

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

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IN THE MATTER OF: :
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Seaton Motor Company, LLC :
t/a Red Hen : Protest
1822 1th Street, NW : Hearing
Retailer CR : (Status)
License No. 90832 :
ANC 5E :
Case No. 13-PRO-00086 :
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September 19, 2013

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:
RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member

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P-R-O-C-E-E-D-I-N-G-S

1:32 p.m.

CHAIRPERSON MILLER: Okay. Well, it's 1:32. So I'm going to call the case. And we can reflect on the record who is here now for the start of the hearing.

This is Case Number 13-PRO-00086, Red Hen, located at 1822 First Street, NW, License Number 90832 in ANC 5E. And this is a renewal application.

All right, would you introduce yourselves for the record?

MR. FONSECA: Michael Fonseca on behalf of the Licensee.

MR. ZUTANT: Jonathan Paul Sebastian Zutant, owner of the Red Hen.

CHAIRPERSON MILLER: Okay. My understanding is that we have some Protestants in this case who were given conditional standing at roll call. And that conditional standing was based on their producing in person the four other members of the group of

1 five.

2 And they're not here right now. I
3 understand they were sent a letter June 6th,
4 2012, informing them to appear in person at
5 the Roll Call Hearing and that the Roll Call
6 Hearing Protestant was instructed to bring
7 four more to make up a group of five status.

8 And that's not on the record as
9 having happened. So then the agency, on June
10 19th, 2013, they informed the Protestant that
11 failure to appear would subject the
12 application or protest to dismissal at the
13 discretion of the Board.

14 And then most recently, September
15 13th, our agency sent a letter to Dr. Holiday
16 that she had been granted conditional standing
17 on June 17th, 2013, and that four more people
18 must appear at the protest on September 19,
19 2013.

20 And it's only four minutes late,
21 but as of this point they're not here. Or is
22 anybody in the group of five here? Okay. So

1 they are not here.

2 MR. ALBERTI: The Red Hen, ma'am?
3 We're here for Red Hen?

4 CHAIRPERSON MILLER: Red Hen?

5 MR. ALBERTI: And you are here for
6 that case?

7 MS. BURNS: Yes.

8 CHAIRPERSON MILLER: You are here?

9 MR. ALBERTI: And what's your
10 purpose with respect to that hearing.

11 CHAIRPERSON MILLER: Can you come
12 to the microphone?

13 MR. ALBERTI: Are you here to
14 appear on behalf of the Protestants or on
15 behalf of the Licensee?

16 MS. BURNS: Protestants.

17 MR. ALBERTI: Pardon?

18 MS. BURNS: Protestants.

19 MR. ALBERTI: Protestants, so come
20 to the table then.

21 CHAIRPERSON MILLER: Come take a
22 seat at the table. Is there anybody else here

1 with you that you know in the group that
2 didn't hear me say come forward?

3 MR. ALBERTI: Come over here and
4 introduce yourself please.

5 (Off the record comments)

6 CHAIRPERSON MILLER: Could you
7 introduce yourself for the record?

8 MS. BURNS: My name is Sharon
9 Burns.

10 CHAIRPERSON MILLER: Sharon what?

11 MS. BURNS: Burns, B-U-R-N-S.

12 CHAIRPERSON MILLER: Okay. Are
13 you a member of the original group of five
14 that filed the protest?

15 MS. BURNS: No. I was an
16 extension on Dr. Holiday's protest. She filed
17 my name last week.

18 CHAIRPERSON MILLER: Okay. So you
19 didn't file a protest originally with the
20 group of five?

21 MS. BURNS: No.

22 CHAIRPERSON MILLER: Okay. So

1 you're not a Protestant, really. Because it
2 starts at that point. But do you know if Ms.
3 Holiday or others are on their way?

4 MS. BURNS: Yes, ma'am, they are.

5 CHAIRPERSON MILLER: They're on
6 their way, okay.

7 MS. BURNS: Yes, ma'am. I got a
8 ride up. That's why I wasn't so long.

9 CHAIRPERSON MILLER: Okay, all
10 right. Do you know when they should be here?

11 MS. BURNS: Well, I can go outside
12 and call them to find out.

13 CHAIRPERSON MILLER: Okay, that
14 would be great, thank you.

15 MS. BURNS: Yes.

16 MR. ALBERTI: Ms. Miller, can we
17 set a time limit as to when we'll allow them
18 to appear. It is now 1:36. I think in
19 fairness to the Licensee we should set that
20 benchmark and proceed as appropriate at that
21 time.

22 CHAIRPERSON MILLER: Well, I guess

1 I would say I just want to hear what she says.
2 Because if she says she'll be here at 2
3 o'clock and I set a benchmark for 10 of 2:00,
4 I don't know. So if you don't mind.

5 We're not going to sit here all
6 day waiting for them to come. And I may end
7 up re-reading what I had read.

8 But the point is that they only
9 have conditional standing at this point. And
10 we were going to initially see if all five are
11 here for the hearing to be granted standing
12 for there even to be a hearing.

13 (Off the record comments)

14 (Pause)

15 CHAIRPERSON MILLER: Good
16 afternoon.

17 MS. HOLIDAY: Good afternoon.
18 When you're ready, could identify yourself for
19 the record. This is the Red Hen case.

20 MS. HOLIDAY: My name is Bertha
21 Holiday. I'm designated representative for
22 the neighbors of the Unit Block of T Street,

1 NW.

2 CHAIRPERSON MILLER: Okay. So, I'm
3 going to repeat myself a little bit. I
4 started to give a little bit of a chronology
5 here on this case. But in essence, you are at
6 least a member of the party of five for the
7 protest in this case.

8 And I understand that your party
9 was given conditional standing, because our
10 laws and rules require that for a party of
11 five all five individuals must appear either
12 at the Roll Call or the Status Hearing. And
13 the last step would be the protest, but to get
14 standing to protest.

15 And my understanding is that you
16 are the only one of the Roll Call in your
17 party and that there were letters dated June
18 6th, 2012, informing the Protestants to appear
19 in person at the Roll Call Hearing and
20 instructing that -- after that there was an
21 instruction that you needed to bring the other
22 four to the status.

1 And there was a letter sent to the
2 Protestants that on June 19th, 2013, that
3 failure to appear will subject the application
4 of the protest to dismissal at the discretion
5 of the Board.

6 We don't have any record of all
7 five appearing at the status conference. And
8 my records show that we wanted to give you
9 every opportunity still.

10 So there was an email and a letter
11 dated September 13th notifying you that you
12 had been granted conditional standing on June
13 17th, 2013, and that four more people needed
14 to appear at the protest hearing today.

15 So I'm glad you're here. And now
16 I need to check with you about the other four.

17 MS. HOLIDAY: Okay. Well, I do
18 have two witnesses here. But I do not have
19 the other four petition signers. The reason
20 was primarily due to the change of date in the
21 hearing.

22 We have been sending emails and

1 advertising this hearing ever since the Status
2 Hearing. And we did have people lined up for
3 that hearing.

4 That hearing was scheduled for
5 yesterday, September 18th, at 5:00 p.m. And
6 we had more than five people who could come on
7 that date at that time.

8 I did not receive notification of
9 the change. I believe the notification was
10 dated the 12th. I didn't actually see it on
11 my email until the next day, the 13th.

12 So these people just really could
13 not make the change. Those who had kids
14 couldn't find babysitters in the middle of the
15 day. Those who were working were working all
16 over the place.

17 I just received a text message from
18 a guy who was trying to come here, but he
19 works in Owens Mills and couldn't get off from
20 work for that time to make the trip from Owens
21 Mills here and back to Owens Mills.

22 So that's basically why we are left

1 with this situation that we're in. Another
2 guy had made special arrangements. He works
3 in New York, and he had made special
4 arrangements to get back here for the 5
5 o'clock. But he could not do it for a 1:30
6 hearing.

7 So that's the problems, is the
8 really short notice and the fact that 1:30,
9 while clearly of greater convenience to
10 somebody, the Board or other people, it was
11 not of greater convenience to the Protestants.

12 CHAIRPERSON MILLER: Let me ask
13 you, you filed the protest, correct? I don't
14 have that in front of me. Did you name the
15 other four or more Protestants who are members
16 of your party?

17 MS. HOLIDAY: We filed a petition.

18 CHAIRPERSON MILLER: Petition,
19 thank you. Okay.

20 MS. HOLIDAY: Yes.

21 CHAIRPERSON MILLER: And your name
22 was on the petition, correct?

1 MS. HOLIDAY: Yes.

2 CHAIRPERSON MILLER: How many names
3 were on that petition?

4 MS. HOLIDAY: I don't know. I
5 think it was either 14 or 16.

6 CHAIRPERSON MILLER: Fourteen or
7 16?

8 MS. HOLIDAY: Yeah, I think I have
9 that with me.

10 CHAIRPERSON MILLER: None of those
11 individuals went to the roll call.

12 MS. HOLIDAY: Correct.

13 CHAIRPERSON MILLER: And why is
14 that?

15 MS. HOLIDAY: Because I believe for
16 the roll, let me see, I think for the roll
17 call I was, the petition -- here, let me see
18 if I can -- the petition has language on it
19 that designates me as the designated
20 representative.

21 And I believe, if I'm remembering
22 this correctly, that I was told that since I

1 was the designated representative that I alone
2 could come to the roll call hearing.

3 I might also add that when I got
4 the notice of the change in dates, I believe
5 it was in response to the change in date, I
6 did call first the adjudication assistant, and
7 I could not reach her. I then called Sarah
8 Fashbaugh.

9 And I asked her specifically, now,
10 do I need five people or can I come to this
11 hearing by myself. And she instructed me I
12 could come to the hearing by myself because I
13 was the designated representative. And that
14 has been a matter of record since filing of
15 the petition.

16 Then the next day, I got an email,
17 I believe, from the adjudication assistant
18 saying the opposite. And I called her up and
19 she explained it. So that's how that's gone.

20 CHAIRPERSON MILLER: Okay. So the
21 rule is then you have to produce all five at
22 some time, either the roll call or the status.

1 And then after you've produced all five bodies
2 then you can come alone as the designated
3 representative.

4 But you haven't, at any point,
5 produced any other body on that list of 14.
6 You have to have five to get standing as a
7 Protestant. So you don't have standing.

8 And we were hoping that you would
9 bring your other four so you could get
10 standing to participate in the hearing.
11 Because DC laws require that. That's the
12 rule.

13 MS. HOLIDAY: Yeah. Until I talked
14 with the adjudication assistant, I guess it
15 was last week, I understood the rule of five
16 and all of that. But I did not understand
17 that once you had five, I just didn't
18 understand it.

19 And I don't have any correspondence
20 that clearly says that, that once five people
21 show up then the designated representative --
22 I have correspondence that says something

1 about -- I can't remember that.

2 CHAIRPERSON MILLER: I can. I have
3 September 12th, 2013.

4 MS. HOLIDAY: Yes.

5 CHAIRPERSON MILLER: And it's from
6 Tesha Anderson.

7 MS. HOLIDAY: Yes.

8 CHAIRPERSON MILLER: And she says,
9 "Dear Ms. Holiday, as you know, you were
10 granted conditional standing at the Roll Call
11 Hearing held June 17th, 2013, because you did
12 not produce the requisite number of persons to
13 represent your protest, namely the group of
14 five or more.

15 "Additionally, you were instructed
16 by the Board's agent of the Roll Call Hearing
17 to appear with four additional persons at the
18 Status Hearing held August 7th, 2013.

19 "The record of the status hearing
20 does not indicate that four additional persons
21 from your Protestant group were in attendance,
22 which was necessary to establish that you had

1 the requisite number of persons to protest the
2 Red Hen's renewal application.

3 "Thus your group was again not
4 granted standing to proceed with the protest.
5 Nonetheless, the Alcoholic Beverage Control
6 Board is requiring you to bring four
7 additional persons from your Protestant group
8 to the Protest Hearing."

9 MS. HOLIDAY: Yeah, I received that
10 letter.

11 CHAIRPERSON MILLER: You got that
12 letter?

13 MS. HOLIDAY: Yes. That's the
14 letter that triggered me to call the
15 adjudication assistant for clarification on
16 that.

17 CHAIRPERSON MILLER: But it says --

18 MS. HOLIDAY: Because prior to
19 receiving the letter, I talked to Ms.
20 Fashbaugh and she, and she said to me --

21 CHAIRPERSON MILLER: Okay. But I
22 want to finish this for the record. And then

1 you can address it.

2 MS. HOLIDAY: Okay.

3 CHAIRPERSON MILLER: "Nonetheless,
4 the Alcoholic Beverage Control Board is
5 requiring you to bring four additional persons
6 from your Protestant group to the Protest
7 Hearing scheduled for Thursday, September
8 19th, 2013, at 1:30 p.m.

9 "If you fail to do so, you risk
10 having your protest dismissed, similar to your
11 experience in Case Number 12-PRO-00088."

12 And they reference attaching the
13 order. And then they give the number for
14 Tesha Anderson if you have any questions.

15 MS. HOLIDAY: Yes.

16 CHAIRPERSON MILLER: Okay. So,
17 personally, I know the Board doesn't like to
18 dismiss people from protesting in a hearing
19 and resolving the case on the merits. But
20 when I read this, it looks like over and over
21 again you're told that you need to bring five
22 people.

1 MS. HOLIDAY: Well, as I said, I
2 had the people lined up before the date was
3 changed.

4 CHAIRPERSON MILLER: When was the
5 change? Can you remind me?

6 MS. HOLIDAY: The original date was
7 September 18th at 5:00 p.m. There was an
8 email that was sent -- it's dated September
9 12th, I read it September 13th -- that
10 informed us of the change of the date and the
11 time of the hearing.

12 The time was more problematic for
13 these people than was the date. Because it
14 changed from 5:00 p.m. where people could take
15 off work a little early and get here to 1:30,
16 which is the middle of the day.

17 CHAIRPERSON MILLER: Okay. Now,
18 when did you get the notice about the change?

19 MS. HOLIDAY: I read it September
20 13th. The email is dated the 12th. And I
21 believe I received a hard copy on the 13th.
22 I got a hard copy and an email copy. I didn't

1 see the email copy -- I remember seeing the
2 email copy the same day I saw the hard copy.

3 CHAIRPERSON MILLER: Oh, I see.
4 I'm looking at the email now and that one says
5 too that four additional people must appear --
6 and must is underlined -- the Protest Hearing
7 on September 19th at 1:30 p.m. or the protest
8 may be dismissed. Okay, so what did you do?
9 So you got this six days ago.

10 MS. HOLIDAY: Yes.

11 CHAIRPERSON MILLER: Did you
12 contact ABRA and say this is going to be a
13 problem for --

14 MS. HOLIDAY: No. I really didn't
15 think that I had any influence on the setting
16 of the date and time of the hearing. I
17 thought that was done pretty much at the
18 convenience of the Board.

19 Now the hearing has been set for
20 September 12th, the original date, since the
21 June 19th letter. So this was really a last
22 minute change. And it really did impact the

1 persons who were going to come here.

2 CHAIRPERSON MILLER: Okay. So
3 we're going to have to decide what to do now.
4 But I would say that what you should have done
5 was to contact the agency and say, I have to
6 produce four other people. And this is
7 difficult for us because they're working.

8 MS. HOLIDAY: Well, I did contact
9 the agency. Now, I did not say that the
10 change in date was problematic. But I did
11 contact, as I said, the adjudication
12 assistant. And she reiterated that these four
13 other people had to show themselves.

14 CHAIRPERSON MILLER: She reiterated
15 four people had to show up?

16 MS. HOLIDAY: She reiterated that
17 point when I called her about the --

18 CHAIRPERSON MILLER: Just to be
19 clear, did you contact, is it Ms. Fashbaugh or
20 Ms. Anderson?

21 MS. HOLIDAY: I contacted both of
22 them. Ms. Fashbaugh told me before the people

1 did not have to show up. Ms. Anderson said
2 that four people did have to show up.

3 CHAIRPERSON MILLER: Did you tell
4 Ms. Anderson that the time was difficult?

5 MS. HOLIDAY: No, I did not.

6 CHAIRPERSON MILLER: Okay. All
7 right. Yes, Mr. Fonseca?

8 MR. FONSECA: Yes. Actually if I
9 may, this case, typically with a layman I
10 would not want to pile it on. And I don't
11 consider this piling on, but it is an
12 interesting situation.

13 Because at the Roll Call, Ms.
14 Fletcher clearly stated that she was granted,
15 as the Board has decided, conditional standing
16 but that she must bring four additional of her
17 group of 14 or 16, whatever it is, which she
18 didn't.

19 Which brings me to the Board, at
20 that time, could have dismissed. It didn't.
21 And I did not press the issue, knowing that my
22 rights were still reserved.

1 And I think the agency then,
2 irrespective of moving the hearing date, the
3 agency bent over backwards, both in the
4 written communication and the email of
5 September 12th and 13th, depending on when it
6 was read, to include the Board order.

7 So you have a designated
8 representative and an ANC Commissioner, not in
9 her role as a Commissioner here but one who's
10 appeared before this Board and in this very
11 case and its initial and original application,
12 that had an order that dismissed her for the
13 same conduct.

14 And this is not someone who is
15 very, very new to this. And even if there was
16 an inconvenience, she had, from the roll call
17 in June to the status in August 7th to get
18 those four out of the group of 16 or 14 here.
19 And she didn't do it.

20 So to gloss over that date, to then
21 find the only rationale is the inconvenience
22 of the switching of this date, when it was

1 very clearly identified both in the letter and
2 in the underscoring of the email, the must,
3 must, must, must, must.

4 And I would be shocked, if we were
5 to bring out Ms. Fashbaugh, that she would
6 state that she said you don't have to bring --

7 MS. HOLIDAY: Well, you should
8 bring her on, because she did inform me of
9 that. I mean, that was the whole purpose of
10 the call, to get clarification on how many
11 people needed to be brought.

12 CHAIRPERSON MILLER: I just would
13 say that, if I really thought that was the
14 issue, I would ask her to come in.

15 But there's so much documentation
16 that says you must, you're very clear, it's
17 not gray. And I think you also said that Ms.
18 Anderson told you that you must.

19 MS. HOLIDAY: All I can say, Madam
20 Chair, is that I and others made every effort
21 to try to get people here.

22 We have sent out emails, we've sent

1 out, I think, two or three emails to everyone
2 on the list. I have personally called
3 everyone on the list. And I have been to the
4 homes of over, I would say at least eight or
5 nine people on the list.

6 And that's why I'm so familiar with
7 the reasons why people were unable to attend
8 this day, today, given the change in the date
9 and especially the time.

10 CHAIRPERSON MILLER: Okay. I don't
11 want to belabor this too much. But I do think
12 if I had all these letters in the record
13 saying you really wanted to be here, but you
14 changed the date, I'm sorry, we couldn't do it
15 because of work, there might be something.

16 But I think that this is the whole
17 purpose of why the Council enacted this law,
18 is that if people want to protest a business,
19 then they need to step up to the plate and
20 personally come to a Roll Call or a Status
21 Hearing.

22 MS. HOLIDAY: Well, I agree with

1 you.

2 CHAIRPERSON MILLER: So, okay. Are
3 there other Board member's questions,
4 comments?

5 MR. ALBERTI: I just want to ask
6 about the Status Hearing. At the Status
7 Hearing, is it correct that you were the only
8 one from the group to appear at the Status
9 Hearing?

10 MS. HOLIDAY: Yes, it's also
11 correct that the applicant was not present.
12 And I think the moving on to the Protest
13 Hearing --

14 MR. ALBERTI: Well, okay, at the
15 Status Hearing. Okay, all right. So you were
16 the only one from the Protestants to appear?

17 MS. HOLIDAY: Correct.

18 MR. ALBERTI: Okay. At the Status
19 Hearing, well, what is the explanation, what
20 is your explanation why four additional people
21 from the group did not appear at that hearing?

22 MS. HOLIDAY: You know, there is no

1 real explanation other than four people didn't
2 appear. People were notified, people were
3 urged to come et cetera, et cetera.

4 MR. ALBERTI: Okay, great. Thank
5 you.

6 CHAIRPERSON MILLER: Anything else?

7 MR. ALBERTI: That's it.

8 CHAIRPERSON MILLER: Anything else
9 before I can, okay. I would move then that
10 the protest be dismissed. Because we don't
11 have a party with standing as a Protestant.
12 Do I have a second.

13 MR. ALBERTI: I'll second it.

14 CHAIRPERSON MILLER: Any other
15 comments? All those in favor of the motion
16 say aye.

17 (Multiple Ayes)

18 CHAIRPERSON MILLER: Aye. All
19 those opposed? All those abstaining? Okay,
20 motion passes, three to zero, to zero.

21 MS. HOLIDAY: May I submit, for the
22 record, the appeal that I did bring today,

1 including letters from people?

2 CHAIRPERSON MILLER: There's no
3 hearing today now.

4 MS. HOLIDAY: Well, for the Board's
5 consideration? I'll check with the General
6 Counsel, but we called the case for a hearing,
7 and then the case was dismissed. So there's
8 no case anymore.

9 (Pause)

10 CHAIRPERSON MILLER: Okay. So I
11 want to let you know that there will be a
12 written order that will come of this. And if
13 you want to seek reinstatement,
14 reconsideration of our ruling, you will have
15 ten days from the written order to do that.

16 And if you have any questions about
17 that, please don't hesitate to call our
18 General Counsel so that you're sure that you
19 know what the rules are and you can not lose
20 any opportunity to appeal or whatever.

21 Your letters can come in. I can't
22 tell you in what context the Board will look

1 at them. But if you want to give us those
2 letters you can submit them.

3 MS. HOLIDAY: Okay.

4 MR. ALBERTI: Now, I think just to
5 be clear, Ms. Miller, so you understand, Ms.
6 Holiday, that we need -- just one moment --

7 (Off the record comments)

8 MR. ALBERTI: We all need letters
9 from each of the people seeking
10 reconsideration.

11 MS. HOLIDAY: Okay. And --

12 MR. ALBERTI: Pardon?

13 (Off the record comments)

14 CHAIRPERSON MILLER: What I would
15 suggest is we will be issuing a written order.
16 And in that order we will also instruct what
17 rights you have to appeal. And if you have
18 any questions, then you can call Ms. Jenkins.

19 MS. HOLIDAY: Okay. And as I
20 recall, if you seek reinstatement it would be,
21 is that what --

22 CHAIRPERSON MILLER: Perhaps. You

1 had conditional standing. But it will state
2 it in the order.

3 MS. HOLIDAY: Okay. I recall that,
4 is that what the Board is most interested in
5 is an explanation in terms of why people did
6 not show. Is that correct?

7 CHAIRPERSON MILLER: I don't really
8 want to go into it at this point.

9 MS. HOLIDAY: Okay. Well, I'll
10 call the General Counsel.

11 CHAIRPERSON MILLER: That's what
12 I'm saying. See what the order says and then
13 contact our General Counsel.

14 MS. HOLIDAY: Okay.

15 CHAIRPERSON MILLER: Okay. All
16 right, then that concludes this case. Thank
17 you very much.

18 (Off the record comments)

19 MR. FONSECA: Thank you.

20 CHAIRPERSON MILLER: Thank you.

21 (Whereupon, the hearing was
22 concluded at 2:08 p.m.)

A				D
ABRA 19:12	asked 13:9	5:8,9,11,11,15,21	clear 20:19 23:16	date 9:20 10:7 13:5
add 13:3	assistant 13:6,17	6:4,7,11,15	28:5	18:2,6,10,13
additional 15:17,20	14:14 16:15 20:12	business 24:18	clearly 11:9 14:20	19:16,20 20:10
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21:16 25:20	attend 24:7		COLUMBIA 1:1	24:14
Additionally 15:15	attendance 15:21	C	come 4:11,19,21	dated 8:17 9:11
address 17:1	August 15:18 22:17	call 2:4,20 3:5,5	5:2,3 7:6 10:6,18	10:10 18:8,20
adjudication 13:6	aye 26:16,18	6:12 8:12,16,19	13:2,10,12 14:2	dates 13:4
13:17 14:14 16:15	Ayes 26:17	12:11,17 13:2,6	20:1 23:14 24:20	day 7:6 10:11,15
20:11	B	13:22 15:10,16	26:3 27:12,21	13:16 18:16 19:2
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