

OFFICE OF THE IMPARTIAL CHAIRMAN
321 WEST 44TH STREET, SUITE 400
NEW YORK, NY 10036
TEL: (212) 541-7212 FAX: (212) 541-9356

#2004-112
Salisbury Hotel
November 9, 2004
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EMPLOYER: Salisbury Hotel

#U04-353/ Jaime Castro, Houseman/EMERGENCY HEARING
REQUESTED BY THE NEW YORK HOTEL AND MOTEL TRADES
COUNCIL, AFL-CIO RE: Unjust discharge of Jaime Castro,
Houseman, for receiving "no match" letter from the Social Security
Administration. SPANISH INTERPRETER NEEDED.

Hearings held at the Office of the Impartial Chairman on September
9 and October 5, 2004.

APPEARANCES:

For the Employer:	Edward Oliva General Manager
Counsel for the Employer: By:	Kane Kessler PC Judith Stoll, Esq.
For the New York Hotel & Motel Trades Council, AFL-CIO: Counsel: By:	Pryor Cashman Sherman & Flynn, LLP Joseph Farelli, Esq.
For the Union:	Robert Deegan, Local 6

* * *

There is no dispute that the discharge of Jaime Castro ("Castro" or "Grievant") was not grounded on misconduct but, rather, on the fact that the Hotel had received a "no match" letter, the third such, from the Social Security Administration. Each side submitted a post-hearing brief on the central legal issues

* * *

A "No Match" letter from the Social Security Administration does not give an employer the right to take adverse action against an employee unless it has additional information clearly indicating that the employee's status is that of an illegal alien under law. While initially the Hotel exercised prudence by giving the employee a leave of absence to rectify any deficiencies presented by the No Match letter, it had no factual basis to assert that the Grievant was an illegal alien. It should be noted that Grievant was a pre-1987 employee and, thus, as

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the Chairman understands the law, was not obligated to complete Form I-9. Therefore, the Hotel did not even have information typically contained in a Form I-9 to use as a basis to claim Grievant's status was fraudulent or in error.

While the Chairman is sympathetic to the Hotel's concerns that Grievant's alleged illegal status would subject the Hotel to fines or penalties, and certainly its conduct cannot be said to be arbitrary, capricious or malicious, there is simply no basis to conclude that the Hotel had actual or constructive knowledge that the Grievant's status would place the Hotel in jeopardy.

Ultimately, the Chairman is constrained to assess whether, under the IWA, the Hotel had "just cause" for Grievant's termination. I find that it did not. The Chairman directs that the Grievant be reinstated with full back pay and benefits, subject to mitigation, and with unbroken seniority.

It is so ordered.

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Dated: November 9, 2004
New York, New York

ELLIOTT SHRIFTMAN, under the penalties of perjury duly affirms
that he is the arbitrator described herein, and that he executed the
foregoing instrument.



IMPARTIAL CHAIRMAN