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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

TERRY L. CHEATHAM,

Plaintiff and Appellant,

v.

LOS ANGELES UNIFIED
SCHOOL DISTRICT,

Respondent.

B271344

(Los Angeles County
Super. Ct. Nos. BS128288,
BS128822)

APPEAL from a judgment of the Superior Court of Los Angeles
County, James C. Chalfant, Judge. Affirmed.

Law Office of Christie E. Webb and Christie Ellen Webb for
Plaintiff and Appellant.

Liebert Cassidy Whitmore, Mary L. Dowell and Jeffery E.
Stockley for Respondent Los Angeles Unified School District.

This employment dispute between appellant Terry L. Cheathem and respondent Los Angeles Unified School District (LAUSD) is before us for the second time. After appellant was terminated from her employment as an assistant general counsel for LAUSD, she appealed her termination to the Los Angeles Unified School District Personnel Commission (Commission). The Commission found she was not given sufficient notice of her performance deficiencies and ordered her reinstatement, but with no back pay. Appellant filed a petition for writ of administrative mandamus under Code of Civil Procedure section 1094.5, seeking back pay and benefits. LAUSD also filed a petition, seeking to reverse the reinstatement. The trial court granted LAUSD's petition, and appellant appealed. We reversed the trial court's reversal of the Commission's decision and remanded for the trial court to reinstate the Commission's decision and to adjudicate appellant's petition as to back pay. Following remand, the Commission awarded appellant \$818,751 in back pay, offset by \$118,732.34 for her earnings in alternative employment at the law firm of Shaw, Jacobsmyer, Crain and Claffey (Shaw) from 2011 to 2013. Appellant now challenges the trial court's entry of an amended judgment, which was based on the Commission's decision. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant's First Appeal

Appellant was hired by LAUSD as an assistant general counsel in 2005 and was terminated from her position in November 2007 for

various performance issues. She appealed her termination to the Commission, which found that LAUSD failed to provide progressive discipline because appellant had not been given an opportunity to improve her performance. The Commission ordered her reinstated, but with no back pay because of her poor performance, and ordered that she be placed on a plan for improvement.

In 2010, LAUSD filed a petition for a writ of administrative mandamus, seeking to overturn the Commission's order that appellant be reinstated. Appellant also filed a petition, seeking an order to reinstate her with full back pay and restoration of seniority, and without being placed on a plan for improvement. The trial court granted LAUSD's petition, overturning the Commission's reinstatement order. In appellant's first appeal, we agreed with the Commission that appellant did not receive progressive discipline and thus reversed and remanded for the trial court to consider appellant's writ petition.

Trial Court Proceedings Upon Remand

On February 5, 2013, the trial court ordered appellant reinstated to her prior position. She returned to "paid status" on February 22, 2013.

The trial court held a hearing on appellant's petition for writ of administrative mandamus on July 2, 2013. The court granted appellant's petition in part, holding that the Commission erred in denying appellant back pay and benefits, and remanded to the Commission for a hearing on back pay and benefits. The court noted

that the issue whether an employee mitigated damages was an affirmative defense that LAUSD had not raised before the Commission. However, because the issue of the amount of back pay was not previously considered by the Commission, the trial court stated that when the Commission decided the back pay issue, it could consider whether LAUSD failed to plead the defense and “whether to permit it to amend its pleadings to do so.”

Commission Hearing and Decision

On June 12, 2014, a hearing was held before a Commission hearing officer, Paul Crost. Crost concluded that the mitigation of damages issue was properly before the Commission because, otherwise, the trial court simply could have decided the amount of the back pay award and remand to the Commission would not have been necessary.

Joanne Latham, a vocational consultant, testified on behalf of LAUSD about the mitigation of damages issue. Latham testified about appellant’s employability and the efforts that appellant should have made in conducting a job search and concluded that appellant did not make enough of an effort. Latham discussed the amount she believed appellant could have been making after her termination and the bases for her analysis.

Appellant testified about her job search, the jobs she applied for, and her lack of success despite several interviews. She did workers’ compensation work for Shaw, initially on a contract basis and later as an associate attorney. Her job with Shaw required significantly more

driving than her former job with LAUSD, which was 12 miles from her home. Appellant testified that she suffered from panic attacks when she drove on the freeway and needed to take antianxiety medication when she did so.

Appellant presented expert testimony by Stephanie Rizzardi regarding her economic losses. Rizzardi opined that appellant's termination resulted in a total loss of \$1,582,495, which included past and future losses.

Following the hearing, Crost concluded that LAUSD did not establish that appellant failed to mitigate her damages because appellant's work as an attorney for Shaw was not substantially similar to her prior work. Crost awarded appellant back pay of \$818,751, reduced by the amount of salary attributable to a period of time when her bar license was inactive. Crost concluded that appellant was not entitled to recover the value of medical, dental, vision, or insurance premiums that would have been paid by LAUSD. He awarded compound interest at the rate of 7 percent on all back pay until it was paid in full.

The Commission adopted the hearing officer's findings of fact and conclusions of law, with two changes. First, the Commission offset appellant's actual earnings as an attorney with Shaw against her back pay, reducing her award by \$118,732.34. The Commission reasoned that the offset was necessary in order "to avoid a windfall and a gift of public funds." In deciding to reduce appellant's award, the Commission rejected appellant's request to rely on the holding of *Villacorta v. Cemex*

Cement, Inc. (2013) 221 Cal.App.4th 1425 (*Villacorta*), “that actual wages earned by an employee may only be deducted from a back pay award if the work from which the wages were earned was not inferior or different from that previously performed by the employee.” Instead, the Commission relied on *Unzueta v. Ocean View School Dist.* (1992) 6 Cal.App.4th 1689 (*Unzueta*), which “required a reduction in back pay where full compensation would make the ‘employee more than whole’ and provide an impermissible ‘windfall’ to the employee.” Second, the Commission concluded that simple interest, not compound interest, was appropriate and thus ordered LAUSD to pay appellant simple interest on the back pay amount at a rate of 7 percent until the amount was paid in full.

Appellant’s Motion for an Order Compelling Compliance by the Commission

On June 1, 2015, appellant filed a motion in the trial court for an order compelling the Commission to issue an order “in full compliance with all applicable California laws.” She asserted that the Commission abused its discretion on three grounds: (1) LAUSD waived the mitigation issue by not pleading it earlier, and it did not establish that appellant failed to mitigate her damages; (2) back pay damages cannot be reduced by wages from a different and inferior job; and (3) the order violated California statutes regarding prejudgment interest on back pay awards and post-judgment interest on unpaid portions of monetary damages.

The trial court granted the motion in part and denied it in all other respects. The court agreed with the Commission that appellant would receive a windfall if her back pay award was not offset by her actual earnings from Shaw, following *Unzueta* rather than *Villacorta*. The court concluded that appellant's position at Shaw was comparable to her work for LAUSD and thus found that the Commission did not abuse its discretion in reducing appellant's award by the amount of her earnings from Shaw. The court also agreed with the Commission that simple interest at the rate of 7 percent was appropriate, although it agreed with appellant that "the interest must be calculated from the time her wages were due." The court noted that LAUSD had paid appellant "\$738,439.30 in gross back pay, and \$301,655.91 after deductions" as of August 4, 2015. However, the court stated that it had "no idea whether this is correct, and the parties shall meet and confer, hiring an actuary if necessary, to ascertain the correct amount." The court gave the parties 60 days to prepare an amended judgment. After the parties were unable to agree on the language, they filed separate proposed amended judgments. The trial court ordered supplemental briefing on the remaining disputed issues.

LAUSD filed a declaration from Rick Duran, its payroll administration manager, stating that the California Public Employees' Retirement System (CalPERS) would not accept LAUSD's contributions to appellant's CalPERS account because she "had not performed creditable services during her long absence from the District." LAUSD accordingly was holding the retirement contributions in trust for

appellant and had asked appellant for instructions regarding the funds, but she had not replied.

In her supplemental brief, appellant asserted that CalPERS had told her she could purchase service credits, and that she was entitled to all lost benefits, including the loss of growth in her CalPERS account. In support, she submitted a declaration stating that she had called CalPERS and explained her situation to an unnamed representative. This representative told appellant that she could purchase her lost service credits by characterizing her termination as a layoff. Appellant stated that she submitted a form to purchase service credits to LAUSD in October 2015, but Duran refused to complete the employer portion of the form “because there was no ‘layoff’ for him to certify.”

LAUSD filed another declaration by Duran, asserting that LAUSD had paid appellant all back pay and interest and restored her correct seniority date and leave balances. In response to appellant’s contention regarding her retirement benefits, LAUSD attached two letters from CalPERS, both dated December 9, 2015, which it had forwarded to appellant. The first was from CalPERS to Duran, stating that the back pay award “does not qualify as compensation earnable,” and that LAUSD “is correct in not reporting this settlement award to CalPERS for purposes of calculating [appellant’s] retirement benefit.” The second was from CalPERS to appellant, explaining that the lump sum payment she received from LAUSD could not be used to calculate her retirement benefit under the Public Employees’ Retirement Law because it was not for services rendered but to settle the dispute

between appellant and LAUSD. LAUSD reiterated its request that appellant give instructions for the disbursement of the retirement contributions it was holding for her.

The trial court granted appellant's petition in part, entering an amended judgment that awarded appellant \$690,130.10 in back pay; \$1,915.65 in costs; interest in the amount of \$257,217.77, "representing prejudgment interest at the rate of 7% simple interest from the date each pay check was missed until the date the back pay was paid on July 17, 2015, offset by \$48,309.11, representing the interest payments previously made" to appellant; 288 hours of vacation time; and postjudgment interest at the rate of 7 percent per year. The court denied appellant's petition in all other respects.

DISCUSSION

I. *Standard of Review*

"Termination of a nonprobationary public employee substantially affects that employee's fundamental vested right in employment. [Citations.] Accordingly, when ruling on a petition for a writ of administrative mandamus seeking review of procedures that resulted in the employee's termination, the trial court examines the administrative record and exercises its independent judgment to determine if the weight of the evidence supports the findings upon which the agency's discipline is based or if errors of law were committed by the administrative tribunal. [Citations.]" (*Bautista v. County of Los Angeles* (2010) 190 Cal.App.4th 869, 874–875.)

“The independent judgment test required the trial court to not only examine the administrative record for errors of law, but also exercise its independent judgment upon the evidence in a limited trial de novo. [Citation.] The trial court was permitted to draw its own reasonable inferences from the evidence and make its own credibility determinations. [Citation.] At the same time, it had to afford a strong presumption of correctness to the administrative findings and require the challenging party to demonstrate that such findings were contrary to the weight of the evidence. [Citation.]” (*Candari v. Los Angeles Unified School Dist.* (2011) 193 Cal.App.4th 402, 407 (*Candari*)). On appeal, we “review the record and determine whether the *trial court’s* findings (not the administrative agency findings) are supported by substantial evidence. [Citations.] We resolve all evidentiary conflicts and draw all legitimate and reasonable inferences in favor of the trial court’s decision. [Citation.]”¹ (*Id.* at pp. 407-408.)

II. *Mitigation of Damages*

Appellant contends the Commission improperly allowed LAUSD to introduce evidence of failure to mitigate damages because LAUSD waived the issue. She further contends that LAUSD failed to meet its

¹ Appellant asserts that de novo review applies on appeal, to the extent pure questions of law were decided on disputed facts, citing *Anserv Ins. Services, Inc. v. Kelso* (2000) 83 Cal.App.4th 197, 204. However, that case actually states that de novo review applies on appeal when “pure questions of law (e.g., jurisdiction) were decided at the trial court upon *undisputed* facts.” (*Ibid.*, italics added.)

burden of establishing that her employment at Shaw was comparable or substantially similar to her prior employment.

A. *Waiver*

In response to appellant's contention that LAUSD waived the failure to mitigate issue, the trial court pointed out that its order remanding for the Commission to determine back pay and benefits "specifically stated that the Commission, in its discretion, could permit the District to assert affirmative defenses." The trial court properly concluded that the Commission did not abuse its discretion in allowing LAUSD to present evidence regarding mitigation of damages.

Because the Commission originally concluded that appellant was not entitled to back pay, the amount of back pay and benefits to be awarded to appellant had never been addressed by the Commission. The Commission could not merely award back pay and benefits without considering any evidence regarding the amount. The Commission needed to determine the proper amount of back pay and benefits to award appellant, a determination that necessarily included the question of mitigation. Thus, the trial court properly allowed LAUSD to present evidence regarding mitigation of damages. (See *Bakersfield Elementary Teachers Assn. v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1303 [permitting the school district "to conduct limited discovery with respect to its burden to prove mitigation of damages," explaining that "[t]his is not a situation where the District,

having already been found to be liable for damages, failed to meet its burden; the damages phase of the proceeding has yet to occur.”].)

B. *Evidence of Appellant’s Mitigation of Damages*

Appellant contends that the decision to reduce her award by the amount she earned at Shaw is not supported by substantial evidence. We have reviewed the record and conclude there is substantial evidence to support the trial court’s decision.

“[B]oth public and private employees faced with a wrongful discharge have a legal duty to mitigate damages while pursuing remedies against their former employer. [Citation.] . . . [¶] [T]he burden to prove failure to mitigate damages lies squarely with the employer: ‘The general rule is that the measure of recovery by a wrongfully discharged employee is the amount of salary agreed upon for the period of service, less the amount which the employer affirmatively proves the employee has earned or with reasonable effort might have earned from other employment. [Citations.]’ (*Candari, supra*, 193 Cal.App.4th at p. 409, italics omitted, quoting *Parker v. Twentieth Century–Fox Film Corp.* (1970) 3 Cal.3d 176 (*Parker*).)

In *Parker*, the California Supreme Court addressed whether summary judgment was properly granted in favor of the plaintiff in a breach of contract suit seeking the recovery of the full amount of agreed upon compensation in an employment contract, despite the plaintiff’s rejection of the defendant’s substitute offer of employment. The court affirmed, concluding that the substitute employment offered by the

defendant “was of employment both different and inferior.” (*Parker, supra*, 3 Cal.3d at p. 183; see also *Candari, supra*, 193 Cal.App.4th at p. 411 [applying *Parker* and holding that the defendant school district failed to meet its burden of showing there were comparable or substantially similar positions not sought by the discharged employee].)

Parker and *Candari* involved “*projected earnings* from other employment opportunities *not* sought or accepted by the discharged employee.” (*Parker, supra*, 3 Cal.3d at p. 182, italics added.) By contrast, the issue here is the mitigation of damages by *actual* income earned by appellant.

Appellant contends the trial court erred in failing to follow *Villacorta, supra*, 221 Cal.App.4th 1425, which extended *Parker*’s holding (that the employment *not* sought or accepted must not be inferior) to actual income earned from substitute employment by a discharged employee. The plaintiff in *Villacorta* accepted substitute employment after being laid off by the defendant. The new job paid more but was far from the plaintiff’s home and thus required him to rent a room and be away from his family five days a week. The jury awarded him lost wages from the time he lost his job through the time of trial, with no deduction for the wages he earned from the new job. The trial court denied the defendant’s motion for judgment notwithstanding the verdict. On appeal, the court held that “[w]ages *actually earned* from an inferior job may not be used to mitigate damages because if they were used then it would result ‘in senselessly penalizing an employee who, either because of an honest desire to work

or a lack of financial resources, is willing to take whatever employment he can find.’ [Citation.]”² (*Id.* at p. 1432, italics added.) The court reasoned that “a jury could reasonably conclude the [substitute] job . . . was inferior to the [former] job . . . because of the burden placed on Villacorta by the location of the job. The burden included not seeing his family during workdays and having to pay for a second residence.” (*Ibid.*)

² The court in *Villacorta* did not address the difference between projected income and actual income earned by a plaintiff, instead merely citing *Parker, Rabago-Alvarez v. Dart Industries, Inc.* (1976) 55 Cal.App.3d 91 (*Rabago-Alvarez*) and *Mize-Kurzman v. Marin Community College Dist.* (2012) 202 Cal.App.4th 832 (*Mize-Kurzman*) to support its conclusion. However, none of the cited cases supports the holding that actual income earned from an inferior job cannot be used to mitigate damages.

The plaintiff in *Rabago-Alvarez* was unable to obtain employment comparable to her sales position with the defendant employer. She was able to obtain part-time work, but in an inferior position and at a salary much lower than she had been paid by the defendant. The plaintiff conceded that the trial court was entitled to deduct her actual earnings from her inferior work, but she asserted that by accepting such employment she did not waive her right to decline other inferior employment opportunities. On appeal, the court did not address the offset from her actual earnings but concluded only that “the trial court should not have deducted from plaintiff’s recovery against defendant the amount that the court found she *might have* earned in employment which was substantially inferior to her position with defendant.” (*Rabago-Alvarez, supra*, 55 Cal.App.3d at p. 99, italics added.) *Mize-Kurzman* held that the trial court erred in allowing evidence of the plaintiff’s retirement benefits to be introduced on the issue of mitigation in a whistleblower action, even though the plaintiff had not actually received any benefits. (See *Mize-Kurzman, supra*, 202 Cal.App.4th at p. 877 [“It seems to us to make little sense to allow introduction into evidence of retirement benefits that plaintiff never received on the issue of mitigation where such evidence would have been precluded under the collateral source rule had she actually received the benefits.”].) The court did not address the offset of actual wages earned.

The trial court here stated that it would follow *Unzueta*, *supra*, 6 Cal.App.4th 1689, instead of *Villacorta*. In *Unzueta*, the appellate court affirmed the trial court’s award of back pay to a teacher who had been suspended by the school district, but held that the amount should have been offset by his earnings during the suspension period. (*Id.* at p. 1693.) The court did not discuss the type of employment the teacher held while suspended, merely describing it as “other employment.” (*Id.* at p. 1700.) As pertinent here, the court reasoned that awarding the teacher the full amount of back pay “would make him more than whole” and thus constitute “a windfall.” (*Id.* at p. 1701.)

The parties disagree about whether the trial court properly relied on *Unzueta* rather than *Villacorta* in affirming the offset of appellant’s back pay by her earnings from Shaw. Appellant contends the trial court erred in relying on *Unzueta*, which offset the award of back pay without considering whether the other employment was comparable. We believe the trial court properly followed *Unzueta*’s reasoning that the award must be offset in order to avoid giving the employee a windfall. (See *Mass v. Board of Education* (1964) 61 Cal.2d 612, 627 [“The cases have long held that the obligation to reimburse the teacher for the amount of salary wrongfully withheld may be mitigated by deducting earnings from other employment.”]; *Davis v. Los Angeles Unified School Dist. Personnel Com.* (2007) 152 Cal.App.4th 1122, 1133 (*Davis*) [“In considering an award of back pay, courts must take care not to grant the employee a windfall.”]; *Rabago–Alvarez*, *supra*, 55 Cal.App.3d at p. 98 [plaintiff conceded “the trial court was entitled to deduct her actual

earnings” from an inferior job].) Regardless of whether *Unzueta* or *Villacorta* is the correct approach, the court here found that appellant’s work at Shaw was comparable to, not inferior to, her work for LAUSD and thus implicitly followed *Villacorta*. The question on appeal is whether this finding is supported by substantial evidence.

In finding that appellant’s position with Shaw was comparable to her position with LAUSD, the trial court reasoned that she “acted as an attorney in both positions, and performed the duties of an attorney in both jobs, including appearing for depositions and in court.” The court acknowledged that appellant’s work for Shaw paid less, required more driving, and did not have comparable benefits. However, the court reasoned that appellant “is parsing the issue of a comparable job too closely. The issue is not whether she preferred her job at the District; the issue is whether the job was comparable or instead was menial or different in kind.” The court also acknowledged appellant’s argument that some of her work for Shaw did not require her to be a lawyer, but noted that LAUSD pointed out that some of the work she did there also did not require her to be a lawyer. The court concluded that, by appearing before the workers’ compensation appeals board and taking depositions, appellant “was doing attorney work,” which constituted “comparable employment.”

The trial court’s conclusion is supported by substantial evidence. Appellant’s job title at Shaw was “associate attorney,” and she was eligible to practice law when Shaw hired her. In her work for Shaw, she appeared before workers’ compensation appeals boards and defended

and took depositions. Although appellant contends that this work did not require that she be an attorney, it was reasonable for the court to conclude that appearing on behalf of clients before the appeals boards and taking depositions is “attorney work.”

Appellant argues that, similar to *Villacorta*, her job with Shaw was inferior to her job with LAUSD because a law license was not required for appearances before the workers’ compensation appeals board; she was required to drive long distances without reimbursement; she earned less and did not have set hours; and her medical and retirement benefits were inferior. However, the fact that the jury in *Villacorta* “could reasonably conclude” that the plaintiff’s new job was inferior to his former job does not mean the court’s conclusion here is unreasonable. (*Villacorta, supra*, 221 Cal.App.4th at p. 1432.) On appeal, “[w]e resolve all evidentiary conflicts and draw all legitimate and reasonable inferences in favor of the trial court’s decision.

[Citation.] ‘Where the evidence supports more than one reasonable inference, we are not at liberty to substitute our deductions for those of the trial court.’ [Citation.]” (*Candari, supra*, 193 Cal.App.4th at p. 408.) The trial court reasonably could infer that appellant’s work as an associate attorney for Shaw was comparable to her work for LAUSD. (See *Currieri v. City of Roseville* (1975) 50 Cal.App.3d 499, 507 [reasoning that, although “there was some testimony to indicate that the [new] position was not comparable or substantially similar to the [former] position, . . . this only created a conflict in the evidence which the trier of fact properly resolved.”].)

Moreover, we agree with the trial court that where an employee receives wages from other employment, “that amount must be offset from the back pay to avoid a windfall.” As the court in *Davis* explained: “Back pay serves to make an employee whole for the employer’s wrongdoing. [Citations.] An award should ‘give [the employee] what he would have earned with the employer less any net earnings during the time [between] his wrongful discharge and reinstatement.’ [Citation.] [¶] The remedy should ‘return[] the [employee] to the financial position he would have been in had the unlawful [conduct] not occurred. . . . [T]he offending employer is made responsible only for losses suffered by the [employee] as a result of [its misconduct]. . . . To hold [otherwise] renders the back pay obligation punitive, and abuses the intent of the remedy. It is manifest that . . . back pay [is] compensatory and remedial in purpose, not punitive.’ [Citation.]” (*Davis, supra*, 152 Cal.App.4th at p. 1133.) Hence, *Davis* concluded that “[i]n considering an award of backpay, courts must take care not to grant the employee a windfall. [Citations.]” (*Ibid.*; see *Unzueta, supra*, 6 Cal.App.4th at p. 1701 [explaining that back pay awards “are designed to make the employee whole,” and that awarding the full amount, without offset for earnings in other employment, “would make him more than whole”]; *MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1091 [declining an interpretation of a statute that would “require employers to give ‘back pay’ to employees who have suffered no loss of pay at all,” explaining that “California courts are justifiably reluctant to construe statutes to confer a windfall”]; *Currieri*

v. City of Roseville (1970) 4 Cal.App.3d 997, 1003 [former employees conceded “from any back payments due there must be deducted [their] earnings from other sources”].) The trial court’s findings are supported by substantial evidence.

III. *Retirement and Vacation Benefits*

Appellant contends the trial court erred in failing to order the restoration of retirement benefits, vacation hours, seniority and service credits. The trial court did not address the issues of “social security, vacation benefits, sick leave, unemployment insurance, [and] Medicare,” stating that appellant had waived the issues by failing to raise them earlier to the Commission or the court. The court therefore did not specifically address these issues in its tentative decision before entering the amended judgment. Nonetheless, the amounts ordered in the amended judgment are supported by substantial evidence.

Appellant’s argument regarding her retirement benefits is based on her declaration that someone at CalPERS told her over the phone that she could purchase her lost service credits by characterizing her termination as a layoff. Not only does appellant fail to identify the CalPERS representative who told her this, but her assertion is contradicted by letters in the record from CalPERS to LAUSD and to appellant, indicating CalPERS’ position that it would not credit the time lost. LAUSD asserted that it was holding the past contributions in trust and offered to place them in an alternative retirement account, but it was awaiting instructions from appellant regarding the funds.

The trial court ordered the award of an additional 288 hours of vacation time, the maximum vacation leave accrual amount allowed under Commission rules. Appellant acknowledges that this is the maximum allowance but argues that she should have been allowed to seek an exception to the rule. As the trial court reasoned, LAUSD was not required to waive the maximum allowance. Appellant cites no authority to support her position, and we find it unmeritorious.

IV. *Prejudgment Interest*

Appellant challenges the award of 7 percent simple interest, rather than 10 percent prejudgment interest. She cites the following provision from Civil Code section 3287: “A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt.” (Civ. Code, § 3287, subd. (a).) However, appellant does not explain how the trial court’s decision violated this provision. The court agreed with appellant’s contention that “the interest must be calculated from the time her wages were due,” and the amended judgment entered by the court reflects this. The court ordered “prejudgment interest at the rate of 7% simple interest *from the date each pay check was missed* until the date the back pay was paid on July 17, 2015.” (Italics added.)

Appellant also relies on the following provision of the Labor Code: “In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.” (Lab. Code, § 218.6.) The trial court reasoned that Labor Code section 218.6 did not apply because appellant’s “mandamus action was for reinstatement to her employment, not for nonpayment of wages.” The other statute on which appellant relied, Civil Code section 3289, was inapplicable because that statute addresses the interest rate following a breach of contract. Appellant does not cite any authority to contradict these findings. Under the plain language of Labor Code section 218.6 and Civil Code section 3289, neither statute applies here.

Appellant resorts to arguing generally that she is entitled to interest from the date the salary accrued, prejudgment interest is mandated, and that LAUSD should not be relieved of its obligation to pay prejudgment interest. However, as stated above, the trial court did order the interest to be “calculated from the time her wages were due.” LAUSD has not been relieved of its obligation to pay prejudgment interest. Appellant takes issue only with the rate of interest, but she has provided no authority to establish that the trial court’s award of 7 percent simple interest was an abuse of discretion.

V. *Compensation for Income Tax Liability*

Appellant contends that the Commission should have awarded her compensation for her excess income tax liability. The trial court rejected this argument, reasoning that appellant had provided no authority for her claim and relied only on a labor discrimination case, which was not binding precedent.

On appeal, appellant again relies on *Latino Express, Inc.*, 359 NLRB No. 44 (2012) to argue that she should have been compensated for excess federal and state income tax liability. The trial court properly concluded that the decisions of the National Labor Relations Board are not binding on the Commission or this court. Appellant has cited no other authority to support her claim. (See *Davis, supra*, 152 Cal.App.4th at p. 1141 [finding the claim for relief such as reimbursement for taxes and penalties waived where the plaintiff, an employee of LAUSD, “merely asserted that he should be made whole” without citing “any pertinent authority that would require the Commission to award any of the specific remedies he was denied”].)

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DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.