

# Whittaker employee wrongly demoted, judge rules

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Powerball winner Jack Whittaker has run afoul of federal labor laws.

A preliminary ruling from the National Labor Relations Board last month concluded that Whittaker wrongly demoted a foreman at his construction company and threatened him physically because the foreman was trying to organize a union.

Such treatment would violate the National Labor Relations Act, which is designed to ensure workers have the right to organize.

Whittaker's company, Diversified Enterprises Inc., has to compensate the worker, Robert Hornsby, for the lower wages he received following his demotion and for other expenses he incurred because of it, according to the July 27 ruling by Administrative Law Judge Eric Fine.

Whittaker says he intends to appeal the ruling.

"We could settle the thing for a \$500 fine, but I'm not having that on my record," he said.

Fine found that Diversified stripped Hornsby of his foreman's rank on Aug. 29, 2006, immediately after Hornsby presented Whittaker at a Ghent worksite with a letter declaring that he had become a voluntary organizer for the Mid-Atlantic Regional Council of Carpenters union. Hornsby also lost use of a company truck and company gas card, and would thereafter not be compensated for hotel costs billed during work-related travel, the ruling says.

Hornsby, at that point a five-year Diversified employee, alleges that Whittaker threatened him on the spot. Whittaker said that Hornsby "needed to get out of his face before he went off on my ass," according to Hornsby's testimony in the case.

Hornsby denied that he ever crowded Whittaker.

Fine said Hornsby's accusations rang true.

"Whittaker impressed me as an individual who, in running a large operation, was used to getting his own way and who would have no problem of forcefully letting a subordinate know his opinion," Fine writes in his decision. "I did not find Whittaker to be a very credible witness."

Whittaker won a \$315 million Powerball lottery jackpot in 2002 and since then has endured a series of misfortunes, including scores of lawsuits and the drug-related deaths of his granddaughter and of a teenage friend of hers while at Whittaker's house.

In the NLRB case, he contends that Hornsby had no right to organize workers because he was not merely a foreman but a supervisor, and for that reason was part of management.

"We're appealing on the basis that this was a supervisor that did all this stuff," Whittaker said.

Fine's ruling rejected that argument on grounds that Hornsby wasn't responsible for supervising employees other than in overseeing repetitive tasks; he was paid hourly instead of a salary, as

management officials typically are; and he didn't attend management meetings and couldn't approve leave requests or overtime.

Whittaker even admitted in a pretrial affidavit that he didn't consider Hornsby to be a supervisor because he was in training, Fine writes.

Carpenters officials haven't finished calculating how much Whittaker would owe Hornsby under the ruling's conclusion, said Randall May, a union organizer.

Hornsby ended up quitting his job at Diversified in December. Back wages dating to then would come to about \$600, May said.

"But it's going to be a lot more" once incidentals like gas and hotel costs are factored in, May said.

Hornsby didn't return a call for comment.

The labor board will issue a final ruling after reviewing the law judge's findings and any appeals, but there's no timetable for its decision, said an NLRB spokeswoman. Either side can challenge the decision in federal appeals court.

The Carpenters haven't been successful in organizing Diversified, May said.

"Jack chilled the campaign ..." he said.

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