

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

ALBERT C. HANSEN dba)	
HANSEN FARMS,)	
)	
Respondent,)	Case No. 78-CE-22-F
)	
and)	5 ALRB No. 46
GERARDO CARBAJAL VERA,)	
)	
Charging Party.))	
_____)	

DECISION AND ORDER

On February 20, 1979, Administrative Law Officer (ALO) Joel Gomberg issued the attached Decision in this proceeding. Thereafter, the General Counsel timely filed exceptions with a supporting brief, and Respondent filed a brief in response to the General Counsel's exceptions.

Pursuant to the provisions of Labor Code Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the ALO and to adopt his recommended Order.

ORDER

Pursuant to Section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board

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hereby orders that the complaint herein be, and it hereby is,
dismissed in its entirety. Dated: June 29, 1979

GERALD A. BROWN, Chairman

HERBERT A. PERRY, Member

JOHN P. McCARTHY, Member

CASE SUMMARY

Albert C. Hansen dba Hansen Farms
(Gerardo Carbajal Vera)

5 ALRB No. 46
Case No. 78-CE-22-F

ALO DECISION

The ALO concluded that Respondent's supervisor did not discharge Gerardo Carbajal Vera because he believed Vera was making a complaint to the ALRB. The ALO found that the supervisor dismissed Vera for refusing to obey an order by leaving the fields instead of doing assigned weeding work. The ALO concluded that the supervisor had not given Vera permission to leave and that Vera had refused the order even before he indicated he was going to the ALRB.

The ALO, finding that no concerted activity had taken place, dismissed the Section 1153(a) charge. Finding that Vera had been discharged for cause, the ALO dismissed the Section 1153(d) charge.

BOARD DECISION

The Board adopted the ALO's Decision and Order, dismissing the complaint in its entirety.

This Case Summary is furnished for information only and is not an official statement of the ALRB.

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



In the Matter of:)
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)
ALBERT C. HANSEN, dba) Case No. 78-CE-22-F
HANSEN FARMS,)
)
Respondent,) DECISION OF ADMINISTRATIVE
) LAW OFFICER
and)
)
GERARDO CARBAJAL VERA,)
)
Charging Party.)
_____)

Ricardo Ornelas of Fresno, for
the General Counsel

Arnold B. Myers of Salinas,
for the Respondent

STATEMENT OF THE CASE

JOEL GOMDBERG, Administrative Law Officer: This matter was heard by me on January 4, 1979, in Coalinga, California. The Complaint issued on November 30, 1978,^{1/} based upon a charge filed by Gerardo Carbajal Vera on October 23[«] A copy of the charge was duly served upon the Respondent.

All parties were given full opportunity to participate in the hearing. The General Counsel and Respondent filed post-hearing briefs pursuant to Section 20278 of the Board's regulations,

Upon the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the parties, I make the following:

¹ All dates refer to 1978, unless otherwise specified.

FINDINGS OF FACT

I. Jurisdiction.

Respondent has admitted in its answer that it is an agricultural employer within the meaning of Section 1140.4 (c)² of the Agricultural Labor Relations Act (hereafter, the "Act"), and that Vera is an agricultural employee within the meaning of Section 1140.4 (b) of the Act, and I so find,

II. The Alleged Unfair Labor Practices.

The Complaint, as amended at the hearing, alleges that Respondent assigned Vera to perform weeding work, rather than his customary irrigation duties, because he engaged in protected concerted activities, in violation of Section 1153 (a) of the Act. It is further alleged that Vera was discharged on October 20, in violation of Section 1153 (d) of the Act, because he complained to a Board agent about this allegedly unfair treatment. Respondent denies that Vera was unlawfully assigned to cut weeds or that he engaged in any protected concerted activities. According to Respondent, Vera was discharged for cause, not as a result of his statements that he was going to complain to the Board about his treatment.

III. The Facts.

Vera was hired by Respondent as an irrigator in November, 1975. His supervisor throughout his terra of employment was Ovidio Gomez. In addition to their work as Irrigators, members of the irrigation crew were occasionally required to cut weeds

²All statutory references are to the Labor Code.

at the edges of the lettuce fields.

In the fall of 1978, Vera asked Gomez to transfer him to work as a night irrigator, in order that he could take care of personal business during the day. Gomez at first refused the request, but several days later Vera was given night work. The night crew members earned 150 an hour more than the day shift workers, but the night crew worked only five days a week, as opposed to six or seven for the day crew. After several weeks of night work, Vera asked Gomez to reassign him to the day shift. Gomez and other supervisors refused Vera's request. They told him that since he had asked to work at night he would have to continue to do so until the night shift ended. About two weeks later, the night shift was discontinued and Vera began working days again.

On October 16 or 17, Gomez assigned Vera to cut weeds. Vera considered such work to be lower in status than irrigation work, although there was no difference in pay and all members of the crew occasionally were called upon to hoe. On October 18, Vera asked for a few hours off to attend to personal business. The request was granted by Gomez. When Vera returned to work in the afternoon, Gomez again assigned him to weeding work.

On October 19, Vera was working with the rest of the crew moving irrigation pipes, for at least part of the day. During the afternoon a dispute arose between Vera and another member of the crew, Nabor Solorio, over whose responsibility it was to move a certain pipe. Gomez arrived and ordered Vera to move the pipe. Vera became angry and swore at Gomez, but he eventually carried

out the order. Gomez and Solorio testified that this incident occurred on the 19th, while Vera indicated that it took place several days earlier. Javier Hernandez, another crew member, did not testify directly about this incident, but did State that the entire crew was moving pipe on the afternoon of the 19th, I find that these events did occur on October 19. Vera was not disciplined as a result of his behavior.

On the morning of October 20, Gomez drove the members of the Irrigation crew to the fields. He stopped his pick-up at one point and directed Vera to take a hoe and begin cutting weeds. Vera asked Gomez why he was the only one made to do the hoeing work. Gomez replied that he was not the only one doing this work and that if he wanted to do it he should go ahead and do it, if he didn't want to do the work, then he should leave. Hernandez, Solorio, and Gomez testified that Vera then told Gomez that this was the last day that he was going to weed and that Gomez should get somebody more stupid to do that kind of work. Vera denied making these statements. I credit the testimony of the other three witnesses.

Vera told Gomez that someone with his seniority could not be required to cut weeds. He said that he had been given a handbook about the Act and that his rights were being violated. He told Gomez that he was going to the Board office in Fresno to complain about his treatment. Gomez said "go wherever you want to go. I can't stop you," Vera testified that he believed Gomez' statement constituted permission for him to leave work and go to Fresno. Vera then threw his hoe into the truck and walked off.

Later that morning, after consulting with Respondent's personnel manager, Tony Vasquez, Gomez filled out a personnel form indicating that Vera had been fired for refusing to follow orders. (GC Ex. 4). Refusal to obey instructions is one of the grounds for discharge listed on Respondent's "Conditions of Employment" form, which was given to, and signed by, Vera at the beginning of the season. (GC Ex. 5). Vera testified that he had read and understood the document's terms. The employment contract provides for a warning rather than discharge for leaving work without written permission. When questioned by the General Counsel, Gomez said that Vera had left without written permission, He testified that he would have given Vera the discharge form in the morning, but Vera had already left. While there is some ambiguity in the record, it is clear that Gomez was talking about a discharge form, rather than a written warning, because there could not logically be an occasion in which an employee is given a warning about leaving work without written permission before he has actually left.

Vera did go to Fresno on October 20 to speak to Board personnel. He returned to the ranch at about 3:30 P.M. and was then given his discharge paper by Gomez. There is no evidence that there was any communication between the Board and Respondent on October 20. Vasquez testified that he did not speak to Board staff about Vera until October 24. But Gomez testified that he believed Vera's statement that he was going to Fresno to complain to the Board,

DISCUSSION, ANALYSIS AND CONCLUSIONS

The Complaint alleges that the assignment of Vera to work cutting weeds violated Section 1153 (a) of the Act because the assignment was made in retaliation against Vera's concerted activities. The General Counsel has not briefed this issue. The record is devoid of any evidence that Vera engaged in any concerted activity. All of Vera's complaints to Gomez and Vasquez were solely related to his treatment by Respondent. He never spoke on behalf of any other employee. I will order that this allegation be dismissed.

The Complaint also alleges that Vera's discharge violated Section 1153 (d) of the Act because it was motivated by his resort to Board processes. While there is no evidence that Respondent knew at the time the discharge was carried out that Vera had in fact spoken to a Board agent, it is clear that Gomez believed that Vera was going to the Board's Fresno regional office to register a complaint. This evidence is sufficient to establish a prima facie case of a Section 1153 (d) violation under the liberal interpretation given to its NLRA analog, Section 8 (a)(4), by the NLRB and the courts. NLRB v. Scrivener, 405 U.S. 117 (1972), and First National Bank & Trust Co., 209 NLRB 95 (1974, enforced 87 LRRM 3275 (3rd cir. 1974).

I conclude, however, that Vera was discharged for cause, and not as a result of his statement to Gomez that he was going to Fresno to speak to Board staff. Gomez had already told Vera to do the weeding work or leave when Vera first mentioned the Board. There was already considerable friction between the

two men stemming from their argument of the previous afternoon. In this context it is impossible to credit Vera's testimony that he believed that Gomez, in telling him to go wherever he chose, was giving him permission to leave work. An employee's right under the Act to communicate freely with the Board without discrimination from his employer does not relieve the employee of his obligation to carry out his work assignments. The controversy which led to Vera's discharge was caused by his unhappiness with being assigned to cut weeds for three or four consecutive days and his subsequent refusal to continue. His decision to leave work rather than carry out Gomez' order was made in anger and in the hope or belief that his assignment to cut weeds was somehow in violation of the Act. It is true, as the General Counsel argues, that Respondent could have given Vera a warning for leaving work without written permission instead of discharging him. But the fact that Vera was discharged rather than warned will not support an inference that the discharge was motivated by Vera's decision to go to the Board. Such reasoning would permit an employee to transform a refusal to obey orders into a less serious infraction simply by walking off the Job. The preponderance of the evidence establishes that Vera's statements about going to the Board occurred after he had refused to obey work instructions and played no part in Respondent 's decision to discharge him.

ORDER

It is hereby ORDERED that the Complaint be dismissed in its

entirety.

DATED: February 20, 1979.

AGRICULTURAL LABOR RELATIONS BOARD

By: _____

JOEL GOMBERG
Administrative Law Officer