

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADVANCED SERVICES, INC.

and

TABITA SHEPPARD HOWARD

**Cases 26-CA-063184 &
26-CA-071805**

and

PRINCESS BALLARD

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S CROSS- EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

Counsel for the Acting General Counsel, pursuant to §102.46 of the Board's Rules and Regulations, submits the following cross-exceptions to the decision of Administrative Law Judge Margaret G. Brakebusch.¹

1. The finding that the email identified as GCX 6 was received only by management employees. JD 6, fn. 1.
2. The failure to find that an email directed to Respondent's consumer sales team was received by Tabita Howard. JD 13, LL 22-24.
3. The finding that Tabita Howard did not contend she knew about Jill Sullivan's email to Trudie Dunlap and Debbie Ulrich which instructed that corrective action

¹ JD refers to the decision of the administrative law judge, and includes references the specific page number and line numbers referenced. Tr. references are to pages of the hearing transcript. GCX and RX refer to the numbered exhibits of Counsel for the Acting General Counsel and Respondent, respectively, while Exh. refers to a particular exhibit within those numbered exhibits.

was warranted for employees who left newspapers on their desks. JD 13, LL 22-24.

4. The finding that Tabita Howard testified that the only information she received from management on the issue of reading material in the work area was the original email from Trudie Dunlap. JD 13, LL 25-28.
5. The finding that Howard asserted she had no knowledge of the email but nevertheless warned her co-workers about having reading material at their desks and told them supervisors would brag about writing them up for the infraction. JD 13, LL 30-34.
6. The failure to find Respondent terminated the employment of Tabita Howard because she was either perceived to have been engaged in protected concerted activity or because she actually engaged in protected concerted activity. JD 12, LL 33-35 and JD 14, LL 15-16.
7. The finding that there was no credible evidence that Tabita Howard engaged in protected concerted activity. JD 14, LL 27-28.
8. The finding that there is insufficient evidence to find that Respondent perceived that Tabita Howard engaged in protected concerted activity. JD 15, LL 3-4.
9. The finding that although Respondent told the State of Tennessee that Howard was terminated for breaching the confidentiality of an internal investigation, Respondent did not terminate Howard's employment because she breached the confidentiality of an internal investigation. JD 15, LL 19-21.
10. The conclusion that Respondent lawfully instructed Tabita Howard and Katina Powell they were not to discuss with other employees anything about an internal investigation conducted by Respondent. JD 15, LL 28-31.

11. The finding that although Respondent believed Howard breached the confidentiality of the investigation, it is relevant that testimony did not establish whether Tabita Howard actually breached the confidentiality of an internal investigation. JD 17, LL 1-4.
12. The conclusion that although Respondent believed Howard breached the confidentiality of the investigation, Respondent did not terminate Howard because she breached the confidentiality of the investigation. JD 17, LL 1-4.
13. The finding that it is undisputed that Howard did not truthfully answer questions propounded by Trudie Dunlap. JD 13, LL 41-42.
14. The finding that an employee is privileged to reply dishonestly to a question regarding protected concerted activity only if the question constitutes unlawful interrogation. JD 13, LL 45-46.
15. The conclusion that the record evidence supports a finding that Respondent terminated Howard because it determined she had not been truthful during an internal investigation. JD 16, LL 24-26.
16. The conclusion that Respondent established that it would have terminated Howard in the absence of protected concerted activity. JD. 16, LL 30-33.
17. The conclusion that Howard's deception was the sole reason Respondent terminated her employment. JD 18, LL 12-13.

Dated this 10th day of September, 2012.


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CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2012, a copy of Counsel for the Acting General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge was filed by e-filing with the NLRB Office of the Executive Secretary. I further certify that on September 10, 2012, a copy of Counsel for the Acting General Counsel's Cross-Exceptions to the Decision of the Administrative Law Judge was served via email on the following:

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