

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1070

September Term, 2018

FILED ON: OCTOBER 30, 2018

CRANESVILLE BLOCK CO., INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

Consolidated with 18-1103

On Petition for Review and Cross-Application for
Enforcement of an Order of the National Labor Relations Board

Before: GARLAND, *Chief Judge*, HENDERSON, *Circuit Judge*, and RANDOLPH, *Senior Circuit Judge*.

J U D G M E N T

This petition for review and cross-application for enforcement were considered on the record from the National Labor Relations Board (NLRB) and on the briefs of the parties. *See* FED. R. APP. P. 34(a)(2); D.C. CIR. R. 34(j). The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). It is

ORDERED AND ADJUDGED that the petition for review be denied and the NLRB's cross-application for enforcement be granted.

The only question at issue on this appeal is whether substantial evidence supports the NLRB's finding that William Deming, a mechanic employed by Cranesville Block Co., was not a supervisor under section 2(11) of the National Labor Relations Act. 29 U.S.C. § 152(11). Cranesville contests this finding, arguing that Deming was a supervisor with authority to assign job duties exercising independent judgment, to responsibly direct staff,

and to discipline other mechanics. Contrary to Cranesville's argument, substantial evidence supports the NLRB's finding that Deming did not have supervisory authority.

First, substantial evidence supports the finding that Deming did not exercise independent judgment when assigning work to others. Deming did not participate in daily discussions in which Cranesville's fleet manager and general manager reviewed repair sheets and other maintenance tasks. Rather, following those discussions, the fleet manager would dictate to Deming what repairs needed to be done, and Deming would assign the work based solely on mechanics' "known skill or experience." J.A. 241. Similarly, although Deming sometimes dispatched mechanics to handle truck breakdowns, he did so only for "simple" tasks, like a "tire fix." *Id.* These examples are insufficient to demonstrate supervisory authority. See *Brusco Tug & Barge, Inc. v. NLRB*, 696 F. App'x 519, 520-21 (D.C. Cir. 2017); *Shaw, Inc.*, 350 N.L.R.B. 354, 356 (2007).

Second, substantial evidence supports the finding that Deming did not responsibly direct other employees because he was never held "accountable for the performance of the task by the other," *Oakwood Healthcare, Inc.*, 348 N.L.R.B. 686, 692 (2006), and "[a] party cannot establish 'responsibility to direct' supervisory authority under Section 2(11) without demonstrating accountability," *735 Putnam Pike Ops., LLC v. NLRB*, 474 F. App'x 782, 784 (D.C. Cir. 2012).

Finally, substantial evidence supports the finding that Deming did not discipline or effectively recommend discipline of other mechanics. To challenge this finding, the employer notes that Deming once recommended to management that it terminate another mechanic for improperly performing a task. But even in that case, the general manager independently spoke with the mechanic and ultimately did not follow Deming's recommendation. See *Jochims v. NLRB*, 480 F.3d 1161, 1170 (D.C. Cir. 2007) (holding that there is no statutory supervisory authority unless a recommendation is "considered in determining future disciplinary action" "without independent investigation or review by other supervisors" (citation omitted)).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Ken Meadows

Deputy Clerk