

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

L. A. ROBERTSON FARMS, INC. ,)	
)	
Respondent ,)	Case No. 83-CE-107-D
)	
and)	
)	12 ALRB No. 11
ISAIAS NUNEZ QUINTERO ,)	
)	
Charging Party.)	
<hr/>)	

DECISION AND ORDER

On October 18, 1985, Administrative Law Judge (ALJ) Arie Schoorl issued the attached Decision in this matter. Thereafter, the General Counsel timely filed exceptions to the ALJ's Decision along with a supporting brief, and Respondent filed a reply brief.

Pursuant to the provisions of Labor Code section 1146,^{1/} the Agricultural Labor Relations Board (Board) has delegated its authority in this matter to a three-member panel.^{2/}

The Board has considered the record and the ALJ's Decision in light of the exceptions and briefs of the parties and has decided to affirm the ALJ's rulings, findings, and

//////////

^{1/} All section references herein are to the California Labor Code unless otherwise specified.

^{2/} The signatures of Board members in all Board Decisions appear with the signature of the chairperson first (if participating), followed by the signatures of the participating Board members in order of their seniority.

conclusions,^{3/} and to adopt his recommended Order.

ORDER

Pursuant to section 1160.3 of the Agricultural Labor Relations Act, the Agricultural Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Dated: June 25, 1986

JORGE CARRILLO; Member

PATRICK W. HENNING, Member

GREGORY L. GONOT, Member

^{3/} While the ALJ stated that it was questionable whether General Counsel had established a prima facie case that Respondent violated section 1153(a) by discharging Isaias Nunez Quintero on May 20, 1983, we would go further and hold that General Counsel failed to make a prima facie case. Quintero had engaged in the same concerted activity (conveying to Respondent his and his co-workers' complaints concerning the amount and method of their pay) over a period of several years, and there is no evidence that Respondent had in the past retaliated against Quintero or any of the other workers who made complaints. In fact, Respondent hired Quintero back twice after he had engaged in such concerted activity. We agree with the ALJ that the timing of the discharge points to the lack of any discriminatory motive on Respondent's part. Since we find that General Counsel failed to present a prima facie case, we need not rely on the ALJ's theory concerning the basis for general manager Scott Robertson's defensive manner while testifying at the hearing. The evidence clearly showed Robertson to be a man who often acted hastily and in an emotional manner. In fact, three days after he discharged Quintero, Robertson told another employee that he had in the past become excited and had fired good workers "because of his nerves." However, we find somewhat strained the ALJ's explanation that Robertson's testimony concerning Quintero's job performance and responsibilities (much of which the ALJ did not credit) was the result of an endeavor at the hearing to justify his intemperate decision to discharge Quintero.

CASE SUMMARY

L. A. ROBERTSON FARMS, INC.

12 ALRB No. 11
Case No. 83-CE-107-D

ALJ Decision

The ALJ recommended dismissal of the complaint, which alleged that the Employer discharged employee Isaias Nunez Quintero because of his protected concerted activities. For several years, Quintero had advised the Employer's general manager of employees' complaints concerning the manner and amount of their pay, and other terms and conditions of employment. The Employer asserted that Quintero was discharged because he failed to repair or report a leak in the irrigation line, which resulted in equipment becoming stuck in the fields. The ALJ found that the General Counsel probably had not presented a prima facie case of a violation of section 1153(a), since the employee had engaged in the same protected concerted activity for several years, and there was no evidence that the Employer had retaliated against him or any of the other workers who made complaints. In fact, the employer hired the employee back several times after he quit for various reasons. Examining the Employer's proffered reason for the discharge (the failure to repair or report leaks), the ALJ found that the Employer's general manager reacted angrily to the employee's failure to perform his duties, and discharged him for that reason.

Board Decision

The Board adopted the findings, conclusions and recommendations of the ALJ, and dismissed the complaint in its entirety. However, the Board found that the General Counsel failed to present a prima facie case, and noted that it therefore did not need to rely on the ALJ's theory concerning the basis for the general manager's defensive manner while testifying at hearing.

* * *

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

* * *



STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:) Case No. 83-CE-107-D
L.A. ROBERTSON FARMS, INC.,)
Respondent,)
and)
ISAIAS NUNEZ QUINTERO,)
Charging Party.)

Appearances:

Juan Ramirez, Esq.
for General Counsel

Sidney P. Chapin, Esq.
Werdel, Chapin & Leverett
for Respondent

Before: Arie Schoorl
Administrative Law Judge

DECISION OF THE ADMINISTRATIVE LAW JUDGE

ARIE SCHOORL, Administrative Law Judge:

This case was heard before me on July 9, 10, 16, 17 and 18, 1985, in Bakersfield, California. The complaint herein, which issued on May 3, 1985, based on charges, filed by Isaias Nunez Quintero, and duly served on Respondent L. A. Robertson Farms, Inc. on May 25, 1983, alleges that Respondent committed a violation of section 1153(a) of the Act by discharging the Charging Party because of his protected concerted activities.

The General Counsel and Respondent were represented at the hearing and filed timely briefs after the close of the hearing. Upon the entire record, including my observation of the demeanor of the witnesses, and after considering the post-hearing briefs of the parties, I make the following:

I. JURISDICTION

Respondent admitted in its answer, and I find, that it is an agricultural employer within the meaning of section 1140.4(c) of the Act, and that Isaias Nunez Quintero is an agricultural employee within the meaning of section 1140.4(b) of the Act.

A. Facts

Isaias N. Quintero commenced work with Respondent in April or May 1978 operating a cotton picking machine. He quit employment in July of the same year so he

could secure immigration papers.¹ He returned to work for Respondent in October 1978 and worked operating a cotton picker and a tractor until March 1979 at which time he was laid off.

In October 1979, Scott Robertson, Respondent's general manager, rehired Quintero and amplified his duties to include supervising co-workers (Quintero spoke and understood some English while his coworkers spoke only Spanish), making out tickets for cotton trailers, checking small repairs thereon and reporting the need for major repairs to Robertson. Quintero's duties also included hiring and firing workers but after consultation with Robertson.

In August 1980 Robertson reprimanded Quintero about a defective clutch in a tractor and angrily pointed out to him that the condition of the tractor was his responsibility. Quintero responded that it was the mechanic's responsibility and besides he had too much work assigned to be done and therefore was quitting his job. Robertson asked him to wait to talk the next day but

¹Quintero did not work continuously for Respondent between the Spring of 1978 until his discharge in May of 1983, the subject matter of the unfair labor practice allegation. He worked during four periods sometimes in a supervisory capacity and sometimes not. He was not working in a supervisory capacity at the time of the alleged unfair labor practice allegation.

Quintero, who already had another job lined up, declined to do so.

The following day Robertson went to the house on Respondent's property where Quintero was residing (part of his employment compensation) and requested him to move out. Quintero complied four days later.

In January 1981 Robertson rehired Quintero to put up levees. After two weeks of such work, Robertson promoted Quintero to foreman with an appropriate raise in salary and Quintero was permitted to move into Sam's house.² During a two week business trip, Quintero was in charge of all ranch activities. Scott Robertson's father, Lloyd, who founded the business and had operated it until 1976 when his son Scott took over, occasionally dropped in to check on the operations but did not intervene whatsoever.

In August 1981, Quintero quit his job as foreman and explained to Robertson that he did so because Robertson was assigning excessive amounts of work to the workers. Quintero moved out of Sam's house two days later.

In July 1982 Quintero sought and obtained an irrigation job from Scott Robertson. After a week Quintero queried Lloyd Robertson about moving Back into Sam's house. Lloyd Robertson responded that it was Sam's house so it was

²Sam was a retired L.A. Robertson worker who lived rent-free in a house located on Respondent's premises.

up to Sam to make the decision. The latter consented and Quintero and his wife moved back in.

In 1979 and 1980 Quintero's coworkers would frequently complain to him about Respondent not paying an overtime premium of 1½ times the regular rate. Quintero relayed the complaints to Robertson, who invariably reacted to them in an angry manner and commented that he could not afford to pay time and a half for overtime since his was a small ranch and moreover he paid straight time without deductions for the 30 minute lunch and the 15 minute morning and afternoon breaks.

In April or May 1981 Respondent began to pay the overtime hours with an extra check once a month. Quintero's coworkers complained to him about the nonpayment of overtime hours on the 15th of each month (previously it had been paid on the 15th and 30th or 31st). In addition they continued to complain to Quintero about their paychecks being short (not receiving compensation for all the hours they worked) and irregularities in the number and length of breaks.

From May 1981 until Quintero left his employment in August 1981, Respondent's employees continued to voice their complaints to Quintero who in turn informed Scott Robertson of them.³ Such complaints occurred virtually

³Quintero testified that he did not relay each and every complaint, just some of them, because he did not want to anger Robertson on such a continuing basis.

every pay day. The times that Quintero informed Robertson of the complaints the latter angrily commented that as his ranch was small he could not pay the overtime premium. In respect to the hours not paid, he checked the records and corrected any errors in calculation at the time of the next pay day.

Between July 1982 and May 20, 1983, Quintero worked as an irrigator for Respondent. The workers continued to make the same complaints to Quintero about the amount and method of their pay and he would relay such complaints to Robertson who would react in the same angry manner and expressing the same reasons for not complying with the workers' requests as to payments. His explanation for not paying overtime on a twice-monthly basis was that it was less complicated, only one overtime check per month instead of two.

In September 1982 Quintero informed Robertson that a worker, who happened to be a friend of Quintero's, had worked for Respondent a few months before and that Respondent had failed to pay him for the last few days he worked. Quintero added that his friend had said that if he did not receive such overdue payment that he would report it to the Labor Commissioner. Robertson reacted in a very angry manner and retorted that he would tear the check up in the worker's face. Quintero advised Robertson to simply tell him what message that he wanted Quintero to transmit to the former worker. Whereupon Robertson checked the office

records and found out that the worker was right that he had not received payment for his last days of work. Robertson acknowledged his error, proceeded to arrange for payment and was no longer angry.

In December 1982 tractor drivers Jorge N. Quintero⁴ and Jesus Ballesteros (Ballesteros real name was Juan Rico but he worked under the name of Ballesteros at Respondent's) asked Quintero to ask Robertson the reason for his not paying the overtime premium. Quintero complied and Robertson responded angrily and said, "I won't pay overtime". The two tractor drivers proceeded to ask about the monthly payment of overtime hours rather than the twice monthly payment. Robertson who had just finished filling up his pickup with gasoline did not respond to the inquiry as he quickly drove off in his pickup.

Later in December 1982 Robertson, Quintero and Ballesteros were riding in Robertson's pickup. Bassesteros complained to Robertson about the hours worked but not paid for, the lack of the overtime premium and the irregularities in break time. Quintero translated. Robertson became angry and said, I do not pay time and a half for overtime and if anyone does not like it he can leave. Robertson added that he did not deduct for the 30 minute lunch break or the morning and afternoon breaks. Ballesteros responded that

⁴Brother of Isaias Quintero.

sometimes Robertson gave 30 minutes for lunch and other times only 15 minutes.

In January 1983 a Mexican worker came to Quintero and complained that he had worked a short time for Respondent but had not received payment for all hours worked. Quintero arranged with Respondent's office for the issuance of a check to compensate the worker for the work hours not previously paid. Upon being informed of the matter, Robertson commented that there were lots of problems with Mexicans.

In April 1983 Ballesteros was cleaning valves and asked Quintero to ask Robertson about the lack of overtime pay, inaccurate check amounts and no uniform breaks. Robertson became angry and once again recited his usual reasons for not complying with the workers' requests.

On the morning of May 15, 1983, the office made out the pay checks. Robertson signed them and delivered them to Quintero. Quintero complained to Robertson that his pay check was short hours, that the government had deducted large amounts and there was no overtime premium. Robertson angrily retorted that if Quintero did not like it, he knew what he could do.

Quintero distributed the checks to the employees the afternoon of the 15th and the morning of the 16th. Upon receiving their checks, coworkers Jorge Quintero (Isaias' brother), Francisco Mosqueda and Pedro Arredondo complained individually to Quintero. A day or two later, Quintero

relayed his brother's and Mosqueda's complaints to Robertson on one occasion and on another occasion relayed Arredondo's complaints. Robertson responded angrily on both occasions but more so when Quintero relayed Arredondo's complaints and commented, "lots of problems with hours and Mexicans".

Quintero testified he had noticed that when he began to pass on his co-employee's complaints to Robertson that the latter increased his work load. In addition to his duties as an irrigator, he relayed orders to the workers, drove a tractor,⁵ helped bale alfalfa, etc. Quintero informed Robertson that he was assigning him too much work for one person.

On the morning of May 19 Robertson gave his daily instructions to Quintero and left the ranch for the day. According to Robertson's testimony, he informed Quintero that they were planning to cut, rake and bale alfalfa the 19th and the 20th in Section 9, fields 3 and 6, and so he should check the main line parallel to those fields for leaks. (Quintero denied receiving such instructions. He testified that it was not part of his duties to repair or replace valves but when he saw one that was defective it was his custom to stop and change it.) During the workday of

⁵However, questioned further on this point, Quintero admitted that his tractor driving duties were incidental to his irrigation duties.

the 19th Quintero attended to his irrigation duties⁶ He was in charge of Section 6 fields, 6, 7, 11 and 12, Section 17 fields 8, 9, 11 and 12 and Section 9 fields 3 and 6 which included driving a tractor to make ditches for tail water and supervising Pedro Arredondo who helped him change the water on some fields during the afternoon. Quintero was so busy during the day that he could not go home for lunch but rather ate it in the fields with brother Jorge and Pedro Arredondo.

The next morning at 4:30 a.m., M.E. "Jim" Pellett, a tractor driver, who was working with a baler in Section 9 field 3 ran one of his tractor wheels into the mud and was unable to extricate it. He notified Scott Robertson who came and pulled the tractor out of the mud with his four-wheel pickup and chain.⁷ Later Robertson, himself, operating a tractor and baler ran it into the mud. At approximately 5:00 a.m. Robertson picked up Quintero at the latter's house and drove to Section 9 field 3. Robertson pulled the tractor and baler that he had been operating out of the mud and Quintero drove it until 8:30 a.m. During the 2½ hours Quintero drove the tractor and baler in field 3

⁶He had to take care of 7 heads of water. Before that date the highest amount of heads of water he had attended at the same time was 4.

⁷Respondent's payroll records indicate that Isaias Quintero worked 2½ hours on May 20.

Pellett continued to drive a tractor and baler in field 3 and Quintero's brother Jorge a raker in an adjoining field (field 6.)⁸

Robertson returned at 8:30 a.m., picked up Quintero, stopped to talk to Jorge Quintero, and Jim Pellett, successively and then drove over to the shop. In route to the shop Robertson asked Quintero what had happened to the water. Quintero answered that "how would you expect a worker who was operating a tractor plus 7 water heads to have time to check leaking valves." Robertson became very angry and told Quintero that he was going to give him his check and he wanted him to move out of Sam's house at the same time. Robertson asked Quintero for the amount of hours worked by him and Quintero gave him the amount on a small piece of paper. Robertson became more angry. Robertson and Quintero arrived at a trailer in the field that Robertson used as a combination office, kitchen, etc. and Robertson expressed his anger by kicking the trailer door. Robertson told Quintero that he wanted the notebook (in which he had

⁸Robertson testified that the raker also got stuck in the mud that morning and he had to pull it out. The driver of the raker, Jorge Quintero, testified that he drove the raker that morning but did not mention anything about it getting stuck in the mud. More over, Isaias Quintero testified that a leak could not have occurred in field 6 as field 7 was at a lower elevation.

I have declined to determine whether a third vehicle, the raker, became stuck that morning because either Robertson's or Jorge Quintero's testimony with respect to this issue is consistent with the analysis and conclusion herein.

noted, down the amount of hours worked by the employees) and Quintero handed it to him. Quintero noticed that Robertson was so angry that he, Quintero, refrained from saying anything so as not to provoke Robertson to further anger which he thought could move Robertson to violence against him.

Quintero went to Sam's house, gathered most of his possessions and left the ranch premises two hours later.

Quintero saw Robertson when he returned to the ranch a day or two later to pick up the rest of his possessions. Nothing untoward occurred.

Three days later Robertson talked to another irrigator, Francisco Loera and told him that he had problems, that he had become nervous and had fired Quintero. He added that it had happened to him before, that due to his nerves, he became excited (Robertson indicated to Loera with his hands that he had lost his head) and had fired good workers and that he had been unaware of what he had been doing.⁹

Five months later, in October 1983, Robertson closely followed behind Quintero's vehicle, with his vehicle's high beam lights on, for approximately 4 miles. Robertson stopped next to Quintero at a stop sign and angrily shouted at him. Quintero lowered the window of his

⁹Transcript Volume 5, pages 50-55.

vehicle but was unable to detect what Robertson was saying other than "if it is money that you want, you did not have to do through the trouble of reporting me ". However, he was unable to understand any more.¹⁰

Some time later Robertson and Quintero saw each other at the Labor Commissioner's hearing on Quintero's overtime claim. At the end of the hearing, Robertson left in a hurry slamming the door on his way out.

Quintero saw Robertson the day before the instant hearing started and Robertson said to him, "One of these days, Isaias". Quintero did not respond and Robertson left.

B. Analysis and Conclusion

General Counsel contends that Respondent discharged Isaias N. Quintero on May 20, 1983 because of his concerted activities e.g. complaining and communicating the complaints of co-workers to Scott Robertson about wage payments and thereby violated section 1153(a) of the Act.

To establish this violation, General Counsel must prove by a preponderance of the evidence that Respondent discriminated against Quintero for the reasons alleged. Generally in discrimination cases General Counsel must prove that the employee engaged in union or concerted activities that the employer had knowledge thereof and there was a

¹⁰Incidentally, Quintero filed the unfair labor practice charge herein on May 25, 1983, a copy of which was duly served on Respondent on May 26, 1983.

causal connection between the union or concerted activity and the employer's subsequent discriminatory treatment of the employee.¹¹

In the instant case Quintero engaged in concerted activity beginning in 1979 and continuing to May 17, 1983 three days before his discharge, in that he would pass on complaints of his co-workers about wages and working conditions e . g . , no premium pay for overtime, the carry over of overtime hours to the end of the month pay check, payroll checks short on hours worked and irregularities in the frequency and length of work breaks.

Respondent clearly had knowledge of Quintero's concerted activities as its general manager Scott Robertson heard Quintero's repetition to him of the workers' complaints once or twice a month (almost every payday) during Quintero's periods of employment since 1979 and Quintero's own personal complaint on May 15, and other employee's complaints on May 16 and 17, 1983.

Almost invariably in discrimination cases, there is no direct evidence of discrimination so circumstantial evidence must be relied upon. A frequent factor to be considered is such cases in timing.¹² An employee engages in union or concerted activity, the employer gains knowledge

¹¹Lawrence Scarrone (1981) 7 ALRB No. 2.

¹²Rigi Agricultural Services (1983) 9 ALRB No. 31; Weather-Shield Corp (1976) 222 NLRB 1171, 91 LRRM 1478.

thereof and soon afterwards discriminates against the employee. In such a situation a strong inference can be made that the employer discriminated against the employee because of his union or union activities.

However in the instant case the factor of timing does not point to any improper motive on the part of Respondent. The alleged discriminatee has been engaged in such concerted activities since 1979. Quintero, whether he was foreman or otherwise, over a period of 4 years, would pass on to general manager Robertson the complaints of the workers. Invariably Robertson would become angry, and would explain his reasons for his method of payment but there is no evidence that he ever discriminated against Quintero or any of the workers who made complaints.

Moreover there was no notable increase in the number of complaints during the one or two week period just prior to the discharge.

According to Quintero's testimony, he made his own personal complaints about his payroll check on May 15, 1983. Robertson became angry and told him that he, Quintero, knew what he could do about it. Quintero also testified that when he passed on his co-workers' complaints to Robertson, the latter began to increase his workload. However in the past Robertson had increased Quintero's workload to such an extent that he had quit and there was no evidence that the increase was caused by Quintero's concerted activities.

It is questionable whether General Counsel has presented a prima facie case. Be that as it may, it is clear from the record evidence that Quintero's discharge came about due to Robertson's angry reaction to what he considered to be Quintero's gross dereliction of duty rather than his concerted activity with respect to employees' complaints.

General Manager Robertson became angry the morning of May 20, 1983 when two tractors became stuck in a muddy portion of a field and he blamed Quintero because he had not checked for leaks the day before. Quintero, himself, testified that Robertson was exceedingly angry the morning he laid him off, so much so, that Quintero was fearful of saying anything to him. There is nothing in the record that would indicate that Robertson's anger was nothing other than an emotional reaction to Quintero's failure or perceived failure to efficiently perform his duties. It is difficult to believe that Robertson feigned or exaggerated anger about the tractor incidents to simulate his real motive for the discharge, Quintero's expressing to Robertson his and his co-workers' complaints. It is true that Robertson invariably reacted in anger to those communications but there is no evidence, during the 4 years that Quintero worked there, that he ever discriminated against anyone for such complaints.

Testimony, by General Counsel's own witness, Francisco Loera, confirms the fact that Robertson discharged

Quintero due to his anger about Quintero's failure to inspect for leaks on May 19. Three days after the discharge, Robertson informed Loera that in effect the reason he discharged Quintero was because of his excessive anger about the alleged failure to perform his duties with respect to possible leaks. Robertson's anger at Quintero thereafter was not so much a continuation of his anger about the leaks but due to the fact that Quintero had resorted to state agencies, the Labor Commissioner and the ALRB, to report Robertson rather than going directly to the latter.

General Counsel argues that there are some serious discrepancies between Robertson's¹ version of the facts and those of other witnesses. General Counsel cites such examples as Robertson's assertions that employees made no complaints about overtime pay from August 1982 through May 1983, that Quintero had limited amount of duties i . e . , made out time cards for irrigators and one or two other employees, that there were three incidents, rather than two, of farm machinery bogged down in mud etc.

Despite the fact of those discrepancies, they do not detract from the fact that for a four year period (with employment lapses) Quintero had been passing on to Robertson a series of employee complaints and Robertson consistently refrained from taking any retaliatory action. Consequently the factor of timing herein points to the lack of any discriminatory motive on Respondent's part.

Moreover, I find that Robertson was very defensive about any criticism of his personnel practices and would habitually react to such in any angry manner as was evidenced by such a reaction on each occasion Quintero would mention employee complaints about lack of premium overtime pay, carrying over extra hours from one pay period to another etc.

In observing Robertson's demeanor during the hearing, I observed that he reacted in a defensive manner (however he managed to contain his emotions while testifying) to questions put to him about his personnel policies including his decision to discharge Quintero.

I believe Robertson's exaggeration of Quintero's errors and omissions in the performance of his duties on May 19 and his minimizing of the extent of Quintero's responsibilities other than those of an irrigator are a result of his endeavor to justify his intemperate and hasty decision to discharge Isaias Quintero rather than for any discriminatory motive.

Consequently I find that the discrepancies in Robertson's testimony are consistent with this defensive characteristic rather than any improper motive on his part.

I hereby recommend that the complaint be dismissed
in its entirety.

Dated: October 18, 1985


ARIE SCHOORL
Administrative Law Judge