

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGIONS 13 AND 20

TERRAPRISE HOLDINGS, INC. D/B/A
GLOBAL RECRUITERS OF WINFIELD

and

CASE 13-CA-108187

MATTHEW SCHMIDT, AN INDIVIDUAL

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

Respectfully submitted:

A handwritten signature in black ink, reading "J. Edward Castillo". The signature is written in a cursive style with a large, circular flourish at the end of the name.

J. Edward Castillo
Counsel for the General Counsel
National Labor Relations Board, Region 13
209 South LaSalle Street, Suite 900
Chicago, Illinois 60604

Counsel for the General Counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, excepts to the following portions of the Decision of Administrative Law Judge Geoffrey Carter in Terraprise Holdings, Inc. d/b/a Global Recruiters of Winfield,¹ dated February 26, 2014:

1. The ALJ's finding that Matthew Schmidt "reached a high level of productivity when Owner Michael Agnew was out of the office for much of the summer 2012, but did not return to that same level in the fall of 2012 when Agnew had to shift his focus to the manufacturing desk." ALJD p. 5, line 31 to p. 6, line 3.

2. The ALJ's failure to find that, on December 19, 2012, Agnew acknowledged to Schmidt that he was angry after receiving the affidavits that Schmidt and co-worker Samantha Chellberg had provided in support of employee John Lucas' unemployment claim. ALJD p. 10, lines 25-32.

3. The ALJ's failure to specifically find that, on December 19, 2012, Agnew was so angry upon receiving the affidavits that Schmidt and co-worker Samantha Chellberg had provided in support of employee John Lucas' unemployment claim, that he (Agnew) slammed his fist down on his desk, violently pushed his chair back, and then threw open several doors as he stormed out of the office for a few hours. ALJD p. 10, lines 25-32.

4. The ALJ's reliance on R 36 (which he admitted solely for the non-hearsay purpose of establishing Agnew's state of mind and motivation for subsequent actions taken) to find that Agnew limited Schmidt's client contact to Constellation Energy, in October 2012,

¹ Hereinafter the National Labor Relations Act will be referred to as the "Act"; the National Labor Relations Board as the "Board"; the Administrative Law Judge as the "ALJ"; citations to the ALJ's decision will be referred to as "ALJD__"; the General Counsel's Exhibits as "GC__"; Respondent's Exhibits as "R__"; and citations to the transcript as "Tr. __".

rather than January 2012. ALJD p. 11, lines 16-20 and fn. 13. See also ALJD p. 7, fn. 10 (where the ALJ explained the limited purpose for which R 36 was admitted into the record).

5. The ALJ's erroneous finding that Agnew, after he began to assign nuclear desk work to employee David Dulay in March 2013, simply instructed him not to talk to Schmidt about "work assignments." ALJD p. 17, lines 10-17 and p. 28, lines 28-29.

6. The ALJ's erroneous finding that, on March 27, 2013, Agnew revoked Schmidt's remote computer login privileges because he planned to terminate him in the near future and feared that Schmidt would take Respondent's records before he left the company. ALJD p. 18, lines 18-21 and fn. 26.

7. The ALJ's failure to accurately summarize how Respondent has addressed absenteeism in the past few years. ALJD p. 23, lines 16-17 and accompanying table.

8. The ALJ's failure to accurately summarize how Respondent has addressed performance issues in the past few years. ALJD p. 24, lines 7-8 and accompanying table.

9. The ALJ's failure to consider the General Counsel's contention that Respondent, by Agnew, violated Section 8(a)(1) of the Act by abandoning its past practice of discussing new job orders that came into the office with Schmidt and then jointly devising a "game plan" to determine where they could go to start sourcing candidates and which candidates they might already have in mind for the job. ALJD p. 26, lines 30-37.

10. The ALJ's erroneous conclusion that Respondent did not exhibit animus towards Schmidt, on December 19, 2012, and February 11, 2013, for having engaged in protected concerted activities. ALJD p. 27, lines 8-31.

11. The ALJ's erroneous conclusion that the General Counsel made a "tenuous" showing of discrimination against Schmidt. ALJD p. 28, lines 1-2.

12. The ALJ's erroneous conclusion that Agnew did not make changes to the nuclear desk that adversely affected Schmidt because of the latter's protected concerted activities, and that Agnew would have made those changes, even in the absence of Schmidt's clearly protected conduct. ALJD p. 28, lines 12-19.

13. The ALJ's erroneous conclusion that Respondent did not make statements or engage in conduct that had a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. ALJD p. 28, lines 31-33 and p. 29, lines 5-24.

14. The ALJ's erroneous finding, based on R 36, that Agnew began taking steps in October 2012 (if not sooner) to address his fear that Schmidt might leave the company to join John Lucas and start up a new recruiting company. ALJD p. 29, fn. 35.

15. The ALJ's erroneous conclusion that Respondent did not exhibit animus towards Schmidt, on December 19, 2012, February 11, 2013, and April 10, 2013, for having engaged in protected concerted activities. ALJD p. 30, fn. 36.

16. The ALJ's erroneous conclusion that Respondent did not exhibit animus towards Schmidt, when Agnew admitted that he was terminating him, in part, because Agnew did not think they could "get past what had happened." Contrary to the ALJ's conclusion, this statement was nothing more than a thinly veiled reference to Schmidt's protected conduct – and the real reason for his termination. ALJD p. 30, fn. 36.

17. The ALJ's erroneous conclusion that Respondent demonstrated, by a preponderance of the evidence, that it would have terminated Schmidt, even in the absence of his protected concerted activities. ALJD p. 30, lines 10-14 and p. 31, lines 14-17.

18. The ALJ's erroneous and unsupported finding that Agnew became concerned about Schmidt's attendance and daily readiness for work and raised those issues with Schmidt in a November 2012 meeting. ALJD p. 31, lines 1-3.

19. The ALJ's erroneous finding that Respondent took a similar approach with Schmidt and former employee Jessica Jantolak when dealing with their absenteeism issues.

20. The ALJ's erroneous conclusion that Respondent's abrupt change to its attendance policy was not "probative." ALJD p. 31, fn. 38.

21. The ALJ's erroneous conclusion that Respondent's failure to follow its own written policy, by not providing Schmidt with a written performance improvement plan and subsequent training, suggestions, and appropriate actions for improvement, did "not cast doubt on the validity of the performance improvement plan." ALJD p. 31, fn. 38.

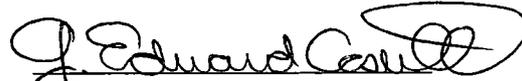
22. The ALJ's erroneous conclusion that Respondent proffered ample support for its decision to terminate Schmidt for poor performance, attitude, and attendance, and also demonstrated it was concerned about those issues before it learned that Schmidt engaged in protected concerted activity. ALJD p. 31, lines 12-14.

23. The ALJ's erroneous conclusion that there was no evidence that Respondent treated Schmidt more harshly than it treated other employees who engaged in similar conduct ALJD p. 31, fn 39.

24. The ALJ's erroneous conclusion that the General Counsel failed to prove by a preponderance of the evidence that Respondent violated Section 8(a)(1) of the Act as alleged in the complaint. ALJD p. 31, lines 21-22.

Dated at Chicago, Illinois, this 9th day of April 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Edward Castillo". The signature is fluid and cursive, with a large loop at the end.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Counsel for the General Counsel's Exceptions to the Decision of the Administrative Law Judge have been served this 9th day of April 2014, in the manner indicated, upon the following parties of record.

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