for the reasons set forth below, that further proceedings are not warranted on the portion of your charge filed against the Employer in Case 12-CA-246922 alleging that the Employer discharged you on or about June 13, 2019, to discourage your union activities and membership, and because of your protected concerted activities.

The investigation disclosed that on or about April 9, 2019, you requested that the Union submit a grievance to the Employer regarding an alleged violation of the hazardous cargo pay section of the collective-bargaining agreement between the Employer and the Union, with respect to the Employer's failure to provide hazard pay to you and your coworkers for work performed on or about December 5 to 7, 2018, consisting of hauling a rocket with fuel approximately 500 gallons of rocket fuel on board from the ocean to Port Canaveral. The Union and the Employer had previously discussed this issue informally at your request, and the Union had informed you that the Employer was not going to provide additional compensation. Nonetheless, on April 10, 2019, the Union submitted a hazard pay grievance to the Employer on your behalf, pursuant to Article II, Section 26 of the parties' collective-bargaining agreement. On April 12, 2019, the Employer sent the Union its response, denying the grievance. On May

20, 2019, the Union notified you that it would not pursue the grievance to arbitration because it had investigated the matter by reviewing the Employer's invoice for the work at issue, and determined the Employer had not received additional revenue for handling hazardous cargo, a condition for the payment of hazard pay required in Article II, Section 26 of the contract. Thus, it appears that the Union made a good faith determination not to pursue the hazard pay grievance further because the Employer had denied the grievance and the Union was unlikely to succeed if it pursued the grievance to arbitration.

The investigation further disclosed that the Employer decided to transfer you from Port Canaveral to Tampa on or about April 24, 2019, and notified you on or about May 23, 2019, that your transfer to Tampa was to take effect on the evening of June 4, 2019. You thereafter requested that the Union file a grievance about the transfer orders, and on May 29, 2019, the Union advanced that grievance to the Employer. On May 30, 2019, the Employer notified the Union that it intended to deny the grievance. On June 3, 2019, the Employer provided its formal response to the Union denying the transfer grievance, and the Union forwarded it to you. On June 3 and 4, 2019, you emailed the Union several times expressing your disagreement with the Employer's denial of the grievance. The Union did not make a decision about whether to advance your transfer grievance to arbitration at that time.

The evidence further shows that on June 4, 2019, you emailed the Employer that you intended to stay home (and not work) unless the Employer permitted you to continue working at Port Canaveral until the transfer grievance process was resolved. The Employer instructed you twice that day to report to work in Tampa or face discipline, up to and including discharge, on the grounds of job abandonment or insubordination. Also, on June 4, the Union advised you to report as instructed in Tampa in order to avoid discipline, effectively refuting your belief that you were entitled to continue working at Port Canaveral during the pendency of the transfer grievance. It is undisputed that you did not report to work as instructed in Tampa at 8:00 p.m. on June 4, 2019, or at any time thereafter.

On June 11, 2019, you submitted a grievance to the Union alleging that the Employer had breached the no-lockout provision in Article II, Section 13 of the collective-bargaining agreement, which states that there shall be no strikes, lockouts or work stoppages during the life of the agreement. The Union informed you that it would not submit the grievance to the Employer because your situation was not covered by the no-lockout provision. After the Union again refused to submit your grievance alleging that you had been locked out, you emailed it to the Employer on June 12, 2019, which was not permitted by the contractual grievance process. The Union reasonably determined that the Employer had not violated the no-lockout provision in the collective-bargaining agreement, and informed the Employer to disregard your lockout grievance.

Subsequently, on June 13, 2019, the Employer discharged you for failure to follow orders. On June 17, 2019, you submitted a grievance about your discharge to the Union. On June 21, 2019, the Union informed you that it would not submit the discharge grievance to the Employer because its investigation revealed that you had refused to report to work in Tampa several times and then failed to appear for work as scheduled. The Union determined, in effect, that your discharge grievance did not have merit. On June 25, 2019, you appealed that decision

to the Union's National President. In July 2019, the Union denied your appeal and upheld the earlier determination that your discharge grievance was likely to be without merit because you were not entitled to refuse to report to work in Tampa. Furthermore, the Union determined that it would not pursue your transfer grievance any further, because that matter was moot as a result of your discharge by the Employer.

In summary, the evidence shows that the Employer discharged you because you failed and refused to report for work as instructed in Tampa at 8:00 p.m. on June 4, 2019, and there is insufficient evidence to show that the Employer discharged you because you filed grievances or engaged in protected, concerted activities. In addition, there is insufficient evidence to show that the Union breached its duty to fairly represent you with respect to any of the grievances you brought to its attention, including those concerning hazard pay, your transfer, lockout, and your discharge.

Accordingly, I am refusing to issue complaint concerning these matters. The remaining allegation of the charge against the Employer in Case 12-CA-246522, alleging that it violated Section 8(a)(3) and (1) of the Act by transferring you from Port Canaveral, Florida to Port Tampa, Florida because of your union activities in filing a hazardous pay grievance, is being further processed.

**Your Right to Appeal:** You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

**Means of Filing:** An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at [www.nlr.gov](http://www.nlr.gov) and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at [www.nlr.gov](http://www.nlr.gov). You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal **MAY NOT** be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

**Appeal Due Date:** The appeal is due on **November 22, 2019**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than November 21, 2019. **If an appeal is postmarked or given to a**

**delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

**Extension of Time to File Appeal:** The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before November 22, 2019**. The request may be filed electronically through the *E-File Documents* link on our website [www.nlr.gov](http://www.nlr.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after November 22, 2019, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

**Confidentiality:** We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



David Cohen  
Regional Director

lg

Enclosure

cc: Michael Lowry, VP of Human Resources  
and Labor Relations  
Seabulk Towing, Inc.  
PO Box 13038  
2200 Eller Dr.  
Fort Lauderdale, FL 33316-3069

Benjamin P. Glass  
PO Box 1808  
Charleston, SC 29402

Daniel Robichaux  
American Maritime Officers Union  
601 S Federal Hwy  
Dania Beach, FL 33004-4109

Howard S. Susskind, Union Lawyer  
100 Miracle Mile, Suite 300  
Coral Gables, FL 33134-5429

David M. Glanstein, Esq.  
Glanstein LLP  
711 3rd Ave, 17th Floor  
New York, NY 10017-4014

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

---

Case Name(s).

---

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

---

*(Signature)*