

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Newport News, Virginia

Issue Date: 25 September 2023

CASE NO.: 2023-CAR-00001

In the Matter of:

ALYCE ANDERSON,
Complainant,

v.

UNITED STATES POSTAL SERVICE,
Respondent.

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY
DECISION**

This matter arises under the employee-protection provisions of the Criminal Antitrust Anti-Retaliation Act ("CAARA"), 15 U.S.C. § 7a-3. That statute makes it unlawful for an employer to discriminate against an employee in the terms and conditions of employment when the employee has provided information regarding certain violations of the criminal anti-trust laws.

On August 7, 2023, I issued an order requiring Complainant Alyce Anderson to show cause why her complaint should not be dismissed because on the face of the complaint, it appears that she did not engage in activity protected by CAARA. On August 29, 2023, however, Respondent USPS filed a motion to dismiss, on the same grounds as that identified in the August 7 Order to Show Cause (OTSC). Respondent alternatively moved for summary decision. Deeming Respondent's motion to be a motion for summary decision, I allowed Complainant until September 20, 2023 to respond to it. She did not respond by that deadline, and has not responded to date. Accordingly, I find the facts alleged by Respondent, which are supported by evidence attached to its motion, to be undisputed, and for the reasons set forth below, the motion for summary decision will be granted.

Undisputed Facts¹

¹ As Complainant was advised in the order of August 30, 2023, and as allowed by 29 C.F.R. § 18.72(e)(2), the facts alleged by Respondent are deemed to be true by virtue of Complainant's failure to contest them.

1. Complainant has been employed by the United States Postal Service since March 13, 1999.

2. Complainant is employed as a Maintenance Mechanic at the Chicago Metro Surface Hub, also known as the Busse P&DC, located in the Chicago, Illinois area within the district of the Postal Service known as the Illinois-1 District.

3. On a date prior to May 11, 2022, Complainant made a request for reassignment to the Indiana District.

4. On May 11, 2022, Complainant was notified via letter that her request for reassignment was accepted for the following position: SOUTH BEND (IN) POST OFC – INSH (IN), MAIL PROCESSING CLERK, Level 06 JOB NUMBER 71864026 BT 1400 ET 223 LUNCH 30mins SDO SATSUN.

5. Complainant accepted the offer of reassignment.

6. By letter dated July 11, 2022, Complainant was informed that her request for reassignment had been reviewed by the selecting official and, as a result of this review, her request for reassignment was denied due to her “unacceptable attendance records.”

7. On July 20, 2022, Complainant initiated a grievance on her own behalf, alleging that the denial of her reassignment amounted to employment discrimination in violation of the collective bargaining agreement.

8. On August 22, 2022, Complainant initiated an informal EEO complaint also alleging that the denial of her reassignment amounted to employment discrimination.

9. On or about October 5, 2022, a representative of Complainant’s union, Craig Fisher, and a management representative, Labor Relations Specialist Heather Ash, reached a tentative agreement to resolve Complainant’s grievance by allowing her to transfer and providing her with back pay.

10. Mr. Fisher inquired with Complainant if she would be willing to withdraw solely her EEO complaint concerning her denial of transfer. Complainant responded as follows: I want the transfer to the US Postal Service Indiana District, to the eReassignment job offer I accepted or one identical to it. And also to settle the all (sic) wages lost not working on that accepted job offer. I would agree to resolve my EEO complaint Case No. 6X-270-0020-22 only. Please forward to me a (sic) exact detail copy of the transfer agreement, location, and the total amount of the financial compensation to be had and when.

11. Mr. Fisher provided Complainant with an EEO withdrawal form on October 7, 2022 and reiterated that she would be placed in the original position she had accepted or mirror position and that she would receive compensation from the date she would have started until October 15, the date she would start her assignment.

12. Complainant corresponded with Mr. Fisher by email on October 8, 2022 requesting an EEO settlement agreement and details of the position to which she would be transferred.

13. Mr. Fisher responded to Complainant on October 9, 2022 stating that her transfer and back pay would be effectuated via the grievance settlement and that she was merely being asked to withdraw her EEO regarding the transfer. He further

explained that the position would be the one she had accepted or a mirror position at the same facility – same pay, same hours, same scheduled days, and same duties.

14. Complainant was dissatisfied with the response from Mr. Fisher and insisted in an October 20, 2022 email to Curtis Walker, another union official, that she be provided details of the position, an exact dollar amount of the back pay, and a detailed settlement agreement.

15. Mr. Walker responded to Complainant explaining that all information was already provided to her to make her decision and that the exact amount of back pay cannot be calculated until after all required forms are completed after a settlement is reached

16. Mr. Fisher again attempted to clarify the proposed grievance settlement and EEO withdrawal on October 31, 2022.²

17. On November 8, 2022, a REDRESS mediation was held in regard to Complainant's EEO complaint about the denial of her transfer. Postal Service Attorney Nikolai Guerra represented the Postal Service in that mediation, during which Complainant claims that Mr. Guerra interfered with the process.

18. Complainant attempted to add a claim to her EEO complaint regarding Mr. Guerra and his alleged conduct during the mediation of the complaint; however, Complainant's claim was ultimately dismissed.

19. On December 13, 2022, Complainant filed a charge with the National Executive Board of her union against Mr. Fisher alleging that he orchestrated a "scam," in that he was "trying to cut a deal to gain favor with USPS Management officials for himself."

20. On December 22, 2022, the union dismissed Complainant's charges against Mr. Fisher.

21. On February 11, 2023, Complainant filed a complaint in U.S. District Court against her union in part due to her complaints about Mr. Fisher and the proposed grievance settlement.

Discussion

CAARA provides:

No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual-

² Back pay compensation is authorized in one of a few ways including a settlement reached under Article 15 of the collective bargaining agreements. (Management Instruction EL-430-2017-6, attached as Exhibit 11). Back pay awards calling for an employee to be "made whole" must be submitted as an hour calculation. (Id). An hour calculation requires an employee to complete a PS Form 8038 and management to complete a PS form 8039.

(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to-

- (i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or
- (ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to-

- (i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or
- (ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

Here, Complainant is alleging that she suffered retaliation for declining a settlement offer in an equal employment opportunity claim. She has not identified how her activities as alleged in the complaint involve criminal antitrust laws. Furthermore, the type of retaliation she alleges can be raised under a different statute, 42 U.S.C. § 2000e-3(a), and addressed by the U.S. Equal Employment Opportunity Commission. Because there are no facts to support a claim under CAARA, Respondent's motion for summary decision will be granted, and the complaint will be denied.

ORDER

Based on the foregoing, IT IS ORDERED:

1. Respondent's motion for summary decision is GRANTED; and
2. Complainant's complaint is DENIED.

SO ORDERED.

PAUL C. JOHNSON, JR.
District Chief Administrative Law Judge

PCJ/pmp
Newport News, Virginia

NOTICE OF APPEAL RIGHTS

To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within thirty (30) days of the date of the administrative law judge's decision. 29 C.F.R. § 1991.110(a).

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1991.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1991.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. § 1991.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1991.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30)

days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1991.109(e) and 1991.110(a) and (b).

Filing and Service of an appeal

- 1. Use of EFS System:** The Board's Electronic Filing and Service (EFS) system allows parties to initiate appeals electronically, file briefs and motions electronically, receive electronic service of Board issuances and documents filed by other parties, and check the status of appeals via an Internet-accessible interface. Use of the EFS system is free of charge to all users. To file an appeal using the EFS System go to <https://efile.dol.gov>. All filers are required to comply with the Board's rules of practice and procedure found in 29 C.F.R. Part 26, which can be accessed at <https://www.ecfr.gov/current/title-29/subtitle-A/part-26>.
- A. Attorneys and Lay Representatives:** Use of the EFS system is **mandatory for all attorneys and lay representatives** for all filings and all service related to cases filed with the Board, absent an exemption granted in advance for good cause shown. 29 C.F.R Part § 26.3(a)(1), (2).
- B. Self-Represented Parties:** Use of the EFS system is **strongly encouraged for all self-represented parties** with respect to all filings with the Board and service upon all other parties. Using the EFS system provides the benefit of built-in service on all other parties to the case. Without the use of EFS, a party is required to not only file its documents with the Board but also to serve copies of all filings on every other party. Using the EFS system saves litigants the time and expense of the required service step in the process, as the system completes all required service automatically. Upon a party's proper use of the EFS system, no duplicate paper or fax filings are required.

Self-represented parties who choose not to use the EFS system must file by mail or by personal or commercial delivery all pleadings, including briefs, appendices, motions, and other supporting documentation, directed to:

Administrative Review Board
Clerk of the Appellate Boards
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220,
Washington, D.C., 20210

2. EFS Registration and Duty to Designate E-mail Address for Service

To use the Board's EFS system, a party must have a validated user account. To create a validated EFS user account, a party must register and designate a valid e-mail address by going to <https://efile.dol.gov>, select the button to "Create Account," and proceed through the registration process. If the party already has an account, they may simply use the option to "Sign In."

Once a valid EFS account and profile has been created, the party may file a petition for review through the EFS system by selecting "eFile & eService with the Administrative Review Board" from the main dashboard, and selecting the button "File a New Appeal - ARB." In order for any other party (other than the EFS user who filed the appeal) to access the appeal, the party must submit an access request. To submit an access request, parties must log into the EFS System, select "eFile & eService with the Administrative Review Board," select the button "Request Access to Appeals," search for and select the appeal the party is requesting access to, answer the questions as prompted, and click the button "Submit to DOL."

Additional information regarding registration for access to and use of the EFS system, including for parties responding to a filed appeal, as well as step-by-step User Guides, answers to frequently asked questions (FAQs), video tutorials and contact information for login.gov and EFS support can be found under the "Support" tab at <https://efile.dol.gov>.

3. Effective Time of Filings

Any electronic filing transmitted to the Board through the EFS e-File system or via an authorized designated e-Mail address by 11:59:59 Eastern Time shall be deemed to be filed on the date of transmission.

4. Service of Filings

A. Service by Parties

- **Service on Registered EFS Users:** Service upon registered EFS users is accomplished automatically by the EFS system.
- **Service on Other Parties or Participants:** Service upon a party that is not a registered EFS user must be accomplished through any other method of service authorized under applicable rule or law.

B. Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail (unless otherwise required by law). If a party unrepresented by counsel files their appeal by regular mail, that party will be served with Board-issued documents by regular mail. Any party may opt into e-service at any time by registering for an EFS account as directed above, even if they initially filed their appeal by regular mail or delivery.

5. Proof of Service

Every party is required to prepare and file a certificate of service with all filings. The certificate of service must identify what was served, upon whom, and manner of service. Although electronic filing of any document through the EFS system will constitute service of that document on all EFS-registered parties, electronic filing of a certificate of service through the EFS system is still required. **Non EFS-registered parties must be served using other means authorized by law or rule.**

6. Inquiries and Correspondence

After an appeal is filed, all inquiries and correspondence related to filings should be directed to the Office of the Clerk of the Appellate Boards by telephone at 202-693-6300 or by fax at 202-513-6832. Other inquiries or questions may be directed to the Board at (202) 693-6200 or ARB-Correspondence@dol.gov.