



Issue Date: 02 December 2010

Case Nos.: 2008-STA-00020
2008-STA-00021

ARB Case No.: 09-032

In the Matter of:

LINDELL BEATTY and
APRIL BEATTY,

Complainants,

v.

INMAN TRUCKING MANAGEMENT, INC.,

Respondent.

DECISION AND ORDER ON REMAND

By Final Decision and Order issued on June 30, 2010, the Administrative Review Board (Board) affirmed the Presiding Judge's recommendation (R. D&O) to dismiss the Beatty's claims based on their terminations as being untimely filed. However, the Board reversed the Presiding Judge's recommendation to dismiss the blacklisting claims as being untimely filed. The Board determined the blacklisting claims were timely filed and remanded the case for further consideration consistent with the Board's decision.

Inter alia, I made the following findings of fact in my R. D&O issued December 9, 2008¹:

SUMMARY OF THE EVIDENCE

Testimony of April Beatty

Mrs. April Beatty testified that she resides in Wilmington, North Carolina and has been a tractor-trailer driver since 1995. (TR at 27:20-28:1.) Mrs. Beatty testified that between August 2004 and December 2005, she and her husband were employed by Inman Trucking Management ("Inman"). (TR at 28:4-14.) Mrs. Beatty testified that around October 2005, while they were driving to California, she began to smell fumes coming into the bunk while she was trying to sleep. (TR at 48:17-49:11.) Mrs. Beatty further testified that she woke up in Knoxville, Tennessee when Mr. Beatty had pulled over to call the on-call safety person. (TR at 49:5-6.) Mrs. Beatty testified that Mr. Beatty informed the on-call person that the exhaust leak was prohibiting them from sleeping in the bunk, but that they were told to go ahead to California and to stop complaining. (TR at 49:14-50:13.) Mrs. Beatty testified that they pulled over again in

¹ The Board's Final Decision and Order referenced these findings and summarized them in pertinent part.

Oklahoma City, went under the truck, and took pictures of the muffler. (TR at 50:18-22.) At that time, Mrs. Beatty testified that they again called Inman about the muffler, but were brushed off. (TR at 50:21-22.) Still, Mrs. Beatty testified that they continued to drive until the muffler blew out in Albuquerque and they stopped to have it repaired. (TR at 49:19-20; 50:22-24.)

Mrs. Beatty further testified that they never received any formal disciplinary action while working for Inman. (TR at 47:1-5.) She also testified that she was not present when Inman terminated their employment on December 14, 2005, (TR at 28:20-22), but that she believed they were fired due to a disagreement her husband had in the office. (TR at 47:9-12, 62:22-25.) After leaving Inman, Mrs. Beatty testified that they received unemployment benefits for twenty-six weeks and then applied to work for FedEx in approximately June 2006. (TR at 38:13-21.) Mrs. Beatty testified that they worked for FedEx for three months before they left. (TR at 39:2-3.)

Mrs. Beatty testified that in August 2007, she and Mr. Beatty applied to U.S. Express, Incorporated, but that they were abruptly pulled out of orientation and were told that U.S. Express could not hire them. (TR at 29:9-15.) Mrs. Beatty testified that they had worked for U.S. Express before, and had not foreseen any problem with getting rehired. Thus, Mrs. Beatty testified that when they arrived home she called the main office in Chattanooga to inquire about the problem, and was told by a recruiter that the DAC report directly affected the reason for their dismissal. (TR at 29:23-30:2.) Mrs. Beatty testified that they next tried to seek other employment with Cargill Meats, but were told that they would not be hired due to their DAC report. (TR at 31:4-25.) Then, Mrs. Beatty testified that they tried to seek employment with three other companies, but were not given reasons for their flat denials. (TR at 36:21-24.) Finally, Mrs. Beatty testified that Inman had essentially cleared the DAC report by November 2007, and that they were able to get employment with Covenant Transport for six months. (TR at 39:14-40:1.)

Mrs. Beatty testified that she believed that the negative DAC report was how Inman retaliated against her and her husband for whatever transpired between Mr. Beatty and the office when they were terminated. (TR at 30:17-20.) She further testified that after being fired from Inman she could have checked her DAC report, but that she did not think to check her DAC report, and therefore, did not know that negative comments had been made. (TR at 61:8-14.) Moreover, Mrs. Beatty testified that in retrospect she believes it would have been a good idea to check her DAC report. (TR at 61:15-17.)

Testimony of Lindell Beatty

Mr. Lindell Beatty testified that he has been a truck driver since 1989 and that he was employed with Inman during the same dates as Mrs. Beatty, between August 2004, and December 2005. (TR at 64:4-15.) Mr. Beatty further testified that he did not disagree with anything in Mrs. Beatty's testimony. (TR at 64:16-21.)

Mr. Beatty testified that as a CDL driver it is his responsibility to check the truck and make sure that it is not operated in a dangerous condition. (TR at 68:21-23.) Mr. Beatty further testified that he did this all the time with Inman, and that as a result Inman labeled him a

complainer. (TR at 68:23-24.) Next, Mr. Beatty testified that he was told to call FleetNet America, Inc. (“FleetNet”), an on call repair service, anytime he had to stop for repairs; however, afterwards Inman told him not to call FleetNet anymore, and to call the office instead. (TR at 69:21-24.)

Mr. Beatty testified that an exhaust leak occurred in October while they were driving truck 167 through Knoxville, TN. (TR at 70:8-71:4; 75:4-5; 77:9-25.) He testified that he first called the office, which then told him to call FleetNet. (TR at 69:24-70:3.) After calling FleetNet, Mr. Beatty testified that he called the office again and told them that there was a T/A across the road, and that the office told him to go to the T/A. (TR at 69:3-7.) Mr. Beatty testified that at the T/A they found a hair-thin line on the muffler that was leaking fumes, but that they would have had to wait until the following day to get the part to fix it. (TR at 70:8-13.) Mr. Beatty testified that he called the office again, but that they didn’t want him to wait, and told him to drive on. (TR at 70:13-15.) Mr. Beatty testified that they pulled to side of the road in Oklahoma and took pictures of the muffler, which by then had a large hole in it. (TR at 76:10-77:6.) Mr. Beatty testified that by the time they arrived in Albuquerque they could go no further because the muffler needed to be fixed. (TR at 70:14-21.) Clarifying, Mr. Beatty testified that although he reported the muffler from two different cities, Knoxville, TN and Albuquerque, NM, there was only one muffler incident, and it occurred in October. (TR at 71:1-5.) Mr. Beatty testified that they waited in Albuquerque a couple days to have the muffler fixed, and Inman put them in a hotel while they waited. (TR at 71:15-16.)

After showing Mr. Beatty EX B and EX F, which depict two exhaust leaks on two separate trucks, the first occurring in October and being reported in Knoxville, and the second occurring in December and being reported in Albuquerque, Mr. Beatty testified that he believed the dates on the invoices and receipts were wrong, or mixed up. (TR at 101:15-20, TR at 102:18-19.) Then, later Mr. Beatty testified that there may have been more than one muffler incidents, and he may have gotten one of the invoice dates wrong. (TR at 104:18-21, TR at 105:14-19.)

Next, Mr. Beatty testified that many times the trucks that they were asked to drive were filthy and that when they reported the dirty conditions of the trucks, they were told that they were always complaining. (TR at 72:14-20.) Mr. Beatty testified that they had to clean the truck before every trip to California because the previous truck drivers had not cleaned out their truck. (TR at 88:6-19.) Specifically, Mr. Beatty testified that on a previous occasion he and his wife were asked to drive a truck to California, but when they arrived at Inman to pick up the truck, the truck was filthy with trash and moldy food. (TR at 73:6-21; 88:6-15.) Mr. Beatty testified that he requested to have an hour to clean out the truck, but that he was told he had to leave immediately, or not go at all. (TR at 73:15-25.) Mr. Beatty testified that they refused to take the truck that day, but returned to take pictures of the truck. (TR at 74:1-3.) The following day, Mr. Beatty testified that he showed the pictures to Darryl, a supervisor at Inman, and that Darryl understood the situation and did not fire them. (TR at 74:5-8; 87:5-7.) Still, Mr. Beatty testified that he and his wife were labeled as complainers. (TR at 89:3.)

Mr. Beatty testified that on December 14, 2005, he and his wife had just returned from a run and he went into the office to turn in some paperwork. (TR at 67:13-16.) Next, Mr. Beatty

testified that Al Grover, Darryl and Trent were in the office, and that he began speaking with Mr. Grover. (TR at 66:16-18.) Mr. Beatty testified that the conversation occurred as follows:

[Mr. Grover] mentioned something that was very derogatory and negative to being a truck driver. . . . I blurted out, "Oh, well, so that's how it is here?" And he said, "Yes." And I said, "Well that's why I got this tape recorder." And that's when I was fired right there.

(TR at 67:21-68:3.) Mr. Beatty also testified that although he had a tape recorder with him, it did not pick up the derogatory comment, and that he does not remember what the comment was that Mr. Grover said. (TR at 92:8-25.) Mr. Beatty further testified that he did not think that he was fired for complaining, but instead, thought he was fired for having the tape recorder with him. (TR at 95:2-3.) Later, Mr. Beatty testified that he believed he was fired for complaining about safety issues. (TR at 111:3-8.)

Mr. Beatty testified that, after their termination with Inman, they didn't have a reason to check their DAC report, because to their knowledge their license was perfectly clean. (TR at 65:3-6.) Mr. Beatty also testified that after leaving Inman he filed for unemployment, and when his unemployment ended he was hired by a couple of companies driving trucks. (TR at 79:2-4.) Mr. Beatty testified that at first he had no problem getting employment, until he applied at U.S. Express. (TR at 79:4; 80:12-25.)

Testimony of Anthony Hall

Mr. Anthony Hall is an owner of a small trucking company, where he leases trucks to Cargill, located out of Milwaukee, Wisconsin. (TR at 116:14-23.) Mr. Hall testified that he had put an ad in the paper stating that he needed a truck driver to run from Milwaukee back to the Carolinas every week, and that Mr. and Mrs. Beatty responded to the ad. (TR at 117:21-25.) Mr. Hall further testified that in early August 2007, they filled out an application, but that Cargill denied it. (TR at 118:1-8; 119:6-10.) He also testified that he did not have any personal knowledge that would have kept him from letting them drive his truck. (TR at 118:9-12.) Next, Mr. Hall testified that Tom, the safety director at Cargill, called and told him that he could not hire them because of their DAC report. (TR at 128:1-7.) However, Mr. Hall also testified that the safety inspector would not tell him what the issue with the DAC report was, and did not identify the Inman DAC report as the problem. (TR at 128:4-15.) He next testified that the Beattys tried to straighten out their DAC report three times, and that Cargill ran the DAC report three times, but that Cargill would still not accept the application. (TR at 128:16-25.) Still, Mr. Hall testified that he believed the Beattys would have been hired if they had had a clean DAC report. (TR at 129:8-9.)

Testimony of Alan Grover

Mr. Alan Grover is a safety director for Inman. (TR at 130:24-131:1.) Mr. Grover testified that he had personal knowledge of the repairs made to Truck Nos. 172 and 167. (TR at

131:8-10.) Mr. Grover testified that, according to an invoice from FleetNet, on October 29, 2005, after smelling exhaust in the cab, Mr. Beatty called FleetNet and reported an exhaust leak in Truck No. 172. (TR at 131:23-132:3; EX D.) Mr. Grover testified that FleetNet sent a man to the truck, but before he arrived, Mr. Beatty called FleetNet, cancelled the complaint and said they were going on. (TR at 132:7-10; EX D.) Mr. Grover testified that Inman was charged \$165.00 for the call to FleetNet. (TR at 132:22-25.) Mr. Grover further testified that the maintenance records show that no exhaust repairs were made to Truck No. 172 in October, or in December 2005. (TR at 132:18-20.)

Next, Mr. Grover testified that in December 2005, there was a second exhaust leak on a different truck, Truck No. 167. (TR at 133:3-20.) Mr. Grover testified that according to his records Truck 167 was repaired in Albuquerque, New Mexico on December 6, 2005. (TR at 133:17-21.) Mr. Grover testified that at that time the Beattys were put up in a hotel, were paid for their meals and received layover pay. (TR at 133:23-25.)

Mr. Grover testified that company policy requires that drivers make three trips per month in order to be considered fulltime. (TR at 134:3-4.) Mr. Grover further testified that the Beattys only made two trips per month between June 15, 2005, and December 14, 2005, which is a violation of company policy. (TR at 134:8-12.) Mr. Grover testified that the Beattys were constantly being reprimanded over the fact that they weren't living up to the responsibilities that they were hired for. (TR at 134:15-18.) In fact, Mr. Grover testified that at one point Inman brought them down to part-time pay. (TR at 134:15-16.) Furthermore, Mr. Grover testified that most drivers are assigned a specific truck, but Inman was not able to assign the Beattys to a specific truck because they were too unreliable. (TR at 134:19-25.) Mr. Grover also testified that when the Beattys would come to work they would then refuse to drive the truck because it was too dirty, or didn't have enough room for them. (TR at 135:4-14.) Mr. Grover testified that nine out of ten times the Beattys complained about the cleanliness of the trucks and not about safety issues. (TR at 136:8-14.)

Mr. Grover testified that the Beattys were fired because of their excessive complaining. (TR at 137:24-25.) He further testified that Inman had conditioned the Beattys' termination, on whether they refused their December 14th trip for any reason. (TR at 138:4-6.) Mr. Grover stated, "We were so tired of excuses and reasons why they couldn't go, that the plan was already made ahead of time that they were going to be fired." (TR at 138:6-9.) Mr. Grover also testified that they did not fire the Beattys for carrying a tape recorder or for making a safety complaint. (TR at 138:1-12).

Mr. Grover testified that he filled out the Beattys' DAC reports within a day of their termination date, (158:7-11), that the reports were originally received by DAC on December 14, 2005, (TR at 141:21-23), and that the reports were not filled out at some later date in order to blackball the Beattys. (TR at 158:5-9.) Regarding the Beattys' work record, Mr. Grover testified that the DAC report stated, "Excessive complaints, company policy violation, personal contact requested and other." (TR at 142:2-5.) First, Mr. Grover testified that the "excessive complaints" comment signified having excessive complaints from the Beattys about dirty trucks, and the size of the trucks. (TR at 142:7-12.) Second, Mr. Grover testified that "company policy violation" referred to running two trips a month instead of three, and also calling FleetNet

personally instead of contacting the office first. (TR at 142:13-20.) Third, Grover testified that “personal contact requested” indicated that future employers should contact him, so that he could explain what he meant on the DAC report. (TR at 142:23-143:6.) Mr. Grover testified that he wanted to clarify to other employers that the excessive complaints were from the drivers and not from the customers. (TR at 143:1-6.) Finally, regarding “other,” Mr. Grover testified that it was basically a catchall phrase. (TR at 143:7-9.) Mr. Grover testified that the reasons for the Beattys’ termination, which he stated in the original DAC report, were accurate. (TR at 144:4-8.) Mr. Grover further testified that he would not have changed the DAC report if OSHA had not offered to settle the case by changing the report. (TR at 144:25-145:6.)

Next, Mr. Grover testified that he changed the DAC report several times in order to settle with the Beattys. (TR at 146:8-147:10.) Mr. Grover testified that he first removed “personal contact requested,” and then, three days later on August 27, 2007, removed “excessive complaints,” and changed “eligible for rehire: no” to “review required before rehiring.” (TR at 146:10-21.) Mr. Grover testified that on September 13, 2007 he submitted the specific DAC codes to make the final changes. (TR at 147:1-8.)

DAC Reports

The following information shows the progressive changes on the Beattys’ DAC report from the approximate time that they first noticed the negative information on the report, until the approximate time that the report was cleared.

Report One - viewed on August 20, 2007

Original data received by DAC on 12/14/2005

Period of Service:	From 06/2004 To 12/2005
Eligible for Rehire:	No
Reason for Leaving:	Discharged (or Company Terminated Lease)
Status:	Company Driver
Work Record:	Excessive Complaints, Company Policy Violation, Personal Contact Requested, Other

Report Two - viewed on September 4, 2007

Original data received by DAC on 12/14/2005

Period of Service:	From 06/2004 To 12/2005
Eligible for Rehire:	Review required before rehiring.
Reason for Leaving:	Discharged (or Company Terminated Lease)
Status:	Company Driver
Work Record:	Company Policy Violation, Other

Report Three - viewed on September 17, 2007

Original data received by DAC on 12/14/2005

Period of Service: From 06/2004 To 12/2005
Eligible for Rehire: Review required before rehire.
Reason for Leaving: Discharged (or Company Terminated Lease)
Status: Company Driver
Work Record: Satisfactory

DAC Revision Form

Mr. Grover submitted three forms on separate dates in order to amend the Beattys' DAC report. The forms contained the following information:

1. Date: 8/24/2007
Period of Service: Hire Date: 06/2004 Termination Date: 12/2005
Driver: Beatty A.
Deletions: Personal Contact Requested.
Authorized by: Al Grover [signed]

2. Date: 8/27/2007
Period of Service: Hire Date: 06/2004 Termination Date: 12/2005
Driver: Beatty A.
Change From: Eligible for Rehire: NO
Change To: Review required before rehire
Deletions: Excessive Complaints, Personal Contact Requested.
Authorized by: Al Grover [signed]

3. Date: 9/13/2007
Period of Service: Hire Date: 06/2004 Termination Date: 12/2005
Driver: Beatty A.
Change From: Code 101, Code 935
Change To: Code 133, Code 901
Deletions: Code 999
Authorized by: Al Grover [signed]

Invoice from FleetNet America, Inc. (EX D)

The Beattys called FleetNet America in order to receive maintenance on their truck for an exhaust leak. This invoice indicates the date of the call, the maintenance issue, the truck number, and what repairs were performed. The pertinent information is reflected below.

Invoice Date: 12/13/2005

Called In: 10/29/2005

Invoice from Quality Inn and Suites

Quality Inn & Suites
411 McKnight Ave. NW
Albuquerque, NM 87102

Date: 12/05/05
Arrival Date: 12/05/05
Room: 113

April Beatty
Wilmington, NC 28404

x April Beatty [signed]

DISCUSSION

As stated above, the Board dismissed the Beatty's claims based on their terminations because the claims were untimely filed.

The Beatty's also maintain that after their termination they were blacklisted by Respondent. In order to establish a claim of blacklisting, there must be evidence that the Respondent had intentionally interfered with any employment opportunity that Complainant may have had available.

The STAA provides a cause of action on behalf of an employee when his former employer blacklists him for having engaged in protected activity. Ramirez v. Frito-Lay, Inc., ARB No. 06-025, ALJ No. 2005-STA-037, slip op. at 5 (ARB Nov. 30, 2006); Murphy v. Atlas Motor Coaches, Inc., ARB No. 05-055, ALJ No. 2004-STA-036, slip op. at 5 (ARB July 31, 2006). We have said, "[b]lacklisting occurs when an individual or a group of individuals acting in concert disseminates damaging information that affirmatively prevents another person from finding employment." Murphy, slip op. at 5.

The Beattys have simply not sustained their burden with regard to blacklisting by Respondent. The evidence shows that the Beattys were terminated on December 14, 2005. The DAC report was filed within a day or two of the termination. Mr. Beatty was subsequently hired by two other trucking companies. It was not until 2007 that the Beattys learned that Respondent had filed negative statements about them on a DAC report. The Beattys merely speculate that the comments filed by Respondent were the cause of them later not being hired by Cargill and U. S. Express. Their witness, Anthony Hall, could not state for certain that the Respondent's DAC report was the cause for them not being hired.

Respondent's Safety Director, Alan Grover, credibly explained that the negative comments on the DAC report had nothing to do with the Beatty's alleged safety complaints. He clearly stated that the negative comments were to explain the specific reasons why the Beattys were terminated in 2005. Mr. Grover stated that the Beatty's had made excessive complaints about the cleanliness and size of the trucks assigned to them and had often refused to drive the trucks because they were not clean. Furthermore, the Beattys had violated company policy by only running two trips per month and not the required three trips and by not contacting the office prior to contacting FleetNet for truck repairs. The December 14, 2005 DAC report corroborates his testimony. The comments are straight forward and do not appear to reflect any animus by

Respondent designed to affirmatively prevent the Beattys from finding employment. Indeed, the fact that Mr. Beatty had subsequently obtained two truck driving jobs speaks to the neutrality of the comments made by Respondent in the DAC report.

Based on the foregoing, I conclude that weight of the evidence establishes that Respondent did not blacklist Lindell Beatty and April Beatty. IT IS ORDERED that the claims of Lindell and April Beatty are DISMISSED.

SO ORDERED.

A

Daniel A. Sarno, Jr.
Administrative Law Judge

DAS/ccb
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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. § 1978.110(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. § 1978.110(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, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(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. §§ 1978.109(e) and 1978.110(a). 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. §§ 1978.110(a) and (b).