

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

IRONTIGER LOGISTICS, INC.

and

Case 16-CA-27543

**INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO**

and

Case 16-CB-8084

IRONTIGER LOGISTICS, INC.

**IRONTIGER LOGISTICS, INC.'S
MOTION FOR SUMMARY JUDGMENT FILED PURSUANT TO
SECTION 102.24 OF THE RULES AND REGULATIONS OF
THE NATIONAL LABOR RELATIONS BOARD AND
MOTION TO TRANSFER AND SEVER THE CASES AND CONTINUE
CASE 16-CA-27543 BEFORE THE NATIONAL LABOR RELATIONS BOARD**

Now comes IronTiger Logistics, Inc., by its attorney Thomas P. Krukowski of the law firm of Krukowski & Costello, S.C., and files this Motion for Summary Judgment pursuant to Section 102.24 of the National Labor Relations Board (NLRB).

1. A Complaint in the above matter was signed by Martha Kinard, Regional Director of the National Labor Relations Board, Region 16, on December 22, 2010.
2. On January 4, 2011, IronTiger Logistics, Inc. (Employer) answered the Complaint and served said Answer.

3. That a hearing has been scheduled for March 28, 2011.
4. That the Employer filed this Motion because, based on the Complaint and Answer and other information, documents and affidavits, and supporting brief, there is no genuine issue as to any material fact and the Employer is entitled to a dismissal of the Complaint as a matter of law in Case No. 16-CA-27543.
5. That the Complaint against the Employer in Case No. 16-CA-27543 was consolidated with a Complaint against the International Association of Machinists (Union) and the Employer requests that the cases be severed and that Case No. 16-CA-27543 be transferred to the Board and that the Board issue an Order transferring the proceedings to itself and also issue an Order to Show Cause why the Employer's Motion should not be granted and ultimately grant the Motion for Summary Judgment and dismiss the Complaint in 16-CA-27543.
6. The essence of the Regional Director's Complain in Case No. 16-CA-27543 is that the Employer ". . . failed to timely furnish the Union with information requested by it. . . ." (See paragraph 16 of the Complaint).
7. The Union's grievance claims that, "The Employer is not placing all available loads on the dispatch board." However, the CBA provides that, ". . . loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger loads and will be moved by carriers

other than IronTiger Logistics. . .” This unqualified language trumps any possible contract violation. The CBA completely and unequivocally contradicts the Union’s claim. It’s that simple. At no time has the Union submitted any evidence of the contract violation after numerous requests by the Employer; nor is it possible! There are no facts in dispute here! The employer never had an obligation to furnish any information. The IAM’s requests were never made relevant because it only made a conclusionary allegation without any supporting arguments or, more importantly, any facts. Throughout this entire time the Union has failed to provide objective evidence of a contract violation and has failed to explain its request with any degree of precision.

8. The Union reformulated its request for information on December 1, 2010 to

- 1.) Explain the assignment for loads.
- 2.) Request copies of communications regarding load assignments.

The Employer’s second defense, and reason it believes no unfair labor practice has been committed and there are no facts in dispute, is based on the Employer’s response to the Union’s reformulation or changes in the Union’s position.

9. The Employer timely responded. On December 20, 2010, before the Complaint issued by the Regional Office, the Employer responded by e-mail and reminded Boysen Anderson, the IAM representative who had full knowledge of the system for assigning employees, because he personally was involved in designing and recommending the very kiosk system used by the Employer and the system assignment that was implemented after agreement. Secondly and as important, no document exists responsive to the

Union's request. These e-mails were sent to the Regional Office before the Complaint was issued in case 16-CA-27543.

10. The Employer never had any legal obligation to furnish any requested information and any documentary information requested does not exist. Therefore, there are no facts, let alone any genuine issue as to any material fact that they do exist. The Employer can not give something it does not have and it also can not obviously delay giving something it does not have. Further, the information for which the Union seeks is within the full knowledge of the Union and there is no other information that exists.
11. As early as May 7, 2010 and before the May 11, 2010 request, the Union was told by e-mail that "8. N/A done by system assignment not through e-mail or other written communications." Thus, no such document exists now or before or after May 11, 2010 and the Union and the Regional Director knew this. The Union, on December 1, 2010, acknowledges this fact and was again told on December 20, 2010 that none exists.
12. That regarding how the Employer assigns loads, the Union designed, made recommendations and its proposals were adopted by the Employer which became the system of assignments. Likewise, here there is no genuine issue as to any material fact that the Union knew the system assignment and, therefore, any such request is clearly irrelevant.

13. Further, there are no facts to support the Union's request for any information and General Counsel will not be able to establish a *prima facie* case in that General Counsel will not be able to prove "either (1.) that the Union demonstrated relevance of the non-unit information or (2.) that the relevance of no information should have been apparent to the Respondent under circumstances." (*See Disneyland Park*, 350 NLRB 1256, 1258 (2007)).
14. The underlying grievance for which information is requested provides "Nature of Grievance: The Employer is not placing all available loads on the dispatch board" and it involves subcontracting allegations. Nothing about the May 11, 2010 request is presumptively relevant. *See Disneyland Park*, 350 NLRB 1256, 1258 (2007).
15. The Collective Bargaining Agreement (CBA) and, specifically, a "Letter of Agreement" between the Employer and the Union, gives the Employer the unilateral and unqualified right to assign work and it provides:

The parties hereto agree that loads not appearing on the IronTiger Logistics drivers' kiosk are not IronTiger Logistics loads and will be moved by carriers other than IronTiger Logistics and the movement of such loads does not constitute Sub-Contracting and does not violate Article 19 of the Agreement between IronTiger Logistics, Inc. and the International Association of Machinists and Aerospace Workers covering the period from September 29th, 2008 through and including September 30, 2011.

Agreed to this 29th day of September, 2008.

16. The Union has not and can not provide any violation for none could exist under the above language. However, the Employer has requested that the Union tell it when, where, who, what and how many times there was a contract violation or why the request for information is relevant, and the Union, by Boysen Anderson, has refused to identify any incidents and sometimes stating in response to the Employer's request, "Enough of this bullshit" and "...don't question what I believe." Another response from the Union and Boysen Anderson was merely, "Bullshit you WILL abide by the contract" without any explanation or clarification of its position. The Employer has continually told the Union that all loads were placed on the dispatch board or kiosk; however, the Union has failed to explain its position and has not provided objective evidence of relevancy. Absent such a showing, the Employer has no obligation to provide anything. See Disneyland at page 1258.

17. Again, there are no facts in dispute here for this is based on the CBA and documents and the attached affidavits. *Disneyland* at page 1258 makes it clear that the Union's CBA claim or violation has zero facts to create a dispute and, based on *Disneyland*, there is no presumption of relevancy and without any facts there can not be a finding of relevancy and, therefore, the Employer is entitled to a dismissal of the Complaint as a matter of law.

Wherefore, the Employer requests the Board issue an Order transferring Case No. 16-CA-27543 and Order to Show Cause why Employer's Request for Summary Judgment should not be granted and, ultimately, that the Board issue and Order granting the Employer's Motion

for Summary Judgment and dismiss the Complaint in 16-CA-27543 and any other relief that is just and equitable.

DATED at Milwaukee, Wisconsin, this 4th day of February, 2011.



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