In the Matter of Arbitration:

Pamela Lapin,  
Claimant,  

v.  

South Florida Regional Transportation Authority,  
Respondent.

DSP Case No. 17-13c-01  
Issued: May 14, 2018

FINAL DECISION

Claimant Pamela Lapin was a non-represented employee of Meridian Rail Corporation, a former contractor for South Florida Regional Transportation Authority (“SFRTA”) charged with facilities maintenance at commuter rail stations and parking areas operated by SFRTA. Lapin was terminated from her position with Meridian on July 1, 2017 after SFRTA’s new contractor, Herzog Transit Services, Inc., subcontracted station maintenance to Stiles Corporation.

Pursuant to 49 U.S.C. § 5333(b), the Department of Labor certifies that fair and equitable employee protections exist and are made applicable to the federal assistance provided by the Federal Transit Administration to transit agencies, including SFRTA. Such protections are required to include dismissal and displacement allowances and priority of reemployment for employees worsened as a result of a federally funded project. 49 U.S.C. § 5333(b)(2)(c).

The employee protections for SFRTA include specified protections for employees represented by labor organizations. As a non-represented employee, Lapin is entitled to substantially the same levels of protections from adverse effects of a project and procedural rights to pursue claims as represented employees. These protections and procedural rights are included in the Unified Protective Arrangement (UPA), one of the protective arrangements made applicable to SFTRA grants.

Paragraph 15 of the UPA specifies that an employee claiming to have been worsened by a federally funded project must “identify the Project and specify the pertinent facts of the Project relied upon.” As such, to be eligible for dismissal or displacement allowance, or any subsequent priority of re-employment, Lapin must show that her termination was the result of a project receiving federal assistance.

Paragraph 1 of the UPA defines the term “Project” stating in part:
The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement. (emphasis added).

As set forth above, a claim based on an adverse effect as a “result of a project” must be linked to the federal assistance provided. See Clark v. Crawford Area Transp. Auth., OSP Case No. 94-18-19 (Digest A-455)(to apply protections there must be some connection between the federal assistance and the harm). In addition, any worsening “solely” caused by “the total or partial termination of the Project or exhaustion of Project funding” does not entitle an employee to benefits. See, Murphy v. Central Oregon Intergovernmental Council and City of Bend, DSP Case No. 12-13c-04 (lay off caused by lack of local funding to support the same level of services provided under prior contract), and Barber et al., v. County of Tioga, New York, DSP Case No. 15-13c-01 (loss of Medicaid funds, not project, sole causal reason for the termination of contract) (https://www.dol.gov/olms/regs/compliance/foia/transit/transit_clm.htm). Further, paragraph 3 of the UPA provides that “[u]nless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.”

In this case, Lapin has failed to identify any project receiving federal assistance as causing her termination. Instead, Lapin points to SFRTA’s selection of Herzog and Herzog’s selection of Stiles as its station maintenance subcontractor as the cause of her termination. Lapin has presented no evidence that these contracting and subcontracting decisions were part of a federal project. Lapin also references sections of FTA funding reallocations that occurred months after SFRTA’s award of the contract to Herzog and her termination, and other projects not covered by 49 U.S.C. § 5333(b), but does not offer any theory as to how these issues are related to her termination.

Absent circumstances not present here, the Department has found that when a contract for a fixed term between a contractor and an FTA recipient has been properly terminated according to its terms, impacts which occur solely as a result of the expiration of a bid contract are not considered to be “as a result of” a project and, therefore do not trigger benefits to affected employees.

Accordingly, Lapin’s failure to establish that her termination was the “result of a project” does not give rise to an actionable claim. Therefore, the claim is denied.

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1 SFRTA’s inclusion of a hiring preference for employees of former contractors in its Request For Proposal falls outside the protections provided under 49 U.S.C. § 5333(b) and the Department’s jurisdiction in this claim.
2 I.e. an acquisition or Memphis plan or bargained for rights.
DETERMINATION

The evidence does not support a finding that Lapin suffered a worsening of position related to employment as a result of a project. 49 U.S.C. § 5333(b)(2)(C).

Therefore, the claim is denied. This decision is final and binding.

[Signature]
Andrew Auerbach, Acting Director
Office of Labor-Management Standards

Date 5/11/18