



IN THE MATTER OF:

**ADMINISTRATOR, WAGE
AND HOUR DIVISION, UNITED
STATES DEPARTMENT OF LABOR,

PROSECUTING PARTY,**

**ARB CASE NO. 2023-0038

ALJ CASE NOS. 2022-MSP-00002
2022-TAE-00004
CHIEF ALJ STEPHEN R. HENLEY**

v.

DATE: July 17, 2025

**A&M LABOR MANAGEMENT, INC.,

RESPONDENT.**

Appearances:

For the Administrator, Wage and Hour Division:

Elena Goldstein, Esq.; Jennifer S. Brand, Esq.; Sarah Kay Marcus, Esq.; Rachel Goldberg, Esq.; Sejal Singh, Esq; U.S. Department of Labor, Office of the Solicitor; Washington, District of Columbia

For the Respondent:

Shaina Thorpe, Esq.; ThorpeLaw, P.A.; Tampa, Florida

Before JOHNSON, Chief Administrative Appeals Judge, and BURRELL, Administrative Appeals Judge

DECISION AND ORDER AFFIRMING IN PART AND REVERSING IN PART

This case arises under the H-2A provisions of the Immigration and Nationality Act (INA), as amended,¹ including the U.S. Department of Labor's (Department or DOL) implementing regulations found at 20 C.F.R. Part 655,

¹ 8 U.S.C. §§ 1101(a)(15)(H)(ii)(a), 1184(c)(1), 1188.

Subpart B and 29 C.F.R. Part 501 (collectively, the H-2A program).² The INA's H-2A program allows employers to hire foreign, nonimmigrant workers to temporarily fill agricultural positions in the United States.

On December 15, 2020, the Tampa, Florida office of DOL's Wage and Hour Division (WHD) issued a Notice of Determination of H-2A violations (NOD) to A&M Labor Management, Inc. (Respondent or A&M), finding back wages owed, assessing civil money penalties (CMPs), and debarring Respondent.³ Respondent sought review of the NOD and requested a hearing.⁴

On March 23, 2023, DOL Chief Administrative Law Judge (Chief ALJ) Stephen R. Henley issued a D. & O. after a hearing.⁵ In the D. & O., the Chief ALJ affirmed one of the H-2A violations found in the NOD, reduced the amount of back wages and CMPs owed, and declined to debar A&M from receiving future labor certifications.⁶ On April 24, 2023, the Administrator of WHD (Administrator) filed a Petition for Review with the Administrative Review Board (Board or ARB).

For the reasons set forth below, we affirm, in part, and reverse, in part, the Chief ALJ's ruling.

BACKGROUND AND PROCEDURAL HISTORY

Gregorio Gonzalez, Sr. (Gonzalez Sr.) is the owner and manager of A&M, while Gregorio Gonzalez, Jr. (Gonzalez Jr.) is also a manager of A&M and the son of

² The events in this case occurred during 2018 and 2019. At the time, the Department's 2010 H-2A regulations were in effect. Unless otherwise noted, all regulations cited are to the 2010 version of the regulations.

³ Administrator's Exhibit (PX) 19; Decision and Order (D. & O.) at 2.

⁴ D. & O. at 2.

⁵ The Chief ALJ's D. & O. also covered issues under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The Administrator separately appealed the D. & O.'s MSPA ruling, and on July 31, 2023, the Board issued a Decision and Order on the MSPA portion of the case. *See Adm'r, Wage & Hour Div., U.S. Dep't of Lab. v. A&M Labor Management, Inc.*, ARB No. 2023-0025, ALJ Nos. 2022-MSP-00002, 2022-TAE-00004 (ARB July 31, 2023).

⁶ D. & O. at 2, 18-19.

Gonzalez Sr.⁷ In 2018, the DOL certified A&M's applications for Temporary Employment Certifications (TEC 1 and TEC 2).⁸ TEC 1 and 2 authorized A&M to employ foreign workers for two different harvesting operations in 2018 and 2019.⁹

1. TEC 1 and 2; WHD Notice of Determination¹⁰

TEC 1 authorized A&M to hire up to 30 foreign workers for corn harvesting and packing in Vincennes, Indiana, for the period of July 6, 2018, to October 5, 2018.¹¹ In addition to foreign workers, A&M also hired U.S. Haitian workers from Belle Glade, Florida, to harvest and pack corn in Indiana.¹² Gonzalez Sr. went to Indiana to oversee the harvest.¹³ Early in the TEC 1 period, A&M terminated its contract with a group of 13 U.S. workers of Haitian descent, sending them from the worksite in Indiana back home to Florida.¹⁴ A&M claimed that the U.S. workers had refused to work in rainy and muddy conditions, and it could not afford to pay for hotel rooms for an additional week if the workers refused to report to the worksite.¹⁵ Subsequently, in the WHD investigation, four of the U.S. workers sent back to Florida "provided statements to the effect that they believed they had been sent home because [A&M] preferred to work with H-2A workers, rather than U.S. workers."¹⁶ In its NOD, the WHD determined that A&M had improperly laid off the 13 workers in violation of 20 C.F.R. § 655.135(g), and that A&M's unlawful layoffs also violated 20 C.F.R. § 655.122(i)'s three-fourths guarantee requirement to offer

⁷ Administrator Brief (Adm'r Br.) at 7, 9; D. & O. at 5. Gonzalez Jr. testified at the hearing for A&M. Adm'r Br. at 9. In 2019, 2020, and 2021, Respondent earned profits of about \$300,000 to \$400,000 each year. D. & O. at 9.

⁸ D. & O. at 5, 7.

⁹ *Id.* at 5, 7.

¹⁰ The WHD NOD identified other violations, but we only recount the WHD violations that are relevant on appeal.

¹¹ D. & O. at 5. In June 2018, the Department of Labor certified A&M's application for TEC 1, which was assigned number H-300-18131-141957. *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 6. We note there is some disagreement in the record regarding whether one of the U.S. workers was of Haitian descent, but it is not relevant to our decision.

¹⁵ *Id.* at 5-6.

¹⁶ *Id.* at 6.

employment for three-fourths of the workdays.¹⁷ For the unlawful layoff violations, WHD assessed \$206,505.00 in CMPs, and for the three-fourths guarantee violations, WHD assessed \$47,098.73 in back wages.¹⁸

TEC 2 authorized A&M to hire up to 30 foreign workers to harvest and pack corn at multiple worksites in Florida, including “5058 E Sugarland Hwy., Clewiston, Florida 33440” and “Florida Other/Miami Canal Road and Rodgers Road, Lake Harbor, Florida, 33430” for the period of January 10, 2019, to June 1, 2019.¹⁹

In 2019, WHD Investigator Paul Dean (Investigator) investigated A&M for the period of July 6, 2018, to June 5, 2019.²⁰ Subsequently, on December 15, 2020, the district director of the WHD’s Tampa, Florida office issued a NOD letter to A&M, finding H-2A violations under TEC 1 and 2.²¹

In its NOD, WHD determined that A&M committed several violations in connection with TEC 2.²² WHD determined that A&M did not satisfy the conditions of the job order for TEC 2 by failing to disclose a third worksite and by listing an experience requirement that it did not in fact require, for which WHD assessed \$3,178.80 in CMPs.²³ WHD also determined that A&M unlawfully rejected a qualified U.S. worker, for which WHD assessed \$5,960.01 in back wages and a CMP of \$14,120.00.²⁴ Finally, in the NOD, WHD imposed a three-year debarment based on A&M’s violations.²⁵

¹⁷ PX-19 at 2, 8; D. & O. at 8.

¹⁸ D. & O. at 8.

¹⁹ *Id.* at 7. In December 2018, the Department of Labor certified A&M’s application for Temporary Employment Certification, which was assigned H-300-18313-191684. *Id.*

²⁰ *Id.*

²¹ *Id.* at 2, 7. The NOD assessed back wages in the amount of \$53,626.36, CMPs in the amount of \$228,557.40, and a three-year debarment. *Id.* at 2.

²² PX-19; D. & O. at 8-9.

²³ D. & O. at 9.

²⁴ *Id.* at 8-9.

²⁵ *Id.* at 2, 9, 9 n.21.

2. Chief ALJ’s Decision²⁶

A&M sought review of the NOD, and the Chief ALJ held a hearing on July 21, 2022, and July 27, 2022.²⁷ On March 23, 2023, the Chief ALJ issued a D. & O. affirming only one of the violations in the NOD—specifically, WHD’s determination that A&M failed to hire a qualified U.S. worker in TEC 2.²⁸ The worker (Wilson Michel) “told Mr. Gonzalez, Sr. that he was available and willing to work,” but A&M did not provide work, violating 20 C.F.R. § 655.135(d).²⁹ Therefore, the Chief ALJ assessed back wages owed to Wilson Michel of \$5,960.01 and a CMP of \$13,875.20.³⁰ This finding is uncontested on appeal, but is relevant to debarment considerations. The Chief ALJ rejected the rest of the WHD’s determinations in the NOD and found A&M did not commit any other H-2A violations.

First, the Chief ALJ rejected the Administrator’s determination that A&M improperly laid off the 13 U.S. workers.³¹ Instead, the Chief ALJ ruled that A&M fired the 13 U.S. workers for their refusal to work in rainy conditions and that the U.S. workers’ race, ethnicity, or heritage played no role in Respondent’s decision.³² In reaching that conclusion, the ALJ found that early in the TEC 1 period, it rained heavily in Indiana, creating muddy conditions.³³ A&M still expected the foreign and U.S. workers to work, but a group of U.S. workers refused to work due to the rain and muddy conditions.³⁴ Gonzalez Jr. spoke with “the crew leader for the U.S. workers refusing to work,” and the crew lead told Gonzalez Jr. “that he would speak to his crew about showing up,” but “when the bus showed up to the hotel to take the

²⁶ We only recount the Chief ALJ’s H-2A rulings that are relevant or contested by the Administrator on appeal.

²⁷ D. & O. at 2-3.

²⁸ *Id.* at 14. The H-2A program requires that employers provide “employment to any qualified, eligible U.S. worker who applies to the employer” during the first half of the contract period. 20 C.F.R. § 655.135(d).

²⁹ D. & O. at 14.

³⁰ *Id.* at 16, 18-19. The Chief ALJ applied a 20% reduction to the CMP because A&M had no previous H-2A violations, A&M was a small business, and only one worker was affected. *Id.* at 19.

³¹ *Id.* at 11-12, 16, 18.

³² *Id.* at 12.

³³ *Id.* at 5.

³⁴ *Id.*

workers to the worksite,” the “crew was not waiting outside and did not respond when the bus driver knocked on hotel room doors”³⁵

With “respect to the reason U.S. workers were sent home from Indiana,” the Chief ALJ found “credible the version of events offered by Gonzalez Jr. who testified that rainy conditions put the corn harvest behind schedule and that Respondent needed as many workers as possible to catch up.”³⁶ A&M “decided that it could not afford to pay for hotel rooms for an additional week if the workers refused to report to the worksite,” and “[u]ltimately, Respondent terminated its contract with 13 U.S. workers.”³⁷ The Chief ALJ also found that “Respondent [had] paid to transport U.S. workers from Florida to Indiana because it needed help with the harvest,” and “it does not follow that Respondent would indiscriminately and unlawfully lay off such a large group of workers at the precise time Respondent needed more work done.”³⁸ Therefore, the Chief ALJ found that A&M did not improperly lay off the workers in violation of 20 C.F.R. § 655.135(g).³⁹ Similarly, the Chief ALJ ruled that because “Respondent did not improperly lay off U.S. workers, it cannot serve as the factual basis for the allegation that Respondent did not comply with the three-fourths guarantee” under 20 C.F.R. § 655.122(i).⁴⁰ The Chief ALJ reversed the back wages and penalties assessed by WHD.⁴¹

Second, the Chief ALJ rejected the Administrator’s determination that A&M failed to satisfy the requirements of the job order for TEC 2.⁴² The Administrator alleged that “[A&M] placed workers at worksites not listed on the certified H-2A contract” and A&M “listed false experience requirements” in the job order.⁴³ The Chief ALJ found that the Administrator failed to prove the charge because WHD cited the incorrect regulatory provision in its NOD: WHD cited 20 C.F.R.

³⁵ *Id.*

³⁶ *Id.* at 6.

³⁷ *Id.* at 5-6.

³⁸ *Id.* at 6.

³⁹ *Id.* at 12.

⁴⁰ *Id.*

⁴¹ *Id.* at 18.

⁴² *Id.* at 14-15.

⁴³ *Id.* at 14 (quotations omitted).

§ 655.121(a)(3) and the Chief ALJ ruled that WHD should have cited subparagraph (a)(4) of that regulation.⁴⁴ The Chief ALJ reversed the penalties assessed by WHD.⁴⁵

Third, the Chief ALJ found debarment was not warranted. The only violation was “Respondent’s unlawful rejection of one U.S. worker in January 2019,” which the Chief ALJ found was not a “substantial violation of the regulation” and did not support debarment.⁴⁶

On appeal, the Administrator timely filed a Petition for Review of these three rulings by the Chief ALJ.⁴⁷

JURISDICTION AND STANDARD OF REVIEW

The Secretary has delegated the authority to review this matter to the Board.⁴⁸ The ARB reviews an ALJ’s decision *de novo* and acts with “all the powers which it would have in making the initial decision”⁴⁹ In addition, because an ALJ observes all witnesses throughout a hearing, the Board generally defers to an ALJ’s credibility findings “unless they are inherently incredible or patently unreasonable.”⁵⁰

⁴⁴ *Id.* at 14-15.

⁴⁵ *Id.* at 18.

⁴⁶ *Id.* at 20.

⁴⁷ The Administrator originally sought review of four of the Chief ALJ’s H-2A related rulings, but the Administrator withdrew appeal of one of the rulings after further review of the evidence. Adm’r Br. at 4 n.2.

⁴⁸ Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020); 29 C.F.R. § 501.42.

⁴⁹ 5 U.S.C. § 557(b); *see also* Adm’r, *Wage & Hour Div., U.S. Dep’t of Lab. v. Ten West Cattle, Inc.*, ARB Nos. 2024-0003, 2023-0058, ALJ No. 2023-TAE-00002, slip op. at 8 (ARB May 29, 2025); Adm’r, *Wage & Hour Div., U.S. Dep’t of Lab. v. Washington Farm Labor Association*, ARB No. 2021-0069, slip op. at 8 (ARB Mar. 31, 2023) (“The ARB, on review from the ALJ, reviews the record *de novo*, including the CMP assessments.”) (citations omitted).

⁵⁰ *Klinger v. BNSF Ry. Co.*, ARB No. 2023-0003, ALJ No. 2016-FRS-00062, slip op. at 5 (ARB July 23, 2024) (citations and inner quotations omitted); *see also* *Gourneau v. BNSF Ry. Co.*, ARB No. 2023-0034, ALJ No. 2021-FRS-00018, slip op. at 14 (ARB May 21, 2025).

DISCUSSION

On appeal, the Administrator raises three primary arguments. First, the evidence does not support the Chief ALJ's conclusion that A&M did not unlawfully lay off 13 U.S. workers and A&M did not violate the three-fourths guarantee.⁵¹ Second, the Board should reverse the Chief ALJ's dismissal of WHD's charge that A&M failed to satisfy the conditions in its job order.⁵² Third, the Chief ALJ's decision that debarment was not warranted should be vacated and remanded.⁵³

Upon review of the Chief ALJ's D. & O., the parties' arguments on appeal, and the record, the Board concludes that: (1) the Chief ALJ correctly found that A&M fired the workers for refusal to work in muddy conditions; (2) the Chief ALJ erred in finding that A&M did not violate 20 C.F.R. § 655.121(a)(3)'s requirement to satisfy the conditions listed in its job order; and (3) the Chief ALJ correctly found that debarment is not warranted.

1. A&M Fired the U.S. Workers for Refusal to Work in Muddy Conditions in TEC 1

We affirm the Chief ALJ's determination that A&M fired the 13 U.S. workers for refusing to work in rainy and muddy conditions and that A&M did not lay off the workers for discriminatory reasons. Therefore, we also affirm the Chief ALJ that A&M did not violate 20 C.F.R. § 655.135(g)'s protection against unlawful layoffs or violate the three-fourths guarantee of 20 C.F.R. § 655.122(i).

The regulations at issue impose the following requirements on H-2A employers. First, under 20 C.F.R. § 655.135(g), an H-2A employer must not "lay off any similarly employed U.S. worker in the occupation that is the subject of the

⁵¹ Adm'r Br. at 12. The Administrator argues that the Chief ALJ's finding "fails the substantial evidence standard" and that the "Board should vacate and remand for proper consideration of all relevant evidence." *Id.* at 14-15. However, in H-2A cases, the Administrative Procedure Act governs our review. 5 U.S.C. § 557(b). Therefore, "[t]he ARB reviews an ALJ's decision de novo and acts with all the powers [the Secretary] would have in making the initial decision." *Ten West Cattle, Inc.*, ARB Nos. 2024-0003, 2023-0058, slip op. at 8 (citations and quotations omitted). Moreover, "[t]he ARB, on review from the ALJ, reviews the record *de novo*, including the CMP assessments." *Washington Farm Labor Association*, ARB No. 2021-0069, slip op. at 8.

⁵² Adm'r Br. at 15, 32.

⁵³ *Id.* at 14-15.

Application for [TEC], except for lawful, job-related reasons within 60 days of the first date of need[.]”⁵⁴ Second, 20 C.F.R. § 655.122(i)’s three-fourths guarantee requires that an H-2A employer must offer each worker “employment for a total number of work hours equal to at least three-fourths of the workdays of the total period . . . specified in the work contract”⁵⁵ However, an H-2A employer is relieved of the three-fourths guarantee when a worker is “*terminated for cause*.”⁵⁶

The WHD charged A&M with violations of 20 C.F.R. § 655.135(g) and 20 C.F.R. § 655.122(i) for improperly laying off U.S. workers early in TEC 1.⁵⁷ The Chief ALJ disagreed with WHD and found that “the 13 U.S. workers did not want to work in the rain and mud and Respondent *fired* them for their refusal to do so and that their race, ethnicity, or heritage played no role in that decision.”⁵⁸ Thus, the Chief ALJ found no violation of 20 C.F.R. § 655.135(g), stating “the 13 U.S. workers were *not laid off* because of their background or ethnicity.”⁵⁹ Furthermore, the Chief ALJ found no violation of 20 C.F.R. § 655.122(i), noting that “[b]ecause I previously found that Respondent did not improperly *lay off* U.S. workers, it cannot serve as the factual basis for the allegation that Respondent did not comply with the three-fourths guarantee.”⁶⁰

On appeal, the Administrator argues the Chief ALJ failed to properly consider significant, relevant evidence in the record, including evidence showing that A&M laid off the 13 U.S. workers for discriminatory reasons and evidence showing that A&M’s claims about why it fired 13 U.S. workers were pretextual.⁶¹ Furthermore, given that the evidence shows that the A&M unlawfully laid off 13

⁵⁴ Even when an employer has a lawful, job-related reason for a layoff, the employer must lay off “all H-2A workers” before laying off “any U.S. worker in corresponding employment.” 20 C.F.R. § 655.135(g).

⁵⁵ *Id.* at § 655.122(i).

⁵⁶ *Id.* at § 655.122(n) (emphasis added).

⁵⁷ PX-19 at 8; D. & O. at 8.

⁵⁸ D. & O. at 12 (emphasis added); *see also id.* at 6 (“I find the evidence does not support that the U.S. workers sent back to Florida were *laid off* due to Respondent’s alleged animus toward Haitians. Rather, I find that the U.S. workers were *fired* and sent back to Florida because they refused to work in rainy conditions.”) (emphasis added).

⁵⁹ *Id.* at 12 (emphasis added).

⁶⁰ *Id.* (emphasis added).

⁶¹ Adm’r Br. at 15-16, 18-28.

U.S. workers, the Administrator argues that the Chief ALJ erred in concluding that A&M did not violate 20 C.F.R. § 655.135(g) (protecting against improper layoffs) and 20 C.F.R. § 655.122(i) (requiring employers meet the three-fourths guarantee).⁶² The Administrator argues the Board should vacate and remand for proper consideration of all relevant evidence.⁶³

As discussed in the following sections, we disagree with the Administrator. First, the record supports the Chief ALJ's finding that A&M fired the workers for refusing to work in rainy and muddy conditions, not for discriminatory reasons. Second, because A&M did not improperly lay off the workers, the Board affirms the Chief ALJ's ruling that A&M did not violate 20 C.F.R. § 655.135(g) or 20 C.F.R. § 655.122(i).

A. The Record Supports the Chief ALJ's Finding that A&M Fired Workers for Refusal to Work in Rainy and Muddy Conditions, Not Discriminatory Reasons

We find that the record supports the Chief ALJ's finding that A&M fired the 13 U.S. workers for refusing to work in rainy and muddy conditions and that the workers were not laid off for discriminatory reasons. Notably, the Chief ALJ found Gonzalez Jr.'s version of events to be credible as to why the U.S. workers were sent home from Indiana.⁶⁴ The ARB only disturbs credibility findings when "they are inherently incredible or patently unreasonable."⁶⁵ Far from being "inherently incredible," Gonzalez Jr.'s version of events was reasonable and logical. Gonzalez Jr. testified that A&M paid approximately \$4,500 for the charter bus to transport the workers to Indiana.⁶⁶ Once in Indiana, A&M "needed all hands on deck" because the "crops were completely ready and [they] were behind."⁶⁷ However, the U.S. workers refused to work in the rain and muddy conditions,⁶⁸ and A&M "could not afford to"

⁶² *Id.* at 16, 28-29.

⁶³ *Id.* at 14, 22-23, 28.

⁶⁴ D. & O. at 6.

⁶⁵ *Klinger*, ARB No. 2023-0003, slip op. at 5 (citations and inner quotations omitted).

⁶⁶ Hearing Transcript (Tr.) at 348-49; *see also* D. & O. at 5.

⁶⁷ Tr. at 356; *see also* D. & O. at 6.

⁶⁸ Tr. at 351-57; *see also* D. & O. at 5.

continue paying for their hotel rooms.⁶⁹ Therefore, A&M fired the U.S. workers for refusing to work⁷⁰ and A&M “paid approximately \$2,200 for the charter bus” to transport those workers back to Florida.⁷¹ In sum, the record supports the Chief ALJ’s finding that A&M fired the workers for failure to work in the rainy and muddy conditions, not for discriminatory reasons. The Chief ALJ’s findings are logical, well-reasoned, and supported by the record. We affirm them.

On appeal, the Administrator argues the Chief ALJ failed to properly consider certain evidence showing that A&M discriminated against the U.S. workers and that A&M’s claims about why it fired the U.S. workers were pretextual.⁷² Furthermore, because the Chief ALJ failed to explain why it ignored or discounted key evidence of discrimination and pretext, the Administrator argues the Board should vacate and remand for further review.⁷³

We disagree. First, in support of pretext, the Administrator highlights how the Chief ALJ did not address “evidence in the record that shows that A&M had repeatedly hired many of the same U.S. workers for years”⁷⁴ and that “the record does not contain any evidence that A&M had ever objected to those workers’ performance.”⁷⁵ We disagree with the Administrator that this shows pretext. In fact, it weighs in favor of Gonzalez Jr.’s version of events.

The evidence that A&M had a long history of employing and hiring the same workers undermines the Administrator’s theory that A&M’s reason for firing the workers was pretextual and A&M actually fired the workers for discriminatory reasons. Gonzalez Jr. acknowledged in his testimony that the U.S. workers had “been doing this for a long time” and [t]hey are very good at their job,”⁷⁶ but he also explained what had changed that caused the firing: “[t]hey just did not want to do it

⁶⁹ Tr. at 356; *see also* D. & O. at 6.

⁷⁰ Tr. at 354; *see also* D. & O. at 6.

⁷¹ Tr. at 357; *see also* D. & O. at 6.

⁷² Adm’r Br. at 15-16, 18-28.

⁷³ *Id.* at 14, 22-23, 28.

⁷⁴ *Id.* at 13.

⁷⁵ *Id.* at 25.

⁷⁶ Tr. at 356.

in the rain.”⁷⁷ Gonzalez Jr.’s testimony shows that the change in the ongoing working relationship was that the U.S. workers refused to work in the rain. It strains credulity that A&M would repeatedly hire the same workers for many years, pay to transport the workers to Indiana, and then abruptly fire them in the middle of a busy season for discriminatory reasons (which had not prevented A&M from hiring the same workers in the past).⁷⁸ The more reasonable explanation, and the explanation that the Chief ALJ found to be credible, is that the workers refused to work in the rainy conditions, it was expensive to continue paying for the workers’ hotel rooms, and A&M fired the workers.⁷⁹

Next, the Administrator relies heavily on the statements of four fired workers to show that A&M’s actions were driven by racial animus and preference for H-2A workers, arguing that the Chief ALJ did not provide an adequate analysis of the worker statements.⁸⁰ We have independently reviewed those statements and concede that the ALJ could have done a more thorough job in determining their impact and relevancy.⁸¹ However, our own review indicates that we cannot give the statements the weight argued for by the Administrator. Although the statements are a key pillar of the Administrator’s position, the statements as reflected in the record are without context. Because the Investigator translated and transcribed the worker statements,⁸² we do not know the exact questions asked by the Investigator—which may or may not been leading—and the statements stand

⁷⁷ *Id.*

⁷⁸ *See* D. & O. at 6 (“Respondent [had] paid to transport U.S. workers from Florida to Indiana because it needed help with the harvest,” and “it does not follow that Respondent would indiscriminately and unlawfully lay off such a large group of workers at the precise time Respondent needed more work done.”).

⁷⁹ *See id.*

⁸⁰ Adm’r Br. at 18-23. The WHD obtained the statements from the workers after A&M fired them. D. & O. at 6.

⁸¹ The Chief ALJ referenced the four worker statements in the D. & O. at 6, 6 n.14.

⁸² The Investigator testified that he “would ask the questions,” then “[t]he translator would ask the question in Creole and give me an interpretation of the answer which is what I memorialized.” Tr. at 168.

without any cross examination.⁸³ In addition, the worker statements appear to contain errors, raising questions about their reliability.⁸⁴

Further, since it is apparent that the interviews were done over the phone, there appears to be no reason in the record, or offered by the Administrator, as to why the workers could not have testified at least virtually, with the opportunity for cross examination, either in the hearing or through depositions. We are mindful of practical geographic difficulties, but in a world where virtual communications are now quite common, this anomaly stands out and is left unexplained. If these four statements were a mere sidebar to the Administrator's argument, this might be somewhat irrelevant, but given their key nature to the Administrator's argument, we are unable to give them the weight argued for without more context.

Our concern with the failure of the Administrator to take simple steps such as a virtual deposition testimony of any of the four employees is further underscored by the failure of the investigator to even ask the employer directly about the reasons for the layoffs. This is of course the gravamen of the entire case before us and yet the investigator failed to pursue that avenue of inquiry.⁸⁵ Whether this was because of a concern about receiving an answer that would undermine the prosecution or an odd oversight, the omission of this line of inquiry together with the failure to bolster the statements by the four employees on which the Administrator so heavily relies undermines the Administrator's position. In sum, the ex parte witness statements from four impacted workers do not persuade us to disturb the Chief ALJ's logical, well-reasoned explanation for why the evidence supported a finding that A&M fired the workers for failure to work in rainy conditions, not for discriminatory reasons.

The Administrator also claims the Chief ALJ did not consider other evidence of pretext and "never acknowledged evidence that undermines A&M's trial

⁸³ In contrast, Gonzalez Jr. was subject to cross examination, which further strengthens the Chief ALJ's credibility determination about Gonzalez Jr.

⁸⁴ For example, one of the workers noted that "I was with 15 Haitians he fired when we were in Indiana last year." PX-15. A&M terminated the employment of 13 U.S. workers, not 15. D. & O. at 6.

⁸⁵ The Investigator testified that he requested and never received documentation from A&M to support a layoff or termination, but importantly, the Investigator also testified that he never interviewed A&M for an explanation of why the U.S. workers left Indiana. Tr. at 278-80.

testimony,” including that “A&M changed its story and claimed for the first time at trial that it had laid off the 13 workers because of their refusal to work due to the weather, even though none of the four worker statements so much as mentioned rain or muddy conditions.”⁸⁶ The Board does not find compelling the Administrator’s argument that A&M changed its story.

The record is unclear why the worker statements did not mention rain or muddy conditions, but as discussed above, the worker statements suffer from several evidentiary deficiencies. As already noted, the Board cannot tell the exact question asked by the Investigator and the exact answer provided by the workers. In addition, none of the workers were subject to cross examination. Therefore, we cannot determine why the worker statements did not mention rain or muddy conditions, but we do not take the absence as evidence that A&M changed its story.

Furthermore, the record before the Chief ALJ seems to have gaps, and it appears that WHD may have failed to fully develop the context and evaluate both sides when determining that A&M violated H-2A regulations. As we discussed above, the Investigator testified that he never interviewed A&M for an explanation of why the U.S. workers left Indiana.⁸⁷ Without asking that crucial question of A&M, the Investigator may not have learned of the muddy and rainy conditions until the hearing and would not have known to ask the workers about the rain or muddy conditions earlier. Therefore, we do not find it persuasive that A&M changed its story because the four worker statements did not mention the rain or muddy conditions, especially given that the Investigator never asked A&M for an explanation of why the workers left Indiana.

⁸⁶ Adm’r Br. at 26-27. The Administrator also argues that the Chief ALJ “omits the fact that A&M’s sole live witness Gonzalez, Jr., was never present at the Indiana job site and did not have first hand knowledge of the conditions.” *Id.* at 26-27. We do not find this persuasive. Gonzalez Jr. was subject to cross examination at the hearing and the Chief ALJ found “credible the version of events offered by Mr. Gonzalez, Jr.” D. & O. at 6. Furthermore, the evidence shows that Gonzalez Jr. was closely involved and monitoring what occurred in Indiana. For example, Gonzalez Jr. spoke with “the crew leader for the U.S. workers refusing to work.” *Id.* at 5. Moreover, in Gonzalez Jr.’s testimony, he indicated that he spoke to his father and the bus drivers who were in Indiana, that he paid the hotel bills, and that he ultimately made the decision to fire the workers for refusing to work in the rain. Tr. at 354-55, 359.

⁸⁷ Tr. at 280.

Finally, in support of the argument that A&M had a discriminatory motive in laying off the workers, the Administrator claims the Chief ALJ overlooked a statement by Gonzalez Jr. of A&M, who testified at the hearing that: “[a]nybody that works in farm labor contracting can tell you that a Haitian worker will not work in adverse weather. They just will not work in the rain or muddy conditions.”⁸⁸ We do not assign much weight to one stray comment, and the remark does not overcome the evidence supporting the Chief ALJ’s finding that A&M fired the workers for refusal to work in rainy and muddy conditions.

On this point, we need not leave common sense at the door. Courts have recognized that relatively isolated comments should be evaluated in the context of the relevant workplace, and that not all workplaces are the same.⁸⁹ In cases arising under the National Labor Relations Act and Title VII of the Civil Rights Act of 1964, courts have long recognized that heated speech, even speech laden with sexual or racial overtones, must be viewed in the context in which it is uttered.⁹⁰ On the one hand, “[s]peech that might be offensive or unacceptable in a prep school facility meeting or on the floor of Congress, is tolerated in other work environments.”⁹¹ On the other hand, employers have obligations under Title VII to

⁸⁸ Adm’r Br. at 20; *see also* Tr. at 350.

⁸⁹ *See Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81-82 (1998) (“The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed. Common sense, and an appropriate sensitivity to social context, will enable courts and juries to distinguish between simple teasing or roughhousing among members of the same sex, and conduct which a reasonable person in the plaintiff’s position would find severely hostile or abusive.”).

⁹⁰ *See* Kurt Stumpo, *Driving the National Labor Relations Act Forward: Analyzing Abusive Conduct that Occurs in the Course of Protected Activity After General Motors LLC*, 43 CARDOZO L. REV. 1999, 2022 (2000) (“The Board and federal appellate courts have long understood that protected activity constitutes a struggle between workers and employers, and that by definition, labor battles frequently do not comport with idealized workplace images.”).

⁹¹ *Gross v. Burggraf Constr. Co.*, 53 F.3d 1531, 1538 (10th Cir. 1995) (quoted in *Herrera v. Lufkin Indus. Inc.*, 474 F.3d 675, 692-93 (10th Cir. 2007) (Cassell, J., dissenting) (“Vulgarity and other socially-unacceptable behavior that might lead to termination in a typical office setting were commonplace in the oilfields. Since raucous race-neutral behavior permeated Herrera’s working environment, the conduct he describes above—even when yoked to the five unquestionably race-based incidents—is not evidence Herrera’s work environment was permeated with *discriminatory* ridicule.”)).

maintain safe and civil workplaces.⁹² In our case, it would be difficult to conclude without more context that Gonzalez Jr. was driven by racial or national origin animus based on comments in a difficult, rough agricultural setting.

Furthermore, we also do not consider the stray comment to be significant because, in reviewing the record, it appears that Gonzalez Jr. was relaying a prior comment told to him by Jeanot Saint Hilaire—the crew leader for the U.S. workers of Haitian descent.⁹³ Specifically, Gonzalez Jr. testified that Mr. Saint Hilaire had told Gonzalez Jr. “that I should know that, you know, Haitians are not going to work in muddy conditions.”⁹⁴ Therefore, the original comment must be read in light of the broader context in which it seems Gonzalez Jr. was sharing what one of the Haitian workers had told him.⁹⁵

In sum, the Administrator’s arguments on appeal do not convince us that the Chief ALJ failed to properly consider evidence or that the Chief ALJ erred in finding that A&M fired the workers for refusal to work in rainy and muddy conditions. Therefore, we decline to vacate and remand for further consideration of the evidence raised by the Administrator on appeal.

⁹² See *Williams v. Gen. Motors Corp.*, 187 F.3d 553, 564 (6th Cir. 1999) (rejecting the principle that the standard for sexual harassment varies depending on the work environment).

⁹³ D. & O. at 5 (“Jeanot Saint Hilaire, the crew leader for the U.S. workers refusing to work.”).

⁹⁴ Tr. at 353. Gonzalez Jr. testified:

Q: Do you know whether your father ever talked with the domestic workers about, you know, increasing their production?

A: Most definitely that was a conversation that was had.

Q: How do you know?

A: I talked -- well, I talked to Jeanot myself and, you know, tried to understand what the problem is. And, you know, he just said that the people didn’t want to work in the rain and muddy conditions.

Id. at 351-52.

⁹⁵ As evidence of pretext, the Administrator also argues that the “ALJ’s decision ignores payroll records and trial testimony confirming that there was no substantial increase in the hours worked by the workers who remained at the jobsite after the 13 U.S. workers were laid off.” Adm’r Br. at 25. We note A&M has an alternative explanation of the hours which appears at least equally plausible. A&M Response Brief (Response Br.) at 20-23. We need not consider the evidence further because we have already concluded that the Chief ALJ’s findings are logical, well-reasoned, and supported by the record.

B. We Affirm the Chief ALJ that A&M Did Not Violate 20 C.F.R. § 655.135(g) or 20 C.F.R. § 655.122(i)

The Administrator argues that, because A&M improperly laid off the workers, the Chief ALJ erred in finding no violations of 20 C.F.R. § 655.135(g) (protecting against improper layoffs) and 20 C.F.R. § 655.122(i) (requiring employers meet the three-fourths guarantee).⁹⁶ However, as discussed in Section 1.A., *supra*, we find that the record supports the Chief ALJ’s findings that A&M fired the workers for refusal to work in rainy and muddy conditions and A&M did not lay them off. Accordingly, as explained further below, we affirm the Chief ALJ that A&M did not violate either provision.

First, 20 C.F.R. § 655.135(g) protects against improper or impermissible layoffs. Here, we agree with the Chief ALJ that A&M *fired* the workers for refusal to work in rainy and muddy conditions and did not *lay off* the workers. Because 20 C.F.R. § 655.135(g) only applies when there is a layoff, and no layoff occurred, we affirm the Chief ALJ that A&M did not violate the provision.

Second, 20 C.F.R. § 655.122(i)’s three-fourths guarantee requires that an H-2A employer must offer each worker “employment for a total number of work hours equal to at least three-fourths of the workdays of the total period[.]” However, under 20 C.F.R. § 655.122(n), an H-2A employer is relieved of the three-fourths guarantee when a worker is “*terminated for cause*.”⁹⁷ As set forth below, we find that A&M *terminated for cause* the U.S. workers. Therefore, pursuant to 20 C.F.R. § 655.122(n), A&M is relieved of the three-fourths guarantee obligation.

In his ruling, the Chief ALJ appeared to equate *firing* with *termination for cause*, using the terms interchangeably. For example, the Chief ALJ found several times that A&M fired the workers, and the Chief ALJ also found that “Respondent *terminated* its contract with 13 U.S. workers.”⁹⁸ Therefore, we construe the Chief ALJ’s finding that A&M *fired* the workers for refusal to work in rainy and muddy conditions as a finding that A&M *terminated for cause* the U.S. workers.

⁹⁶ Adm’r Br. at 16, 28-29.

⁹⁷ 20 C.F.R. § 655.122(n) (emphasis added).

⁹⁸ D. & O. at 6 (emphasis added).

However, even if the Chief ALJ did not equate *firing* and *termination for cause*, the record supports a finding that A&M terminated the workers for cause because A&M's basis for firing the workers (refusal to work in rainy and muddy conditions) fits squarely within the permissible bases for terminating workers for cause. DOL Field Assistance Bulletin No. 2012-1 provides guidance to the meaning of "termination for cause,"⁹⁹ stating: "Generally, 'termination for cause' refers to termination based on specific act(s) of omission or commission by the employee. For example, insubordination, deliberately violating company policies or rules, lying, stealing, breaching the employment contract, and other job-related misconduct are all possible bases for termination for cause."¹⁰⁰

Here, in the "job duties" section of TEC 1, the workers were informed that the "[j]ob is outdoors and continues in all types of weather."¹⁰¹ Therefore, by refusing to work in rainy and muddy conditions, the U.S. workers violated the requirements of their "job duties" and engaged in conduct that falls within a permissible basis to terminate for cause a worker's employment. Accordingly, we find A&M's firing of the U.S. workers for refusal to work in rainy and muddy conditions constitutes a termination for cause. Because the three-fourths guarantee does not apply when there is a termination for cause, we affirm the Chief ALJ that A&M did not violate 20 C.F.R. § 655.122(i).

2. A&M Failed to Satisfy the Conditions It Listed in Its Job Order in TEC 2

We reverse the Chief ALJ's ruling that A&M did not violate 20 C.F.R. § 655.121(a)(3). We find that A&M failed to satisfy the requirements of the job order in two respects. Accordingly, we assess a penalty of \$1,412.80 for each violation of 20 C.F.R. § 655.121(a)(3), totaling a CMP of \$2825.60 for both violations.

A. Chief ALJ Erred in Finding that A&M Did Not Violate 20 C.F.R. § 655.121(a)(3)

The Chief ALJ dismissed WHD's charge in its NOD that A&M violated 20 C.F.R. § 655.121(a)(3) in TEC 2 by failing to adhere to the conditions it included in

⁹⁹ "Termination for cause" is not defined in the applicable version of the regulations (the 2010 version). It is defined in the latest 2024 version of § 655.122(n), but that version is inapplicable because the 2010 version applies here.

¹⁰⁰ DOL Field Assistance Bulletin No. 2012-1 at 6 (Feb. 28, 2012) (FAB 2012-1).

¹⁰¹ Joint Exhibit 1A at 3.

its job order for TEC 2.¹⁰² The Chief ALJ found that the Administrator had not proven the charge because WHD had cited the incorrect regulatory provision in its NOD: WHD had cited 20 C.F.R. § 655.121(a)(3) and the Chief ALJ ruled that WHD should have cited subparagraph (a)(4) of that regulation.¹⁰³

We disagree with the Chief ALJ because the Chief ALJ relied on the 2022 version of 20 C.F.R. § 655.121(a)(3) when dismissing WHD’s charge. The ALJ should have relied on the 2010 version of that regulation which was operative at the time of A&M’s 2019 violation. In 2022, the Department moved what had been in subparagraph (a)(3) to subparagraph (a)(4).¹⁰⁴ Thus, the Chief ALJ was correct that the 2022 version of 20 C.F.R. § 655.121(a)(3) did not apply,¹⁰⁵ but that was not the provision WHD had relied on in the NOD: WHD’s NOD properly referred to the 2010 version of 20 C.F.R. § 655.121(a)(3).¹⁰⁶

Because the Chief ALJ believed WHD had cited to the wrong regulatory provision, the Chief ALJ did not make a factual finding about whether A&M had failed to satisfy the conditions it listed in its job order. We now review whether violations should be assessed for failure to comply with the job order in accordance with the 2010 version of 20 C.F.R. § 655.121(a)(3).

The 2010 version of 20 C.F.R. § 655.121(a)(3) states: “The job order submitted to the SWA must satisfy . . . the requirements set forth in § 655.122.” In the December 15, 2020 NOD, the WHD charged A&M with the following two violations of 20 C.F.R. § 655.121(a)(3) in TEC 2:

- The “employer listed false experience requirements in the job orde[r] that were not actually considered when hiring H[-]2A workers.”¹⁰⁷

¹⁰² D. & O. at 14-15.

¹⁰³ *Id.*

¹⁰⁴ Compare 20 C.F.R. § 655.121(a)(3) (2010) (“The job order submitted to the SWA must satisfy . . . the requirements set forth in § 655.122”), with 20 C.F.R. § 655.121(a)(4) (2022) (“The job order must satisfy . . . the requirements set forth in § 655.122.”). The provisions are slightly different, but almost identical.

¹⁰⁵ The 2022 version of § 655.121(a)(3) deals with job orders for employers that plan to jointly employ workers.

¹⁰⁶ The NOD could not have applied the 2022 version of § 655.121(a)(3) because WHD issued the NOD in 2020 before the changes to (a)(3) occurred.

¹⁰⁷ PX-19 at 7.

- “[T]he investigation disclosed that the employer placed workers at worksites in Homestead, FL, which are not listed on the certified H-2A contract and are not within the area of intended employment.”¹⁰⁸

After reviewing the record, and the parties’ arguments on appeal, the Board finds two violations for TEC 2 under the 2010 version of 20 C.F.R. § 655.121(a)(3), which incorporates requirements for 20 C.F.R. § 655.122.¹⁰⁹

First, 20 C.F.R. § 655.122(b) requires that “[e]ach job qualification and requirement listed in the job offer must be bona fide[.]” Here, A&M listed a job qualification requirement in the job order that required three months of corn harvesting experience.¹¹⁰ However, both Gonzalez Sr. and Gonzalez Jr. admitted they did not enforce the experience requirement.¹¹¹ Accordingly, we find that A&M violated 20 C.F.R. § 655.121(a)(3), which incorporates the 20 C.F.R. § 655.122(b) requirement that job offers only list bona fide job qualifications.

Second, 20 C.F.R. § 655.122(c) requires that “[e]very job order accompanying an” application for TEC must include the “working condition provisions[.]” On appeal, the Administrator argues that A&M failed to disclose in the job order that the employer had another worksite in Homestead, Florida.¹¹² In its response, A&M does not address this argument from the Administrator.¹¹³ Instead, A&M argues that if the ARB agrees “that the appeal is proper on this issue” and not waived, “the

¹⁰⁸ *Id.*

¹⁰⁹ The Board has de novo review, and “[o]n appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision” 5 U.S.C. § 557(b); *see also Ten West Cattle, Inc.*, ARB Nos. 2024-0003, 2023-0058, slip op. at 8.

¹¹⁰ D. & O. at 7 (“Respondent also indicated in TEC 2 that three months of experience was required to perform the job of harvester.”).

¹¹¹ *Id.* at 9 (The Investigator “also obtained signed statements from Mr. Gonzalez, Sr. and Mr. Gonzalez, Jr. stating that Respondent does not enforce an experience requirement for corn harvesting workers”).

¹¹² Adm’r Br. at 33; *see also* D. & O. at 9 (“[S]igned statements from Mr. Gonzalez, Sr. and Mr. Gonzalez, Jr.” state that “Respondent brought H-2A workers to worksites in Homestead, Florida.”).

¹¹³ A&M Response Br. at 29.

issue is due to be remanded” because the “Board cannot render a decision on the propriety of CMPs” and the “Board cannot engage in fact-finding.”¹¹⁴

We disagree with A&M. In H-2A cases, the Administrative Procedure Act governs our review, and “[t]he ARB, on review from the Chief ALJ, reviews the record de novo, including the CMP assessments.”¹¹⁵ Because A&M did not address the Administrator’s argument, we adopt the Administrator’s position and find that A&M violated 20 C.F.R. § 655.121(a)(3), which incorporates 20 C.F.R. § 655.122(c)’s obligation to include in the job order the working conditions of the job.

B. The Board Assesses CMPs for Violations of 20 C.F.R. § 655.121(a)(3)

Having found two violations, we proceed to consider penalties. The maximum CMP at the time of WHD’s assessment was \$1,766.00.¹¹⁶ WHD applied a 10% reduction because A&M did not have a prior history of violations.¹¹⁷ Thus, based on two violations of 20 C.F.R. § 655.121(a)(3), WHD assessed two CMPs of \$1,589.40 each, totaling \$3,178.80.¹¹⁸ As already noted, the Chief ALJ reversed these penalties.¹¹⁹

In determining the monetary amount that should be assessed for each violation, several non-exclusive factors may be considered, including any history of noncompliance, the number of affected workers, the seriousness of the violations, efforts made in good faith to comply, the explanation for noncompliance, a commitment to future compliance, and any financial gain from the violations.¹²⁰

Here, we agree with WHD that a 10% reduction should apply to the maximum CMP of \$1,766.00 because A&M does not have a previous history of H-2A violations. We also apply an additional 10% reduction because of the small size of

¹¹⁴ *Id.*

¹¹⁵ *Washington Farm Labor Association*, ARB No. 2021-0069, slip op. at 8; *see also* 5 U.S.C. 557(b); *Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Azzano Farms, Inc.*, ARB No. 2020-0013, ALJ No. 2019-TAE-00002, slip op. at 5 (ARB Mar. 30, 2023).

¹¹⁶ 29 C.F.R. § 501.19(c) (2020).

¹¹⁷ D. & O. at 9; *see also* 29 C.F.R. § 501.19(b)(1) (2020).

¹¹⁸ D. & O. at 9.

¹¹⁹ *Id.* at 18.

¹²⁰ 29 C.F.R. § 501.19(b) (2020).

A&M's business. Therefore, we apply a 20% reduction to the maximum CMP of \$1,766.00. Accordingly, we assess a penalty of \$1,412.80 for each violation of 20 C.F.R. § 655.121(a)(3), resulting in a total CMP of \$2,825.60 for both violations.

3. Debarment Is Not Warranted

The Administrator argues that the Board should vacate the Chief ALJ's dismissal of debarment and remand for reconsideration in light of all the evidence in the record.¹²¹ We disagree.

An employer may be barred from receiving future labor certifications for up to three years if the employer has “substantially violated a material term or condition of its temporary labor certification, with respect to H-2A workers . . . or U.S. workers improperly rejected for employment, or improperly laid off or displaced”¹²² The regulations further provide that “[i]n determining whether a violation is so substantial as to merit debarment, the factors set forth in § 501.19(b)(1) shall be considered.”¹²³

The Administrator argues that the Chief ALJ erred because the Chief ALJ premised the decision not to debar A&M on a conclusion unsupported by the evidence—that “A&M had a lawful reason for firing 13 U.S. workers.”¹²⁴ As set forth in Section 1., *supra*, we affirm the Chief ALJ that the U.S. workers were lawfully fired and do not find a violation on that issue. Therefore, it cannot be a basis for debarment.

The remaining question is whether A&M's violations of 20 C.F.R. § 655.135(d) (unlawful rejection of a qualified U.S. worker) and 20 C.F.R. § 655.121(a)(3) (for failure to satisfy conditions it listed in its job order) are “so substantial as to merit debarment.” We agree with the Chief ALJ that “debarment is a severe punishment,”¹²⁵ and after consideration, we find that debarment is not warranted under the circumstances.

¹²¹ Adm'r Br. at 30, 32.

¹²² 29 C.F.R. § 501.20.

¹²³ *Id.* at § 501.20(d)(2).

¹²⁴ Adm'r Br. at 30.

¹²⁵ D. & O. at 20.

Debarment would be inappropriate and unduly harsh for these violations. We agree with the Chief ALJ that A&M did not commit a “substantial” violation when it unlawfully rejected one U.S. worker in January 2019.¹²⁶ In addition, as the Chief ALJ pointed out, “[b]ack wages have been ordered to make the single U.S. worker whole.”¹²⁷ Similarly, we do not find A&M engaged in “substantial” violations when A&M failed to satisfy conditions listed in its job order, and we have also ordered A&M to pay CMPs for the violations. Notably, A&M also does not have any previous history of H-2A violations related to these provisions. Thus, we find that the violations at issue are not so substantial as to merit debarment.

CONCLUSION

We **AFFIRM** the Chief ALJ’s findings that: A&M did not violate 20 C.F.R. § 655.135(g)’s protection against unlawful layoffs; A&M did not violate 20 C.F.R. § 655.122(i)’s three-fourths guarantee; and debarment is not warranted.

We **REVERSE** the Chief ALJ’s ruling that A&M did not violate 20 C.F.R. § 655.121(a)(3) because A&M failed to satisfy the requirements of the job order in two respects. Accordingly, we assess a penalty of \$1,412.80 for each violation of 20 C.F.R. § 655.121(a)(3), for a total CMP of \$2,825.60 for both violations.

In all other respects, the Chief ALJ’s D. & O. is **AFFIRMED**, including the back wages and CMP assessed by Chief ALJ.¹²⁸

SO ORDERED.

THOMAS H. BURRELL
Administrative Appeals Judge

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ The Chief ALJ assessed back wages owed to Wilson Michel of \$5,960.01 and a CMP of \$13,875.20. *Id.* at 16, 18-19.