

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

Debra Larkins,)	
)	
Charging Party)	
)	Case Nos.
and)	L-CA-14-068
)	L-CA-14-069 &
Chicago Transit Authority,)	L-CA-14-080
)	
Respondent)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

On August 20, 2014, Executive Director Melissa Mlynski issued a Dismissal, dismissing three charges filed by Debra Larkins (Charging Party) against her employer, the Chicago Transit Authority (Employer Respondent), in Case Nos. L-CA-14-068, L-CA-14-069 and L-CA-14-080. Charging Party filed a timely appeal of the Executive Director's dismissals pursuant to Section 1200.135(a) of the Illinois Labor Relations Board's Rules, 80 Ill. Admin. Code § 1200.135(a). Employer Respondent did not file a response. After reviewing the appeal and the record, we affirm the Executive Director's Dismissal for the reasons articulated in that document.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut
Robert M. Gierut, Chairman

/s/ Charles E. Anderson
Charles E. Anderson, Member

/s/ Richard A. Lewis
Richard A. Lewis, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on November 18, 2014; written decision issued in Chicago, Illinois on December 30, 2014.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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Debra Larkins,

Charging Party

and

Chicago Transit Authority,

Respondent

Case Nos. L-CA-14-068
L-CA-14-069
L-CA-14-080

DISMISSAL

On May 2, 2014, Charging Party, Debra Larkins, filed charges with the Local Panel of the Illinois Labor Relations Board (Board) in Case Nos. L-CA-14-068 and L-CA-14-069 alleging that Respondent, Chicago Transit Authority (Employer or CTA), violated Section 10(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012), as amended (Act). On May 30, 2014, Charging Party filed an additional unfair labor practice charge in Case No. L-CA-14-080 alleging violations of Section 10(a) of the Act. After an investigation conducted in accordance with Section 11 of the Act, I determined that the charges fail to raise an issue of law or fact sufficient to warrant a hearing and issue this dismissal for the reasons set forth below.

I. INVESTIGATORY FACTS & POSITION OF THE CHARGING PARTY

At all times material, Larkins has been a public employee within the meaning of Section 3(n) of the Act, employed by the Chicago Transit Authority (CTA) as a Bus Driver. Respondent is a public employer within the meaning of Section 3(o) of the Act. The Amalgamated Transit

Authority (ATU) is the exclusive representative of a bargaining unit (Unit) that includes the title of Bus Driver. Respondent and the ATU are parties to a collective bargaining agreement (CBA) for the Unit which provides for a grievance procedure culminating in arbitration.

Charging Party alleges she did not receive interest on back pay when she was reinstated pursuant to a 2012 arbitration award. Charging Party asserts the CTA caused adverse ramifications on her taxes by issuing a lump sum payment that made it appear as if she received the money for two weeks of work. Moreover, Charging Party asserts the CTA made unwarranted deductions by deducting taxes from her lump sum award for the unemployment compensation she received while unemployed although she had already paid taxes on the funds when she received the unemployment benefit. Finally, the CTA did not allow her to withhold taxes based upon her own personal tax exemptions. Charging Party requests Respondent pay interest on the back pay amount calculated from the date she was discharged through the present, including punitive damages.

Also, Charging Party alleges Respondent violated the Act because she requested, but was not provided, a copy of an arbitration decision involving Bus Driver Ronald Trotter (Trotter Award) and a copy of subsequent settlement agreement negotiated between the CTA and the ATU (Trotter Settlement).

Charging Party began working for the CTA as a part-time Bus Operator in April of 2006. In October of 2008, she became a full-time Bus Driver. In February of 2009, the CTA discharged Larkins for having received four safety violations within a 24 month period, with one of the violations being issued because she ran a red light while driving a bus (red light camera violation). Larkins grieved her discharge and an arbitration hearing occurred in September of 2011, before Arbitrator James Cox. Arbitrator Cox granted the grievance December 29, 2011,

and ordered: “Debra Larkins is to be offered reinstatement within two weeks from the date of this Award with back pay and benefits less any outside earnings of benefits received. However, considering her safety record, upon reinstatement, she is to be subject to a ninety day probationary period during which she may be discharged for a safety violation.” Cox based his decision to reinstate Larkins on the fact that one of her violations, the red light camera violation, should not have counted as a safety violation against her record because of an agreement between the CTA and the ATU that a red light citation, received during a specific period of time, would not count as a safety violation to be held against the employee. With the red light incident removed, she no longer had four violations on her disciplinary record and was not subject to discharge under the CBA’s corrective action guidelines.

After Cox issued his award, the CTA requested he reconsider the back pay owed to Charging Party. Cox amended his award to limit the back pay retroactive to the effective date of the settlement agreement that was the source of the reversal of her discharge.

Larkins returned to work on or about February of 2012. Thereafter, she began to be cited for rule violations. Larkins was charged with missed assignments on May 27, 2012; July 4, 2012; July 7, 2012; and October 20, 2012. Larkins was terminated on or about November 12, 2012. She disputed three of the violations by filing timely grievances. The CTA denied each of the grievances, the last of which was denied January 7, 2014. The ATU advanced all of the grievances to arbitration, but postponed the arbitration hearing on or about April of 2014.

At some point in time Charging Party learned of an arbitration decision that she believed could resolve her dispute with the CTA. The arbitration award involved a Bus Driver by the name of Ronald Trotter. In accordance with Section 12.9 of the collective bargaining agreement, the CTA cannot use past discipline as the basis of corrective action if the discipline occurred

more than one year prior, except in the cases of safety violations. In the Trotter Award, the arbitrator held that one of Trotter's past violations fell outside of this one year timeframe, so that violation could not be used against him for corrective disciplinary purposes. The Trotter Award resulted in the ATU and the CTA reaching an agreement to settle all outstanding grievances that involved similar facts, where a violation "fell off" the employee's record because it was more than a year old. Consequently, as a result of the Trotter Award, a large number of CTA employees that had been discharged, but had discipline fall off their records, were reinstated via a settlement agreement between the ATU and the CTA (Trotter Settlement).

Larkins claims that she requested a copy of the Trotter Award and Trotter Settlement from the CTA but did not receive it. The CTA claims that Larkins was provided, on at least one occasion, a copy of the Trotter Award. Larkins further asserts that the CTA should reinstate her under the terms of the Trotter Award and Settlement.

II. DISCUSSION AND ANALYSIS

Pursuant to Section 11(a) of the Act, "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of a charge with the Board...unless the person aggrieved thereby did not reasonably have knowledge of the alleged unfair labor practice." The six month limitations period begins to run when an employee has knowledge of the alleged unlawful conduct or reasonably should have known of it. Moore v. ISLRB, 206 Ill. App. 3d 327, 564 N.E.2d 213, 7 PERI ¶4007 (1990); Service Employees International Union, Local 46 (Evans), 16 PERI ¶3020 (IL LLRB 2000); Teamsters (Zaccaro), 14 PERI ¶3014 (IL LLRB 1998), aff'd by unpub. order, Docket Nos. 1-98-2382 and 1-98-3014, 16 PERI ¶4003 (1st Dist. 1999).

In the instant case, Charging Party claims she should have received interest on the back pay she received when an arbitrator reinstated her in 2012.¹ Charging Party received the back pay in April of 2012. Charging Party did not file these charges until May of 2014, clearly outside the six month statutory time frame.

Charging Party asserts that her charges are timely because she did not learn that she was entitled to interest on her back pay until she became aware of a case in which interest was awarded to another CTA employee in another matter. Apparently, shortly before filing her charge in May of 2014, Larkins became aware of a Board decision in which the Board awarded interest on a back pay award. Pursuant to Section 11(c) of the Act, the Board can award back pay at 7% interest. However, this statutory language is not applicable to back pay awarded by an arbitrator in a grievance arbitration.

Second, in Moore v. ISLRB, the Fourth District affirmed the Board's dismissal of a claim on the grounds that the charge was not filed within six months of charging party's actual knowledge, and rejected the charging party's argument that he did not understand the legal significance of his situation during the six months when a charge could have been filed. Id. at 336. Here, the Charging Party would have learned that interest was not awarded, at the latest, when the back pay was disbursed on or about April of 2012. This makes her charges, filed in May of 2014, untimely.

If, however, the Board determines that the six month time frame for filing a charge should not be triggered until Charging Party learned about another CTA employee receiving back pay with interest in a case before the Board, this allegation must still be dismissed for failure to raise an issue for hearing. A review of the arbitration award indicates that Arbitrator

¹ As noted above, Arbitrator Cox issued his ruling in December of 2011, but Charging Party was returned to work in February of 2012.

Cox did not specifically order Charging Party interest on the back pay, so it was not unreasonable for the Employer to interpret the award as not including interest. The Board does not have the authority to supplant the arbitrator's remedy. Furthermore, there is no evidence that the Employer withheld interest from the Charging Party because of, or in retaliation for, the Charging Party engaging in protected activity under the Act.

Charging Party also claims the CTA violated the Act because it took unlawful deductions and failed to inform and allow her to use her personal tax exemptions for the back pay she was awarded in April of 2012.² This allegation is clearly untimely. By statute, Charging Party had six months from when she received the lump sum payment in April of 2012 to file a timely unfair labor practice charge. She failed to do so.

The final allegations that must be considered in these charges involve the Trotter Award and Settlement. Charging Party claims that CTA failed to provide her a copy of the Trotter Award and Settlement, despite her request that they do so. The CTA asserts that it did provide Charging Party with a copy of the Trotter Award. I find the Act does not govern an employer's obligation to provide information to employees. Therefore, even if the CTA failed to provide Larkins with the Trotter Award and/or Settlement, this allegation fails to raise an issue for hearing.

Charging Party also claims that the CTA should reinstate her under the terms of the Trotter Award. The CTA asserts it was the Union's responsibility to request a Trotter settlement. The available evidence indicates that the Trotter Award does not apply to Charging Party because all four of her violations occurred in one year and none of the violations fell off of her

² Respondent indicates that the tax rate that was deducted from Ms. Larkins' back pay was based upon the Standard tax rate for all back pay awards, which is 25% as required by the Internal Revenue Code. In addition to the taxes deducted, the CTA also deducted the amount of unemployment compensation Charging Party received and directed repayment to the Department of Labor for the amount of funds Larkins received for unemployment.

disciplinary record. More importantly, there is no evidence (or even an allegation) that CTA refuses to reinstate the Charging Party under the terms of the Trotter Award because of or in retaliation for her engaging in protected activity under the Act. As such, this allegation also fails to raise an issue for hearing.

III. ORDER

Accordingly, the instant charges are hereby dismissed. The Charging Party may appeal this Dismissal to the Board any time within 10 days of service thereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the General Counsel of the Illinois Labor Relations Board, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. The appeal must contain detailed reasons in support thereof, and the Charging Party must provide it to all other persons or organizations involved in this case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this Dismissal will be final.

Issued in Springfield, Illinois, this 20th day of August, 2014.

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**Melissa Mlynski
Executive Director**