

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MANHATTAN BEER DISTRIBUTORS LLC

and

Case 29-CA-115694

JOE GARCIA DIAZ

GENERAL COUNSEL'S EXCEPTIONS TO  
THE ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel files the following exceptions to the Decision of Administrative Law Judge Steven Davis, which issued on May 15, 2014.

<u>Exception Number</u>	<u>Page</u>	<u>Line</u>	<u>Exception</u>
1	10	28-30	Failing to find that the reason for Joe Garcia Diaz's discharge was his refusal to submit to a drug test without union representation.
2	10	28-30	Erroneously distinguishing Diaz's refusal to submit to a drug test without union representation from his refusal to submit to a drug test.
3	10	31-35	Inconsistently finding that although Diaz's refusal to submit to a drug test was "premised upon" Respondent's denial of his <i>Weingarten</i> right to have union representation, his discharge for refusing to take the drug test was nevertheless unrelated to his assertion of <i>Weingarten</i> rights.
4	10	39-40	Failing to find that the evidence established unlawful discrimination in violation of Sections 8(a)(1) and (3) of the Act.

5	10	43-45	Ignoring record evidence that Respondent bore animus against Diaz's protected assertion of <i>Weingarten</i> rights and failing to find that Diaz's assertion of <i>Weingarten</i> rights was a motivating factor in his discharge.
6	10	43-45	Failing to give due weight to evidence that supervisor Roy Small said, in response to Diaz's request for union representation, "It's a company issue" and the "shop stewards have nothing to do with it," and failing to find that this evidence establishes Respondent's animus.
7	10	46-51	Failing to give due weight to the evidence that other employees whom Respondent discharged for refusing to submit to drug tests did not request or were not denied union representation during Respondent's investigation of their suspected drug use, and thus failing to distinguish Diaz from those other employees.
8	10	46-49	Finding, without basis in law or fact, that Respondent's failure to state in its disciplinary documents that Diaz was discharged because he refused to submit to a drug test without union representation proves that Diaz's demand for union representation was not a factor in his termination.
9	10-11	50-1	Failing to give due weight to the testimony of Respondent's Director of Operation that Respondent could not have fired Diaz based on reasonable suspicion of drug use alone.
10	10-11	50-1	Erroneously finding that Respondent could "reasonably conclude" that Diaz would have failed a drug test based on his refusal to submit to the test without union representation.
11	11	4-8	Failing to find that the evidence established a nexus between the denial of Diaz's <i>Weingarten</i> rights and his discharge, even though the discharge was motivated by Diaz's refusal to take a drug test without union representation.
12	11	7-8	Failing to shift the burden of persuasion to Respondent, under <i>Wright Line</i> , to demonstrate that Respondent would have discharged Diaz notwithstanding his refusal to submit to a drug test without union representation.
13	11	8-10	Incorrectly applying <i>System 99</i> , 289 NLRB 723 (1988) and <i>Taracorp</i> , 273 NLRB 221 (1984) to conclude that Respondent did not violate the Act by terminating Diaz.

