In the matter of:

Judith Parker-Day, *Claimant*, v. Northern New England Passenger Rail Authority, LPM Holding Company, Inc., and LPM Franchises, LLC, *Respondents*.	DSP Claim: 12-13c-02 Issued: March 16, 2014

FINAL DECISION

On September 16, 2011, Judith Parker-Day (Claimant) submitted this claim to the Department, alleging that the Northern New England Passenger Rail Authority (NNEPRA) denied her the employee protections required by the Federal Transit Act (the Act), 49 U.S.C. § 5333(b)(1). The Act requires as a condition of federal financial assistance that the interests of employees affected by the assistance be protected under arrangements the Secretary of Labor certifies are fair and equitable. These protective arrangements are often referred to as section "13(c)" arrangements or agreements because the requirement for such arrangements originated in section 13(c) of the Urban Mass Transportation Act of 1964, 78 Stat. 307, as amended, 49 U.S.C. § 1609(c). NNEPRA uses federal financial assistance in partner contracts to provide Downeaster Train service. Consequently, NNEPRA is subject to the requirements of the Act. The Department certification of protections for NNEPRA projects ME-95-X009 and ME-95-X011 specified protections at Appendix A (Protections) for employees not represented by a union. [1] Paragraph 4 of the Protections provides for training and reemployment of employees who were terminated or laid off as a result of a project funded by federal assistance. However, the Protections also provide that an employee shall not be regarded as deprived of employment in case of her resignation or dismissal for cause.

When employees are not represented by a union, the terms and conditions of the Department's certification provide for the Secretary of Labor, or designee, to serve as arbitrator and render final and binding determinations on disputes under the Protections.

NNEPRA contracted with LPM Holding Company, Inc. for the provision of food services on the AMTRAK Downeaster train. LPM Holding Company, Inc. employed Claimant as a café attendant from December 2001 to March of 2010, when LPM Holding Company, Inc. reorganized. Thereafter, Claimant was employed by LPM Franchises, LLC (also d/b/a

[1] Other protective arrangements cover represented employees.

Epicurean Feast)(LPM Holding, Inc. and LPM Franchises, LLC referred to jointly as "the Employer"). As a nonunion employee of a NNEPRA contractor, Claimant is covered by the Protections.

On July 5, 2011, Claimant experienced problems performing her assigned tasks during her tour of duty. The exact chronology of events of the day is unclear. However, it is clear that the Employer informed Claimant by electronic mail on July 6, 2011 that Claimant had terminated her employment by walking off the job the previous day.

Pursuant to above referenced terms and conditions of the Department's certification, the Claimant filed this claim with the Department. Claimant alleges that her wages were not comparable to those of café attendants employed directly by Amtrak and that NNEPRA failed to preserve and continue wages, hours, working conditions, and benefits established under her previous employment arrangement with Employer. Claimant also alleges that NNEPRA and the Employer failed to post the protective arrangements, as certified by the Department, during the term of her employment. Finally, Claimant alleges that her July 6, 2011 dismissal was not for cause. As a remedy, Claimant seeks restored benefits and dismissal allowance at the pay rate of café attendants employed by Amtrak. Claimant also seeks re-training assistance for placement in a management position.

The remedies set forth in the Protections are limited to those employees who were affected "as a result of the project."[2] Neither the Act nor the Protections preclude employers from discharging employees for cause, nor do they address standards for, or provide for Departmental review of decisions regarding the presence of just cause.[3] In this case, the Employer clearly determined that Claimant walked off the job on July 5, 2011, and deemed it a "voluntary resignation" and reason for termination. Claimant's dismissal pertains exclusively to the performance of her assignments as a café attendant and the Employer's evaluation of that performance. The circumstances of Claimant's dismissal do not meet the standard of "deprived of employment or placed in a worse position" as a "result of a project" under the Protections. Further, Claimant has failed to show how the alleged wage and benefit reductions following the Employer's restructuring were related to a project. As such, Claimant's claims are not within the scope of the Act.

With regard to the claim that NNEPRA failed to post the protective arrangements pursuant to the Protections, Claimant did not successfully demonstrate that NNEPRA or its service providers failed to follow the certification requirements.[4]

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[2] See Appendix A, paragraphs 3, 4 and 5 US DOL Certification of Project ME-95-X011(February 9, 2011) which indicates that the alleged "worsening" must be connected to a project.

[3] Dismissal for cause or other disciplinary actions are explicitly outside the scope of NNEPRA's 13(c) arrangement. See Appendix A, paragraph 5 of US DOL Certification of Project ME-95-X011(February 9, 2011).

[4] NNEPRA is reminded that failure to comply with this on-going obligation could result in non-compliance issues and jeopardize continued eligibility for federal assistance.

DETERMINATION

The Department finds no violation of the Act or NNEPRA's protective arrangement, and does not have authority under the law to address the merits of dismissals for cause. Therefore, your claim is denied.

This decision is final and binding.

Date May 16, 2014

Michael J. Hayes
Director, Office of Labor-Management Standards