

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

CC1 Ltd. P'ship v. Nat'l Labor Relations Bd.

898 F.3d 26 (D.C. Cir. 2018) · Decided August 3, 2018

SUMMARY

The D.C. Circuit reviewed the National Labor Relations Board’s determination that CC1 unlawfully discharged an employee for alleged participation in a work stoppage and discharged employees who participated in a later wildcat strike. The court affirmed the finding concerning the individual employee, but remanded the Board’s determination that the wildcat strike was protected activity for further explanation. The court declined to consider additional challenges that CC1 had failed to preserve or properly raise.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Griffith, Circuit Judge; Griffith; Rogers; Srinivasan
JURISDICTION	Federal
DECIDED	August 3, 2018
DISPOSITION	vacated
PROCEDURAL POSTURE	CC1 petitioned for review of a National Labor Relations Board order, and the Board cross-applied for enforcement. The court affirmed enforcement of the Board's rulings concerning the discharge of Miguel Colón and the uncontested portions of the order, but vacated and remanded the Board's conclusion that the October wildcat strike was protected activity.
STANDARD OF REVIEW	The court reviewed the Board's legal interpretation of the NLRA deferentially, affirming reasonably defensible interpretations and non-arbitrary policy judgments. Factual findings were conclusive if supported by substantial evidence on the record considered as a whole, and ALJ credibility determinations adopted by the Board were upheld unless hopelessly incredible, self-contradictory, or patently unsupportable.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	CC1 Limited Partnership v. National Labor Relations Board

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QUESTIONS PRESENTED

1. Whether substantial evidence supported the Board's finding that CC1 unlawfully discharged Colón for protected union activity rather than for encouraging the September 9 work stoppage.
2. Whether the Board adequately explained its conclusion that the October unauthorized wildcat strike remained protected activity under sections 7 and 9 of the NLRA despite the Union's disavowal of the strike.
3. Whether the court could review CC1's challenges to the Board's tax-consequence backpay remedy and last-chance-agreement ruling when those arguments were not properly preserved.

HOLDINGS

1. The Board reasonably found that CC1 did not discharge Colón because it believed he had encouraged the September 9 work stoppage and that CC1 failed to establish an alternative lawful motive. The discharge therefore violated the NLRA.
2. The Board's interpretation that some wildcat strikes may be protected when they do not undermine the union's objectives or exclusive bargaining position was reasonably defensible. However, the Board failed to explain how it applied that standard to employees who continued striking after learning that the Union had disavowed the strike, so the court could not determine whether the conclusion was supported by substantial evidence.
3. The court could not consider CC1's challenge to the tax-consequence remedy because CC1 failed to raise it before the Board, and CC1 forfeited its challenge to the last-chance agreements by raising it for the first time in its reply brief. The uncontested portion of the Board's order was therefore subject to summary enforcement.

KEY QUOTATIONS

"It is only when employees' activity undermines the Union's objectives or position as bargaining authority that it loses NLRA protection." (34)

"We cannot determine if the Board based its decision on a reasonably defensible interpretation of the NLRA if we do not know how the Board reached its conclusions." (35)

FACTUAL BACKGROUND

CC1 operated a Coca-Cola bottling plant in Puerto Rico whose warehouse employees were represented by a Teamsters local. After a September 9, 2008 work stoppage connected with union negotiations, CC1 suspended shop stewards, including Miguel Colón, and later discharged them. More than 100 employees subsequently

engaged in an unauthorized October wildcat strike demanding reinstatement of the shop stewards and renewed bargaining; the Union disavowed the strike, but CC1 suspended or discharged 86 participants. The Board found Colón's discharge and the discharges of the striking employees unlawful, and ordered backpay and other relief.

PROCEDURAL HISTORY

An ALJ found that CC1 unlawfully discharged Colón and employees who participated in the October wildcat strike, and further found the last-chance agreements unlawful. The Board initially affirmed with exceptions, but that decision was set aside after the Supreme Court held that appointments of Board members were unlawful. A lawfully appointed Board panel later reviewed the matter de novo and affirmed the ALJ's rulings. CC1 petitioned for review, and the Board cross-applied for enforcement.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The Board was directed to provide further explanation of the importance of the provenance of the Union's disavowing letter, how the striking employees learned of the Union's position, and whether the Union's message to CC1 accurately represented its position. In all other respects, the court denied CC1's petition for review and granted the Board's cross-application for enforcement.

CASES CITED

- NLRB v. Noel Canning, 573 U.S. 513, 134 S. Ct. 2550, 189 L. Ed. 2d 538 (2014)
- Silver State Disposal Service, Inc., 326 N.L.R.B. 84, 103 (1998)
- Emporium Capwell Co. v. W. Addition Cmty. Org., 420 U.S. 50, 62, 70 (1975)
- Jones & McKnight, Inc. v. NLRB, 445 F.2d 97, 105 (7th Cir. 1971)
- Bridgeport Ambulance Serv., Inc., 302 N.L.R.B. 358, 363-64 (1991), enforced, 966 F.2d 725, 729 (2d Cir. 1992)
- Children's Hosp. & Research Ctr. of Oakland, Inc. v. NLRB, 793 F.3d 56, 59 (D.C. Cir. 2015)
- E. Chi. Rehab. Ctr., Inc. v. NLRB, 710 F.2d 397, 402-03 (7th Cir. 1983)
- Ford Motor Co. v. NLRB, 441 U.S. 488, 496-97 (1979)
- Int'l Transp. Serv., Inc. v. NLRB, 449 F.3d 160, 163 (D.C. Cir. 2006)
- Universal Camera Corp. v. NLRB, 340 U.S. 474, 477 (1951)
- Bally's Park Place, Inc. v. NLRB, 646 F.3d 929, 935 (D.C. Cir. 2011)
- Stephens Media, LLC v. NLRB, 677 F.3d 1241, 1250 (D.C. Cir. 2012)
- Tasty Baking Co. v. NLRB, 254 F.3d 114, 125-26 (D.C. Cir. 2001)
- TIC-The Indus. Co. Se., Inc. v. NLRB, 126 F.3d 334, 337 (D.C. Cir. 1997)
- Fort Dearborn Co. v. NLRB, 827 F.3d 1067, 1072, 1075-76 (D.C. Cir. 2016)
- Gold Coast Rest. Corp. v. NLRB, 995 F.2d 257, 265 (D.C. Cir. 1993)

- NLRB v. Creative Food Design Ltd., 852 F.2d 1295, 1297 (D.C. Cir. 1988)
- Prop. Res. Corp. v. NLRB, 863 F.2d 964, 967 (D.C. Cir. 1988)
- Shattuck Denn Mining Corp. v. NLRB, 362 F.2d 466, 470 (9th Cir. 1966)
- Sutter E. Bay Hosps. v. NLRB, 687 F.3d 424, 435-36 (D.C. Cir. 2012)
- N.Y. Rehab. Care Mgmt. v. NLRB, 506 F.3d 1070, 1076 (D.C. Cir. 2007)
- Inova Health Sys. v. NLRB, 795 F.3d 68, 84 (D.C. Cir. 2015)
- Consolidated Commc'ns, Inc. v. NLRB, 837 F.3d 1, 7 (D.C. Cir. 2016)
- Woelke & Romero Framing, Inc. v. NLRB, 456 U.S. 645, 665-66 (1982)
- Enter. Leasing Co. of Fla. v. NLRB, 831 F.3d 534, 550-51 (D.C. Cir. 2016)
- New York v. EPA, 413 F.3d 3, 20 (D.C. Cir. 2005)
- Verizon Tel. Cos. v. FCC, 292 F.3d 903, 911-12 (D.C. Cir. 2002)
- Carpenters & Millwrights, Local Union 2471 v. NLRB, 481 F.3d 804, 808 (D.C. Cir. 2007)
- Flying Food Grp., Inc. v. NLRB, 471 F.3d 178, 181 (D.C. Cir. 2006)