

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

ALLIED MEDICAL TRANSPORT, INC.

and

TRANSPORT WORKERS UNION  
OF AMERICA, AFL-CIO

Cases 12-CA-072141  
12-CA-072148  
12-CA-074078

**ACTING GENERAL COUNSEL'S REPLY BRIEF TO  
RESPONDENT'S ANSWERING BRIEF TO CROSS-EXCEPTIONS**

Pursuant to Section 102.46(h) of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the undersigned Counsel for the Acting General Counsel files the following Reply Brief to Respondent's Answering Brief to Cross-Exceptions in order to address three contentions made by Respondent. Counsel for the Acting General Counsel's Brief in Support of Cross-Exceptions fully addresses Respondent's other contentions in its Answering Brief to Cross-Exceptions.

**A. The recommended Board Order should be modified to require that the Notice to Employees be posted and read to employees in Haitian Creole, in addition to the requirement that the Notice be posted and read to employees in English.**

Respondent claims that there is no evidentiary basis or factual support that Haitian Creole is the first language of many of Respondent's drivers or that they do not fully understand English both written and orally. Respondent further claims that it is required that the drivers can effectively communicate in English as a requirement of the position in order to communicate with the clients. Respondent failed to present any evidence of this requirement. Respondent simply relies on Union organizer George Exceus' testimony that the drivers would be able to understand English. (Tr. 47:12-14, Exceus). However, Exceus also testified, without contradiction from Respondent, that over 50% of Respondent's drivers speak Haitian Creole. He

also testified that even though the drivers are able to understand English, he believed that good communication with the drivers requires the use of the Haitian Creole language. Exceus did not know if the drivers could understand written English, and he testified, without contradiction, that in order to avoid any miscommunication all of his communications with employees during the organizing campaign were distributed in English and Creole. (Tr. 47:3-48:7, Exceus). Exceus' belief is borne out by the testimony of Respondent's current employee, Andrys Etienne, that he is Haitian and does not understand everything in English. (Tr. 66). Although the employees may have limited ability to speak, understand, and/or read English, the evidence shows that English is not the first language of the majority of the employees, and it is apparent that many of those employees will not be able to fully comprehend the Notice to Employees if it is only posted and read to them in English. Therefore, Counsel for the Acting General Counsel respectfully urges the Board to modify the ALJ's recommended Order by requiring that the Notice to Employees be posted and read in both English and Haitian Creole, as set forth in Acting General Counsel's cross-exception 9.

**B. Contrary to Respondent's assertion, Yvel Nicolas did not abandon his job. Rather, Respondent suspended Nicolas and subsequently discharged him.**

Respondent repeatedly claims throughout its Answering Brief that Yvel Nicolas abandoned his job because he failed to pay for his alleged fare shortages or make arrangements to review the records supporting the fare shortage audit, and because Nicolas never returned to Respondent or sought reemployment or to resolve his fare shortages. (Respondent's Answering Brief at pages 6, 7, 8, 9, 13, 15). However, as Nicolas testified, he was asked to return his uniform before he could collect his paycheck, thus signifying that he was being discharged. (Tr. 247, line 15 to 248, line 2, Nicolas). When he then returned his uniform, Nicolas was given two paychecks, and realized that the second check was his final paycheck. (Tr. 248:16-23, Nicolas).

Therefore, Respondent's actions made it clear to Nicolas that it did not intend to call him back to work, and Nicolas did not abandon his job. Rather, as found by the ALJ, Respondent indefinitely suspended and then discharged Nicolas. (ALJD page 16, lines 22-23).

**C. Respondent failed to present evidence that Terrance Wilson was “written up” or otherwise disciplined for his fare shortages.**

Respondent claims that driver Terrance Wilson was disciplined and written up for his fare violation. (Respondent's Answering Brief at pages 5, 8, 9, 15). However, Wilson testified that he was not suspended while Respondent investigated his fare violation, and the documents in evidence also demonstrate that although Respondent threatened to take legal action against him if he did not repay the shortages, which he admitted, he was not disciplined or threatened. (Tr. 292, lines 22-24, Wilson). Respondent failed to present any probative evidence that Wilson was “written up” or otherwise disciplined for his fare violation. Rather, Respondent merely elicited testimony through a blatantly leading question that it was Wilson's understanding that he could have been disciplined up to and including termination. (Tr. 294, lines 5-13, Wilson).

Wilson was not disciplined even though his misconduct was far more egregious than the alleged misconduct of drivers Nicolas and Fertil. Thus, Wilson withheld all fares he collected for a period of months and admitted it in a letter to Respondent on May 10, 2011, apparently following a meeting. [GC Exhibits 5(b), 5(c) and 5(d)]. Nevertheless, he was offered a payment plan, which Respondent, not Wilson, suggested, and two weeks later, on May 24, 2011, Wilson signed an agreement to repay the money and avoid criminal charges by Respondent, but Wilson was never suspended. [Tr. 293, Wilson; GC Exhibit 5(a)]. Although the repayment agreement raises the possibility of criminal charges against Wilson, it does not suggest that Wilson was being disciplined or that there was any impact on his employment status. [GC Exhibit 5(a)].

Accordingly, the evidence demonstrates that Fertil and Nicolas were disparately treated as compared with Wilson. This evidence supports the ALJ's finding that there is a prima facie case establishing that Respondent violated Section 8(a)(1) and (3) of the Act by discharging Fertil and Nicolas because of their union activities. The evidence concerning the disparate treatment of Fertil and Nicolas as compared to the treatment of Wilson supports Acting General Counsel's cross-exceptions 1 and 2 and demonstrates that Respondent failed to meet its burden of proving that it would have suspended and discharged Fertil and Nicolas even if they had not engaged in union activities. This evidence also supports Acting General Counsel's theory of a Section 8(a)(1) and (5) violation as stated in cross-exceptions 5, 6 and 7.

DATED at Miami, Florida this 7<sup>th</sup> day of May, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of Acting General Counsel's Reply Brief to Respondent's Answering Brief to Cross-Exceptions in the matter of Allied Medical Transport, Inc., Cases 12-CA-072141, 12-CA-072148, and 12-CA-074078 was served electronically upon the following individuals on this 7<sup>th</sup> day of May, 2013.

By Electronic Filing

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