SUPREME COURT OF THE UNITED STATES

No. 92–1550

ABF FREIGHT SYSTEM, INC., PETITIONER *v.* NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[January 24, 1994]

JUSTICE STEVENS delivered the opinion of the Court.

Michael Manso gave his employer a false excuse for being late to work and repeated that falsehood while testifying under oath before an Administrative Law Judge (ALJ). Notwithstanding Manso's dishonesty, the National Labor Relations Board (Board) ordered Manso's former employer to reinstate him with backpay. Our interest in preserving the integrity of administrative proceedings prompted us to grant certiorari to consider whether Manso's misconduct should have precluded the Board from granting him that relief.

Manso worked as a casual dockworker at petitioner ABF Freight's (ABF's) trucking terminal in Albuquerque, New Mexico, from the summer of 1987 to August 1989. He was fired three times. The first time, Manso was one of 12 employees discharged in June 1988 in a dispute over a contractual provision relating to so-called "preferential casual" dockworkers.[1] The grievance Manso's union filed

[1]ABF at this time had three dockworker classifications: those on the regular seniority list, nonpreferential casuals, and preferential casuals. *ABF Freight System, Inc.*, 304 N. L. R. B. 585, 589, n. 10 (1991). A supplemental labor

eventually secured his reinstatement; Manso also filed an unfair labor practice charge against ABF over the incident.

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agreement ABF negotiated with the union in April 1988 created the preferential casual dockworker classification with certain seniority rights. *Id.*, at 585–586.

Manso's return to work was short-lived. Three supervisors warned him of likely retaliation from top management—alerting him, for example, that ABF was "gunning" for him, App. 96, and that "the higher echelon was after [him]," *id.*, at 96–97. See also *ABF Freight System, Inc.*, 304 N. L. R. B. 585, 592, 597 (1991). Within six weeks ABF discharged Manso for a second time on pretextual grounds—ostensibly for failing to respond to a call to work made under a stringent verification procedure ABF had recently imposed upon preferential casuals.[2] Once again, a grievance panel ordered Manso reinstated.

Manso's third discharge came less than two months later. On August 11, 1989, Manso arrived four minutes late for the 5 a.m. shift. At the time, ABF had no policy regarding lateness. After Manso was late to work, however, ABF decided to discharge preferential casuals—though not other employees—

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[2]The policy required preferential casuals—though not other dockworkers—to be available by phone prior to a shift in case a foreman needed them to work. A worker who did not respond risked disciplinary action for failing to "protect his shift"; two such failures authorized ABF to discharge the worker. 304 N. L. R. B., at 597. ABF issued a written warning to Manso on May 6, 1989, after he failed to respond to such a call. On June 19, a supervisor again asked a regular dockworker to summon Manso to work just prior to 6 a.m. for the 8:30 a.m. shift. When Manso did not answer, the employee who had dialed his number asked to dial it again, fearing he had misdialed. The supervisor denied permission and instead had the employee sign a form verifying that Manso had not responded. Manso was then discharged. The ALJ found that the special call policy discriminated against preferential casual dockworkers as a class, *id.*, at 598, 600; both the ALJ and the Board concluded that it was discriminatorily applied to Manso. *Id.*, at 600; *id.*, at 589, n. 11.

who were late twice without good cause. Six days later Manso triggered the policy's first application when he arrived at work nearly an hour late for the same shift. Manso telephoned at 5:25 a.m. to explain that he was having car trouble on the highway, and repeated that excuse when he arrived. ABF conducted a prompt investigation, ascertained that he was lying,[3] and fired him for tardiness under its new policy on lateness.

Manso filed a second unfair labor practice charge. In the hearing before the ALJ, Manso repeated his story about the car trouble that preceded his third discharge. The ALJ credited most of his testimony about events surrounding his dismissals, but expressly concluded that Manso lied when he told ABF that car trouble made him late to work. *Id.*, at 600. Accordingly, although the ALJ decided that ABF had illegally discharged Manso the second time because he was a party to the earlier union grievance,[4] the ALJ denied Manso relief for the third discharge based on his finding that ABF had dismissed Manso for cause. *Ibid.*

The Board affirmed the ALJ's finding that Manso's second discharge was unlawful, but reversed with respect to the third discharge. *Id.*, at 591.

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[3]Manso told ABF management that his car had overheated on the highway, that he had to phone his wife to pick him up and take him to work. Manso also said a deputy sheriff stopped him for speeding in his ensuing rush. A plant manager who looked for Manso's overheated car on the highway found nothing, however, and the officer who Manso said issued him a warning for speeding told ABF officials—and later the ALJ—that Manso had been alone in the car.

[4]Specifically, the ALJ held that the dismissal violated §§8(a)(1), (3), and (4) of the National Labor Relations Act, 49 Stat. 452, as amended, 29 U. S. C. §§158(a)(1), (3), and (4).

Acknowledging that Manso lied to his employer and that ABF presumably could have discharged him for that dishonesty, *id.*, at 590, n. 13, the Board nevertheless emphasized that ABF did not in fact discharge him for lying and that the ALJ's conclusion to the contrary was "a plainly erroneous factual statement of [ABF]'s asserted reasons."[5] Instead, Manso's lie "established only that he did not have a legitimate excuse for the August 17 lateness." *Id.*, at 589. The Board focused primarily on ABF's retroactive application of its lateness policy to include Manso's first time late to work, holding that ABF had "seized upon" Manso's tardiness "as a pretext to discharge him again and for the same unlawful reasons it discharged him on June 19."[6] In addition, though the Board deemed Manso's discharge unlawful even assuming the validity of ABF's general disciplinary treatment of preferential casuals, it observed that ABF's disciplinary approach and lack of uniform rules for all dockworkers "raise[d] more questions than they resolve[d]." *Id.*, at 590. The Board ordered ABF to reinstate Manso with backpay. *Id.*, at 591.

The Court of Appeals enforced the Board's order. *Miera* v. *NLRB*, 982 F. 2d 441 (CA10 1992). Its review of the record revealed "abundant evidence of antiunion animus in ABF's conduct towards Manso," *id.*, at 446, including "ample evidence" that Manso's

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[5]304 N. L. R. B., at 590. The Board found that the record in this case unequivocally established that ABF did not treat Manso's dishonesty "in and of itself as an independent basis for discharge or any other disciplinary action." *Ibid.*

[6]*Id.*, at 591. The Board also noted that the supervisors' threats of retaliation and the earlier unlawful discharge under the verification policy provided "strong evidence" of unlawful motivation regarding Manso's third discharge. *Id.*, at 590.

third discharge was not for cause. *Ibid.* The court regarded as important the testimony in the record confirming that Manso would not have been discharged under ABF's new tardiness policy had he provided a legitimate excuse. *Ibid.* The court also rejected ABF's argument that awarding reinstatement and backpay to an employee who lied to his employer and to the ALJ violated public policy.[7] Noting that "Manso's original misrepresentation was made to his employer in an attempt to avoid being fired under a policy the application of which the Board found to be the result of antiunion animus," the court reasoned that the Board had wide discretion to ascertain what remedy best furthered the policies of the National Labor Relations Act (Act). *Id.*, at 447.

The question we granted certiorari to review is a narrow one.[8] We assume that the Board correctly found that ABF discharged Manso unlawfully in August 1989. We also assume, more importantly,

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[7]ABF's public policy argument relies on several decisions refusing to enforce reinstatement orders where the employee had engaged in serious misconduct. See, *e.g.*, *Precision Window Mfg.* v. *NLRB*, 963 F. 2d 1105, 1110 (CA8 1992) (employee lied about extent of union activities and threatened to kill supervisor); *NLRB* v. *Magnusen*, 523 F. 2d 643, 646 (CA9 1975) (employee padded time card and lied about it under oath); *NLRB* v. *Commonwealth Foods, Inc.*, 506 F. 2d 1065, 1068 (CA4 1974) (employees engaged in theft from employer); *NLRB* v. *Breitling*, 378 F. 2d 663, 664 (CA10 1967) (employee confessed to stealing from employer).

[8]We limited our grant of certiorari to the third question in the petition: "Does an employee forfeit the remedy of reinstatement with backpay after the Administrative Law Judge finds that he purposefully testified falsely during the administrative hearing?" Pet. for Cert. i.

that the Board did not abuse its discretion in ordering reinstatement even though Manso gave ABF a false reason for being late to work. We are concerned only with the ramifications of Manso's false testimony under oath in a formal proceeding before the ALJ. We recognize that the Board might have decided that such misconduct disqualified Manso from profiting from the proceeding, or it might even have adopted a flat rule precluding reinstatement when a former employee so testifies. As the case comes to us, however, the issue is not whether the Board *might* adopt such a rule, but whether it *must* do so.

False testimony in a formal proceeding is intolerable. We must neither reward nor condone such a "flagrant affront" to the truthseeking function of adversary proceedings. See *United States* v. *Mandujano*, 425 U. S. 564, 576–577 (1976). See also *United States* v. *Knox*, 396 U. S. 77 (1969); *Bryson* v. *United States*, 396 U. S. 64 (1969); *Dennis* v. *United States*, 384 U. S. 855 (1966); *Kay* v. *United States*, 303 U. S. 1 (1938); *United States* v. *Kapp*, 302 U. S. 214 (1937); *Glickstein* v. *United States*, 222 U. S. 139, 141–142 (1911). If knowingly exploited by a criminal prosecutor, such wrongdoing is so "inconsistent with the rudimentary demands of justice" that it can vitiate a judgment even after it has become final. *Mooney* v. *Holohan*, 294 U. S. 103, 112 (1935). In any proceeding, whether judicial or administrative, deliberate falsehoods "well may affect the dearest concerns of the parties before a tribunal," *United States* v. *Norris*, 300 U. S. 564, 574 (1937), and may put the factfinder and parties "to the disadvantage, hindrance, and delay of ultimately extracting the truth by cross examination, by extraneous investigation or other collateral means." *Ibid.* Perjury should be severely sanctioned in appropriate cases.

ABF submits that the false testimony of a former employee who was the victim of an unfair labor practice should always preclude him from winning

reinstatement with backpay. That contention, though not inconsistent with our appraisal of his misconduct, raises countervailing concerns. Most important is Congress' decision to delegate to the Board the primary responsibility for making remedial decisions that best effectuate the policies of the Act when it has substantiated an unfair labor practice. The Act expressly authorizes the Board "to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of [the Act]." 29 U. S. C. §160(c). Only in cases of discharge for cause does the statute restrict the Board's authority to order reinstatement.[9] This is not such a case.

When Congress expressly delegates to an administrative agency the authority to make specific policy determinations, courts must give the agency's decision controlling weight unless it is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron U. S. A. Inc*. v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844 (1984). Because this case involves that kind of express delegation, the Board's views merit the greatest deference. This has been our consistent appraisal of the Board's remedial authority throughout its long history of administering the Act.[10] As we explained over a half century ago:

"Because the relation of remedy to policy is

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[9]"No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause." 29 U. S. C. §160(c).

[10]See *Virginia Electric & Power Co.* v. *NLRB*, 319 U. S. 533, 539–540 (1943). We stated in *Virginia Electric* that such administrative determinations should stand "unless it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act." *Id.*, at 540.

> peculiarly a matter for administrative competence, courts must not enter the allowable area of the Board's discretion and must guard against the danger of sliding unconsciously from the narrow confines of law into the more spacious domain of policy." *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 194 (1941).

Notwithstanding our concern about the seriousness of Manso's ill-advised decision to repeat under oath his false excuse for tardiness, we cannot say that the Board's remedial order in this case was an abuse of its broad discretion or that it was obligated to adopt a rigid rule that would foreclose relief in all comparable cases. Nor can we fault the Board's conclusions that Manso's reason for being late to work was ultimately irrelevant to whether antiunion animus actually motivated his discharge and that ordering effective relief in a case of this character promotes a vital public interest.

Notably, the ALJ refused to credit the testimony of several ABF witnesses, see, *e.g.*, 304 N. L. R. B., at 598, and the Board affirmed those credibility findings, *id.*, at 585. The unfairness of sanctioning Manso while indirectly rewarding those witnesses' lack of candor is obvious. Moreover, the rule ABF advocates might force the Board to divert its attention from its primary mission and devote unnecessary time and energy to resolving collateral disputes about credibility. Its decision to rely on "other civil and criminal remedies" for false testimony, cf. *St. Mary's Honor Center* v. *Hicks*, 509 U. S. ___, ___ (1993) (slip op., at 18), rather than a categorical exception to the familiar remedy of reinstatement is well within its broad discretion.

The judgment of the Court of Appeals is affirmed.

It is so ordered.