

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

REGION 12

ANHEUSER-BUSCH, LLC,

Respondent, and

MATTHEW C. BROWN, an individual,

Charging Party, and

Case 12-CA-094114

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 947 AND
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, BREWERY AND SOFT
DRINK WORKERS CONFERENCE,

Parties in Interest

**LIMITED CROSS-EXCEPTION OF CHARGING PARTY MATTHEW C. BROWN
TO THE DECISION OF THE ALJ**

Pursuant to § 102.46 of the Board's Rules and Regulations and the extension of time for filing answering brief and cross-exceptions granted by the Board on November 7, 2013, Matthew C. Brown ("Brown" or "CP"), by and through his undersigned counsel, files this limited, speaking cross-exception to the decision of the ALJ:

The ALJ erred in omitting from his recommended order that Respondent Anheuser-Busch, LLC ("AB") restore CP to the financial *status quo* he enjoyed prior to AB's § 8(a)(5) violation by ordering that AB reimburse CP for the legal expenses he would not have incurred but for having to brief and oppose AB's efforts to unilaterally impose the DRP on him by its motion to compel arbitration in response to CP's federal discrimination suit.

Brown respectfully offers or notes the following in support of this limited exception:

1. In response to Brown's federal discrimination lawsuit (Joint Exh. 11), AB filed a motion to compel arbitration (Joint Exh. 12) under the provisions of its CBK with the Union (Joint Exh. 5) and under the provisions of the Dispute Resolution Program (DRP)(Joint Exh. 1). After Brown filed a memorandum in opposition to the motion (GC Exhibit 3, proffered but not admitted), the federal court entertained oral argument on AB's motion on October 16, 2012, at which hearing AB conceded the CBK prong of its motion because the CBK did not 'clearly and unmistakably' compel resort to arbitration for resolution of statutory claims of discrimination. All briefing and proceedings in federal court after the October 16, 2012, hearing have been limited to AB's motion to compel arbitration under the terms of its DRP,¹ which it admittedly unilaterally adopted and sought to enforce against Brown without prior notice to or negotiation with the Union (Joint Exh. 14 ¶23) . [The federal court stayed the case by order of February 13, 2013, ordered the parties to mediation which subsequently failed, and by order of October 9, 2013, continued to stay the case and keep AB's motion to compel arbitration under the DRP under advisement, with specific instructions that the parties keep the Court advised of all pertinent develops in this ULP case.]

2. Brown's request for reimbursement of his limited out-of-pocket reduced hourly fees occasioned by AB's § 8(a)(5) violation in by-passing the Union and attempting unilaterally to enforce the arbitration provisions of the DRP would, if ordered, restore him to the financial position he enjoyed *before* AB's violation. Principles of equity and the policies of restoring

¹See, e.g., Brown's memorandum in response to AB's supplemental filing, proffered but not admitted as GC Exh. 2.

victims of unilateral actions taken in violation of § 8(a)(5) support CP's limited exception under the circumstances of this case.

3. The CBK between the Union and AB (Joint Exh. 5)(by virtue of the fact that it does not 'clearly and unmistakably' require resort to arbitration as the exclusive remedy for statutory discrimination claims of unit employees) effectively secures for unit employees the benefit of the remedies Congress provided for pursuing such claims - a judicial forum and trial by jury. No alleged *individual* agreement to the contrary can be invoked to defeat or displace those benefits of the collective-bargaining framework and this specific agreement. *J. I. Case. Co. v. NLRB*, 321 U.S. 332, 337-338, 64 S. Ct. 576 (1944)(individual contracts no matter the circumstances of their execution or terms may not defeat, delay or waive the procedures or benefits preserved by the collective-bargaining framework).

4. CP raised his fee reimbursement request with the ALJ at the outset of the hearing. (Tr. 12, lines 4-10) In response the ALJ indicated he was not inclined to order fees for work in other forums, indicating that such other fora should award or allocate fees as appropriate. Based on the ALJ's response, CP did not re-raise his request either later during the hearing or by filing a post-hearing, pre-decision brief with the ALJ.²

5. CP's exception and fee-reimbursement request is not a fee-generating tool for his attorney. It is limited to his out-of-pocket legal expenses and limited to briefing and responding to AB's DRP-based prong of its motion to compel arbitration over the course of nearly a year of federal court litigation. By some measures the amount involved is small (CP estimates in the

²With limited financial means he could ill-afford to kick a dead horse with the ALJ by spending money on legal expenses briefing his reimbursement claim.

neighborhood of \$4000) but to him it represented a significant and otherwise unnecessary outlay of limited funds. Because of the size of his fee reimbursement request and that litigating the amount would not be cost-effective, CP expects that the parties *should* be able to stipulate as to the amount while at the same time preserving AB's likely opposition to any such award.

CP respectfully submits that for all the foregoing reasons that his limited cross-exception to the decision of the ALJ be sustained and that the Board include in its ordered relief that AB reimburse CP for his out-of-pocket legal expenses that would not have been incurred but for AB's § 8(a)(5) violation.

Respectfully submitted for filing this 14th day of November, 2013.

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CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing limited, speaking cross-exception by Charging Party to the decision of the ALJ was electronically filed via www.nlr.gov with:

Honorable Gary W. Shinnars, Executive Secretary
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Washington, D.C. 20570-0001

and

Honorable Margaret J. Diaz
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and served by e-mail on the following persons this 14th day of November, 2013:

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