



**BOARD OF CONTRACT APPEALS**

**2101 WILSON BOULEVARD, SUITE 600  
ARLINGTON VA 22201-3078  
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_____	)	December 2, 2022
	)	
ANGELA WILSON,	)	
Appellant	)	
	)	
v.	)	
	)	
UNITED STATES POSTAL SERVICE,	)	
Respondent	)	PSBCA No. 6825
_____	)	

APPEARANCE FOR APPELLANT: Angela Wilson

APPEARANCE FOR RESPONDENT: Micah Zomer, Esq.  
United States Postal Service Law Department

**OPINION OF THE BOARD**

This matter is before the Board following Angela Wilson’s appeal of the Postal Service’s decision to terminate her contract for default. A hearing was held to determine the propriety of that decision. For the reasons below, we deny the appeal and uphold the termination for default.

**FINDINGS OF FACT**

1. The Postal Service and Ms. Wilson were parties to a firm-fixed-price, mail delivery contract, HCR 305A8, with a performance period from March 1, 2018 to September 30, 2023 (AF 1 at 1; Tr vol. 1 at 20). The contract was operated out of the Blue Ridge, Georgia, Post Office and required Ms. Wilson to deliver mail along the route specified in the contract’s Statement of Work using a contractor-supplied vehicle (AF 1 at 16–18, 20).

2. The contract contemplated that the contractor and the contractor's employees would have access to postal facilities, information, and resources. The contractor was therefore required to get a clearance for anyone working on the contract, as specified in Management Instruction PO-530-2009-4, *Screening Highway Transportation Contractor Personnel*. (AF 1 at 34).

3. That Management Instruction provides that

- “[w]hile performing their contractual duties, suppliers, subcontractors, and their personnel may not transport in their vehicles individuals who do not have a security clearance.” (AF 12 at 121, § 123).
- “the supplier must identify to the administrative official all individuals who require access to Postal Service facilities or the mail or who have authority to drive.” (AF 12 at 122, § 13; see *also* § B.5 of the Statement of Work, AF 1 at 26 (containing a nearly identical provision)).
- “Transportation suppliers, suppliers’ personnel, and subcontractors’ personnel who transport mail or who are allowed access to Postal Service operational areas must receive nonsensitive clearances. Pending clearance, a temporary photo ID badge, PS Form 5139, Non-Postal Service Temporary Employee, allows such access. Once clearance is obtained, a photo ID badge, PS Form 5140, Non-Postal Service Contract Employee, allows access to mail and mail-processing facilities. (AF 12 at 121, § 122; see *also* § B.5 of the contract’s SOW, AF 1 at 26 (containing a nearly identical provision)).
- “Suppliers and their personnel must be re-screened at least once every four years” (AF 12 at 130, § 18).

4. The contract included the following clause about workplace violence:

The Postal Service has a Zero Tolerance Policy regarding workplace violence. Suppliers and their employees must conduct themselves in a professional and business-like manner, since poor conduct has a direct reflection on the Postal Service. Zero Tolerance means that we will not ignore any incident of verbal or physical action on the part of any supplier (or the supplier's employee) who could cause injury to another.

(AF 1 at 23).

5. On July 2, 2020, Ms. Wilson was delivering mail along her route (Tr. vol. 1 at 21–22). As he regularly did, Ms. Wilson’s husband was riding in the vehicle and helping her perform the contract even though he did not have a security clearance and had not been cleared by the Postal Service (Tr. vol. 1 at 21–22, 32, vol. 2 at 47). While they were delivering mail that day, the Wilsons believed a car was blocking a narrow road along the route (Tr. vol. 2 at 36). They got out of their vehicle and began arguing with the driver of that car over an incident that had occurred the day before (Tr. vol. 2 at 37). The driver was the adult daughter of a local resident who was visiting her parents (Tr. vol. 2 at 37, 39).

6. One of the customers captured a part of the incident on video. (AF 5 at 74–76, AF 7, and AF 8 at 84; Tr. vol. 1 at 41). The video showed Ms. Wilson yelling at the customers, saying, among other things, “You’re nasty; go back to Florida.” (AF 4 at 74; AF 7 at 84; Tr. vol. 1 at 67–68; vol. 2 at 8–9, 27–28). The video also showed Mr. Wilson moving toward the customers while threatening them. His threats included:

- “Bring your a\*\* over here.”
- “I need a good fighting.”
- “You come on motherf\*cker.”
- “I don’t take no crap from out-of-towners.”

- “I’m fixing to kick his a\*\*.”
- “I’ll knock your G\*ddamn head off.”

(AF 7 at 84, AF 5).

7. The customers involved in the incident reported the matter to the local postmaster, and the matter was eventually referred to the United States Postal Inspection Service for further review. The Inspection Service reviewed the video of the incident and interviewed Ms. Wilson. The Inspection Service then prepared a report describing the incident. (AF 5).

8. The Inspection Service report was sent to a Postal Service contracting officer for his review. After reviewing the video and the Inspection Service report, the contracting officer terminated Ms. Wilson’s contract for default. The contracting officer cited two reasons for the default: (1) violation of the contract’s zero-tolerance policy, and (2) Mr. Wilson’s unauthorized presence in the vehicle during contract performance. (AF 3).

### **DECISION**

The decision to terminate a contract for default is a drastic sanction that should be upheld only for good grounds and on solid evidence. *J.D. Hedin Constr. Co. v. United States*, 187 Ct. Cl. 45, 57, 408 F.2d 424, 431 (1969). The Postal Service thus bears the initial burden of proving that its decision to terminate the contract for default was justified. *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 765 (Fed. Cir. 1987). If the Postal Service meets that initial burden, the burden then shifts to the contractor to show an excusable cause for the default or to show that the Postal Service abused its discretion in terminating the contract. *JM Carranza Trucking Co. v. United States Postal Service*, PSBCA No. 6354, 14-1 BCA ¶ 35,776.

Here, the Postal Service based its decision to terminate the contract for default on two grounds: (1) Ms. Wilson and her husband's verbal harassment and threats to postal customers, which the Postal Service alleges breached the contract's zero-tolerance policy, and (2) Mr. Wilson's unauthorized presence in the vehicle with Ms. Wilson while she performed the contract.

The Board has held that evidence of disruptive behavior and threats are enough to uphold a termination for default under the zero-tolerance policy clause. *Peter A. Sobiecki d/b/a Roadmax*, PSBCA Nos. 4901, 4940, 04-1 BCA ¶¶ 32,600. In that case (and the ones it cites), the disruptive behavior and threats took place at a postal facility. Here, the offending behavior took place on a public road while Ms. Wilson performed her contract. But we do not believe that the clause is any less applicable to these facts. We hold that the zero-tolerance policy applied to Ms. Wilson, her vehicle, and her immediate surroundings as she performed the contract. It also applied to the words and actions of her husband, who, in the view of the customers, was essentially acting as her employee even though he was not authorized to be in the vehicle. In fact, Ms. Wilson conceded that she was responsible for his behavior and actions (Tr. vol. 2 at 47).

Given the substantial video evidence of the events of July 2, 2020, we hold that Ms. Wilson breached the terms of the contract. The Postal Service has therefore met its initial burden of proof, and the burden shifts to Ms. Wilson to provide an excuse or justification for that breach. To that end, Ms. Wilson argues that her and her husband's actions are excusable because they were provoked, on both July 2 and the day before during their encounters with the residents and guests on their route. Regardless of the truth of that allegation, the Wilsons' actions were outrageous and unprofessional and

cannot be excused under any circumstances. And of most relevance to this appeal, the Wilsons' actions breached the zero-tolerance clause of the contract.

Relatedly, Ms. Wilson alleges that the zero-tolerance clause does not apply to behavior directed at anyone who was not a resident of the street where the mail was being delivered. At best, this argument is frivolous, and it cannot justify any of the Wilsons' behavior. Nothing in the zero-tolerance clause can be read to exclude non-residents of Ms. Wilson's postal route from the terms of that clause. To read the clause otherwise would be to condone outrageous behavior by a Postal Service contractor during the performance of a contract just because someone did not live along the route. Even Ms. Wilson belatedly conceded that anyone she encountered while performing her route could be considered a "customer" (Tr. vol. 2 at 51). We therefore will not provide any relief from the termination for default just because one of the victims of the Wilsons' behavior may not have been a permanent resident on the contract route.

Ms. Wilson next argues that the termination for default should be overturned because her husband had been given authority to ride with her during performance of the contract. Because he was allegedly authorized to ride with her, Ms. Wilson therefore believes that the Postal Service's second basis for the default was not justified. This argument, however, fails under the unambiguous terms of the contract.

As discussed above, the contract incorporated Management Instruction PO-530-2009-4, *Screening Highway Transportation Contractor Personnel* by reference. That Management Instruction required someone in Mr. Wilson's position to get a clearance from the Postal Service before assisting Ms. Wilson with the contract. Here, the record establishes that Mr. Wilson never received any such clearance from the Postal Service.

His presence in the car with Ms. Wilson on July 2, 2020, therefore breached the contract. Thus, as an initial matter, the Postal Service has again met its burden of proof on this issue.

In response, Ms. Wilson alleges that she had been working for the Postal Service for 12 years as either a contractor or substitute driver. During that time, she alleges that her husband had regularly ridden with her during the performance of her duties. She also alleges that postal officials knew about this arrangement and never objected. She also alleges that her husband had been cleared to ride with her sometime between 2008 and 2010 by the then-postmaster. Finally, Ms. Wilson claims that she submitted the paperwork to get her husband cleared sometime around 2008 to 2010, but she never received a formal approval. Rather, she asserts that after she submitted that paperwork, a postal employee gave her a “thumbs up” and told her that “everything was fine” with her husband riding with her.

These arguments, however, ignore the terms of Ms. Wilson’s contract, which required her to screen (or re-screen, as applicable) her employees every four years. Thus, even if Mr. Wilson had been granted a clearance as late as 2010, he needed to be re-screened and granted a new clearance when this contract was awarded in 2018. And there is no credible evidence that Ms. Wilson ever tried to do that, let alone any evidence that a clearance was granted.

These facts therefore establish that Ms. Wilson’s decision to have her husband ride with her during performance of the contract breached the requirements of Management Instruction PO-530-2009-4. We therefore hold that the decision to terminate the contract on that basis was also justified.

**ORDER**

The appeal is denied. The decision to terminate the contract for default is upheld.



Alan R. Caramella  
Administrative Judge  
Chairman

I concur:



Diane M. Mego  
Administrative Judge  
Board Member

I concur:



Catherine Crow  
Administrative Judge  
Board Member