

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

VALHI, INC., AKA SOUTHDOWN LAND)	
COMPANY ,)	
)	Case No. 75-CE-55-F
Respondent,)	
)	4 ALRB No. 1
and)	
)	
UNITED FARM WORKERS OF AMERICA,)	
AFL-CIO,)	
)	
Charging Party.)	

DECISION AND ORDER

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.

On June 28, 1977, the Board issued the attached Proposed Decision and Order in this proceeding. An extension of time having been granted, the UFW filed exceptions and a brief and the Respondent filed a brief in response to the exceptions.

In the Proposed Decision, the Board determined that the General Counsel had failed to establish by a preponderance of the evidence that Raymundo Camacho, an employee of the Respondent, had been discharged in violation of §§ 1153 (c) and (a) of the Act, and consequently ordered that the complaint be dismissed in its entirety. Having carefully considered the UFW's exceptions, it remains our conclusion that the complaint must be dismissed.^{1/}

^{1/}The union has correctly noted that evidence of union animus need not itself rise to the level of conduct chargeable as an unfair labor practice. We expressly disclaim any contrary inference which may arise from the language on page 5, bottom, of the attached Proposed Decision.

Accordingly, it is ORDERED that the attached Proposed Decision and Order in this proceeding be and is hereby made the Board's Decision and Order.

DATED: January 10, 1978

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD



VALHI, INC., aKa)
SOUTHDOWN LAND COMPANY)
Respondent) No. 75-CE-55-F
and)
UNITED FARM WORKERS OF)
AMERICA, AFL-CIO,)
Charging Party.)

PROPOSED DECISION AND ORDER

This decision has been delegated to a three-member panel. Labor Code Section 1146.

This case was tried before Administrative Law Officer Dawn B. Girard (ALO) on October 16 and 17, 1975. The complaint alleged that respondent violated Sections 1153(c) and (a) of the Act by its discharge of Raymundo Camacho on September 20, 1975. In its answer the respondent admitted the fact of the discharge but claimed that it was for just cause.

The general counsel and respondent filed post-hearing briefs. The ALO having become unavailable, pursuant to 8 Cal. Admin Code Section 20266 (1976), the matter has been transferred to the Board for issuance of a proposed decision and order. If no exceptions are filed within 20 days after service of this proposed decision and order, it shall become final.

The resolution of this case hinges on the answer to a single question: Is it more likely than not, that Raymundo Camacho

was discharged because of his participation in organizing activities on behalf of the UFW? Deriving the answer to that question is not a simple task. On balance, however, it is our view that the general counsel has failed to establish its case. The complaint shall therefore be dismissed in its entirety.

Mr. Caitiacho was a tractor driver, one of four, hired in February, 1973 to work full-time at the respondent's ranch located some 27 miles south of Kettleman City. Camacho had previously worked as a tractor driver at another area ranch with respondent's supervisor Robert Crowell, and it was Crowell who hired Camacho on respondent 's behalf.

Camacho's tasks at the ranch varied depending on the season: Part of the year the tractors would be weeding the groves; during the remainder of the year they were involved in cultivation of various sorts. The tractors were assigned to work in a team arrangement, so that the timely completion of any specific task was dependent upon the combined efforts of two tractor drivers. This fact shall be further discussed infra.

The tractor drivers began work at 6:00 a.m., and were expected to return to the shop at approximately 5:00 p.m. There was a paid half-hour lunch period and two designated break periods at 8:00 a.m. and 3:00 p.m. The respondent did not utilize a time-clock system for recording the hours of its employees.

The evidence shows that Camacho was an active supporter of the UFVi in its organizing campaign in Kettleman City during the summer months of 1975. Kettleman City is a snail town (population

approximately 800) and the UFW regularly held evening organizational meetings in the town park in August, 1975. At one of these meetings Camacho and a Valhi co-worker were selected as delegates to the UFW convention held in Fresno on August 17 - 19, 1975. Camacho had also allowed three organizational meetings to be held in his home, some of which were preceded by loudspeaker and bulletin announcements throughout town giving his home address as the site of the meeting. One of respondent's two supervisors at the subject ranch, Frank Perico, also lived in Kettleman City, four blocks from Camacho, whom he had known for approximately 18 years. On one occasion during the summer Perico observed Camacho meet two men in the park, get in a car with them and drive away. Minutes before, these two men had approached Perico and his companion, offered them union literature, and sought to have them sign authorization cards for the UFW. Finally, Perico acknowledged that immediately after the UFW convention he had been told by Camacho's co-worker and co-delegate that Camacho had attended the convention.

The totality of the above evidence establishes that on September 20, 1975, the date of the discharge, the respondent had knowledge of Camacho's activities in support of the UFW. This fact is not negated by Camacho's admission that he refrained from any activity at the ranch itself for fear of retaliation nor by the undisputed fact that there was no organizing effort underway at the ranch. However, in the connecting up of the fact of the respondent's knowledge of Camacho's union activities with the fact of the reason for the discharge the general counsel's case fails. The evidence is in an ambiguous state and will not support the inferences which must be drawn to find a violation.

The general counsel's first witness was Frank Perico, one of respondent's supervisors. His testimony was directed primarily to the issue of respondent's knowledge of Camacho's union activity. There was no discussion of Camacho's firing. Camacho himself was next called. The general thrust of his testimony on direct regarding the cause for his discharge was that he had not been criticized by anyone at the ranch regarding his work prior to September 20. Specifically, he stated that no one had criticized him for leaving work early or not properly performing his work. His testimony was that at the time of the firing Crowell told him that the company had been after him (Crowell) to fire Camacho for three weeks, and that he was being fired because he was talking about the union in town.

Arrayed against the general counsel's case is the following evidence offered by respondent. The respondent called Milimo Mitchell, a tractor driver for respondent and Camacho's partner from

approximately November, 1974 to April, 1975. The relevant portion

of his testimony ^{1/}indicates that he advised supervisor Crowell in April, 1975, that he wanted a transfer because Camacho was too slow and "stopped too much." Supervisor Perico was recalled and recounted a markedly different version of the firing of Camacho. According to Perico, Crowell called the employee into his office, and in Perico's presence, presented him with his checks and told him that

^{1/}Mitchell testified at length about Camacho's "sleeping on the job." However, since supervisor Crowell denied that Mitchell gave him any detailed information about why he wanted a new partner, this testimony is irrelevant to a determination of the basis for respondent's decision to fire Camacho on or about September 20, 1975. This testimony has therefore not been considered herein.

he was being fired for sleeping on the job and coming into the shop too early in the evening. Perico also stated that he had informed supervisor Crowell about two occasions when he had found Camacho not working during normal work hours. On one of these occasions Camacho was asleep on his tractor, on the other, he was "relaxing back" on the machine but not asleep. Crowell's own testimony is that at the time he made the decision to fire Camacho he was operating on the complaint of Mitchell (Camacho's co-worker), the information from Perico, his own observation of a sizeable gap between the tractors in Camacho's team which independently suggested that something was amiss, and two instances when he personally observed Camacho lying in the fields apparently asleep during working hours. The last of these personal observations occurred on September 18, and it is Crowell's testimony that he then determined to fire Camacho, and did so on September 20, the end of the payroll period. Crowell further testified that he had warned Camacho after the first incident (which occurred a few days after Mithcell's transfer) that if he was caught sleeping again he would be fired.

Camacho was not called in rebuttal after the close of the respondent's case. The specific allegations of the respondent's witnesses concerning the basis for the discharge therefore stand in opposition to the general denials of the employee. Nor do we find evidence of union animus to tip the balance in the general counsel's favor: No other unlawful conduct was alleged in the complaint, and none was in fact tried at the hearing. On the state

of this evidence we cannot find a violation of the Act.

Accordingly, IT IS HEREBY ORDERED that the complaint in its entirety be DISMISSED.

Dated:

GERALD A BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member