

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 1**

READYJET, INC.	:	
	:	Cases:
Respondent	:	01-CA-132326
	:	01-CA-140878
and	:	01-CA-155263
	:	01-CA-159503
32 BJ SEIU NEW ENGLAND 615	:	01-CA-159509
	:	
Charging Party	:	

**RESPONDENT READYJET INC.'S EXCEPTIONS TO THE DECISION OF THE
ADMINISTRATIVE LAW JUDGE AND PROCEEDINGS**

ReadyJet Inc. (“ReadyJet”, the “Company” or “Respondent”), Respondent in the above-styled action, hereby submits its exceptions to the Decision of Administrative Law Judge (“ALJ”) Kenneth W. Chu issued on October 12, 2016, and the proceedings before the ALJ, argument, record citations, and legal authority issued in support of these exceptions are contained in a separate brief in support of ReadyJet’s exceptions filed contemporaneously herewith.

ReadyJet excepts to the following :

1. The ALJ’s allowing testimony regarding what Union Organizer, Lydia Kamanou, told Union Organizer, Andry Mendez, about alleged “talks against the Union” and “threats made to employees”. ALJ Dec. 3; Tr. 21-22.
2. The ALJ’s finding that “the genesis of the charges in the complaint is the alleged threats and intimidation made to the employees by the Respondent related to the Union’s organizing efforts and the discipline issued to the employees after an unfair labor practice strike” when no evidence was proffered that any alleged “threats” or “intimidation” could

be traced to the conduct that directly lead to the unfair labor practice charges. ALJ Dec. 3; Tr. 21-22, 83-85, 95, 100-105, 112-115, 121-122, 194-195, 200, 215.

3. The ALJ's crediting Mendez's testimony that ReadyJet supervisor, Jean Carlos Torres¹, talked to Giovannie Martinez on the phone when Mendez was standing next to him. ReadyJet. ALJ Dec. 5; Tr. 31-32.
4. The ALJ's crediting Mendez's testimony describing the direction in which another person, ReadyJet Shift Manager, Giovannie Martinez, was looking and what Martinez was observing. ALJ Dec. 5; Tr. 33-34.
5. The ALJ's crediting Mendez's testimony regarding any conversation between Torres and Martinez since he could purportedly only hear Torres, further, because the labor strike had not yet started according to many witnesses. ALJ Dec. 5; Tr. 33-34.
6. The ALJ finding of interrogation despite the fact that Gonzalez said that the ReadyJet supervisor did not ask Gonzalez or Cruz any questions. ALJ Dec. 18-23; Tr. 50-51.
7. The ALJ finding that Gonzalez said she never asked Felipe for his opinion or advice. ALJ Dec. 21; Tr. 52-53, 220-225.
8. The ALJ failing to find that both Gonzalez and Cruz's cases were barred by the applicable statute of limitations and, as such, no finding in their favor should have been made. ALJ Dec. 18-23; Tr. 54, 65-67.
9. The ALJ's failing to consider Gonzalez's resignation letter regarding her tenure with ReadyJet as being a "great experience" as affecting her credibility at the hearing. ALJ Dec. 18-23; Tr. 60; R. Exh. 1.
10. The ALJ's failure to credit the testimony of Cruz who said that she did not see ReadyJet supervisors at the Food Court. ALJ Dec. 21; Tr. 71.

¹ Referred to as "Torrest" in the transcript until p. 204.

11. The ALJ's decision to accept any statements made to Gonzalez and Cruz by Felipe as constituting a violation of Section 8(a)(1) when Cruz testified that Felipe only said two things: that the Union was no good and that it would take money from them and run away. ALJ Dec. 22; Tr. 72.
12. The ALJ's failure to credit Cruz's testimony that when meeting with Felipe and Gonzalez, no one said that Cruz and Gonzalez would lose their jobs. ALJ Dec. 18-23; Tr. 73.
13. The ALJ erred in allowing General Counsel's objections to the translation by the translator and for permitting another translation until General Counsel was satisfied. Tr. 55, 85, 113.
14. The ALJ's crediting Batista's testimony that Martinez told Batista that it was his last chance because he was involved in the strike. ALJ Dec. 14; Tr. 85, 194-195.
15. The ALJ's crediting Batista's testimony that Martinez told Batista that he was fired for being involved with the Union. ALJ Dec. 14; Tr. 87, 195-197.
16. The ALJ's crediting Batista's testimony that his only no call/no show offense during his employment occurred on June 16, 2015. ALJ Dec. 14; Tr. 87, 96, 195-197.
17. The ALJ's failure to find or give proper weight to evidence that Batista knew about the strike days before the strike, knew that it was ReadyJet policy to call out when absent, yet he never informed ReadyJet and never called out. ALJ Dec. 6; Tr. 91-92, 94-95.
18. The ALJ's failure to find or give proper weight to evidence that ReadyJet employee Gerfi Mendez knew about the strike days before the strike, knew that it was ReadyJet policy to call out when absent, yet he never informed ReadyJet and never called out. ALJ Dec. 7; Tr. 100, 104.

19. The ALJ's failure to find that ReadyJet employee Julio Medina knew it was ReadyJet policy to call out when absent. ALJ Dec. 7-8; Tr. 115.
20. The ALJ's failure to allow counsel for ReadyJet to expand on testimony during cross-examination of Batista. Tr. 94-95.
21. The ALJ's failure to credit Gerfi Mendez's testimony that it was he that brought up the strike as a reason for the no call/no show, not any managerial or supervisory employee from ReadyJet. ALJ Dec. 7, 12-14; Tr. 102.
22. The ALJ's failure to credit Gerfi Mendez's testimony that only a non-supervisory employee from ReadyJet said that any discipline was because of their participation in a strike. ALJ Dec. 7, 12-14; Tr. 103.
23. The ALJ's failure to find that Gerfi Mendez did receive warnings for attendance infractions prior to the strike. ALJ Dec. 7, 12-14; Tr. 105.
24. The ALJ's failure to find or give proper weight to evidence that Julio Medina did not give the required no call/no show notice for his absence on June 16, 2015. ALJ Dec.7; Tr. 109-110.
25. The ALJ erred by finding that Julio Medina received a disciplinary warning for going out on strike or, alternatively, crediting Julio Medina's testimony that that is what he believed occurred. ALJ Dec. 12-14; Tr. 112.
26. The ALJ's failure to find that Giovannie Martinez never said to anyone that the reason anyone received a disciplinary notice was for participating in the strike on June 16, 2015. ALJ Dec. 9-14; Tr. 116 - 117.
27. The ALJ's failure to find that the discipline that Luna received was for no call/no show. ALJ Dec. 12-14; Tr. 122.

28. The ALJ's failure to find or give proper weight to evidence that Luna could have been fired for the no call/no show but that he was given a further break because he was needed. ALJ Dec. 8-9, 16; Tr. 122.
29. The ALJ's failure to find that there was no mention of the strike at Batista's or Luna's disciplinary meeting. ALJ Dec. 8-9, 16; Tr. 120-122, 195.
30. The ALJ's crediting Luna's testimony that he did not know what his termination document stated. ALJ Dec. 8-9, 16; Tr. 124.
31. The ALJ's disregard or minimization of Luna's testimony regarding his termination meeting, describing it merely as "some inconsistencies." ALJ Dec. 16, fn 8; Tr. 124.
32. The ALJ's failure to find that Luna acknowledged under oath that he was fired for not performing his job. ALJ Dec. 8-9; Tr. 138.
33. The ALJ's failure to credit Union Logistics Coordinator Daniel Nicolai's testimony regarding the timing of the strike since he was the coordinator of the strike. ALJ Dec. 4-5; Tr. 156.
34. The ALJ's failure to find that the Union did not notify ReadyJet about the strike until the strike had already ended. ALJ Dec. 4; Tr. 159-161.
35. The ALJ's failure to find or give proper weight to evidence that the strike date was set two weeks ahead of the strike. ALJ Dec. 4; Tr. 164.
36. The ALJ's failure to credit Nicolai's testimony that no ReadyJet supervisors were located where the individuals were participating in the strike. ALJ Dec. 4-5; Tr. 167.
37. The ALJ's failure to find that Gonzalez and Cruz were seeking information about the Union from Felipe. ALJ Dec. 18-19; Tr. 221.
38. The ALJ's failure to find that any statements made by any ReadyJet supervisory employee is protected by Section 8(c) of the Act. ALJ Dec. 18.

39. The ALJ's decision to credit any General Counsel testimony with regard the timing of the strike is riddled with inconsistencies about its timing and location. ALJ Dec. 5; Tr. 26-36, 39, 78-82, 94, 99-103, 110-116, 119-122, 155-162, 172-177, 194 – 195, 215.
40. The ALJ's finding with respect to Sergio Restituyo that because no testimony was proffered as to the circumstances of Restituyo's no call/no show or the warning notice that was issued. ALJ Dec. 9, fn 5.
41. The ALJ's finding that Sergio Restituyo received a disciplinary warning on June 18, 2015. ALJ Dec. 9, fn 5.
42. Regardless of the standard used by the ALJ, the ALJ made an error of law by concluding that ReadyJet violated Section 8(a)(1) because General Counsel failed to establish that an unlawful consideration entered into the decision making process of disciplining any employee for no call/no show or for terminating Batista or Luna. Further, no violation of Section 8(a)(1) occurred because the basis of any discipline or discharge was not intertwined with any protected activity, and the employees had, in fact, violated company policy. ALJ Dec. 12.
43. The ALJ erred in finding that "it has not been seriously disputed that Martinez the overnight manager, was aware that the disciplined employees were engaged in a protected activity." ALJ Dec. 13; Tr. 193.
44. The ALJ erred in finding that "It is also not seriously disputed that Martinez, on June 18, issued the written warnings to the five employees because they failed to call in when they did not work their scheduled shifts but instead, participated in the strike." ALJ Dec. 13; Tr. 193-195.

45. The ALJ erred in finding that it is “without dispute” that warnings were issued because the five employees failed to call in for the reason that they were picketing on June 16. ALJ Dec. 13; Tr. 193-195.
46. The ALJ erred by relying on the “right to strike without prior notice despite an employer’s policy that requires advance notice by a worker when not coming to work” since the policy does not necessarily require advance notice. ALJ Dec. 10-11, 13; Joint Exh. 10.
47. The ALJ erred by concluding that the written warnings had the tendency to restrain and coerce employees in the exercise of their Section 7 rights. ALJ Dec. 14.
48. The ALJ erred by concluding that Giovannie Martinez’s remarks were “clearly coercive” and that the Respondent violated Section 8(a)(1). ALJ Dec. 14.
49. The ALJ erred by finding that “(e)ach of the four employees testified and corroborated that similar threats were made by Martinez” and that their testimony was “consistent” ALJ Dec. 14.
50. The ALJ erred by concluding that Martinez implicitly threatened discharge. ALJ Dec. 14.
51. The ALJ erred by finding that Martinez was a “top official” and “that he had the power not only to threaten but also to turn threat into reality.” ALJ Dec. 14.
52. The ALJ erred by relying on a case that involved discrimination as the impetus for a threat and coercion, and no such factor has been suggested in this case. ALJ Dec. 14.
53. The ALJ erred by finding that Batista and Luna would not have been terminated under Respondents’ progressive disciplinary policy but for their warnings received for participating in the strike. ALJ Dec. 14.

54. The ALJ erred by failing to find that ReadyJet discharged Batista because he was not arriving to work almost every Monday. ALJ Dec. 14; Tr. 196.
55. The ALJ erred by limited ReadyJet's argument regarding discharge of Luna because he had falsified a document of completing an assignment to replenish the potable water in the aircraft's laboratory. ALJ Dec. 14.
56. The ALJ erred by failing to consider ReadyJet's progressive disciplinary policy in its entirety, as evidence shows that "each level of discipline need not be imposed in every case, but is dependent on all the circumstances" and that they constitute "general guidelines to be used in the progressive discipline process." ALJ Dec. 15; Jt. Exh. 10.
57. The ALJ erred by implying that Giovannie Martinez gave the testimony that Batista's discharge was for "having been absent in that call-in and for being involved in matters with the Union" as such testimony came from Batista. ALJ Dec. 15; Tr. 86-87.
58. The ALJ erred by placing little importance on Batista's statement that he would "do the best he could to arrive on time on Mondays." ALJ Dec. 15; Tr. 196-197.
59. The ALJ erred by failing to note and recognize the pattern that each of Batista's absences or lateness subsequent to June 16, 2015, were on a Monday. ALJ Dec. 15; R. Exh. 3.
60. The ALJ erred by concluding that absent the final warning issued to Batista because of his participation in the strike, he would not have been discharged and by concluding he could not have been disciplined otherwise under the progressive discipline policy. ALJ Dec. 16.
61. The ALJ erred by finding that Batista's termination was intertwined with his participation in the strike. ALJ Dec. 16.

62. The ALJ erred by concluding that the basis for Luna's termination was faulty and that his final warning was issued on the basis of his protected activity for the strike. ALJ Dec. 16.
63. The ALJ erred by concluding that Luna could not have been disciplined otherwise under the progressive discipline policy. ALJ Dec. 17.
64. The ALJ erred by finding that Luna's termination notice, referencing a delay in the performance of services, referred to the June 16, 2015 strike and by concluding that he would not have been terminated "but for" his final warning for participating in the strike. ALJ Dec. 17.
65. The ALJ erred by concluding that Respondent discharged Batista and Luna due to their protected activity in violation of Section 8(a)(1) of the Act.
66. The ALJ erred by finding that the General Counsel met his initial burden and that the Respondent failed to meet its burden to show it would have taken the same action even absent the employee's protected activity and that the employee failed to demonstrate that it would have taken the same action in absence of the protected conduct. ALJ Dec. 17, fn. 10.
67. The ALJ erred by failing to find that the employees disciplined for no call/no show on June 16, 2015 were, in fact, guilty of no call/no show.
68. The ALJ erred by finding that Ready Jet's reasons for terminating Batista and Luna were "false." ALJ Dec. 17, fn. 10.

69. The ALJ erred in his Conclusions of Law in their entirety² as they are not justified by the record or under the Act or other legal principle, as ReadyJet did not violate the Act in any respect. ALJ Dec. 26.

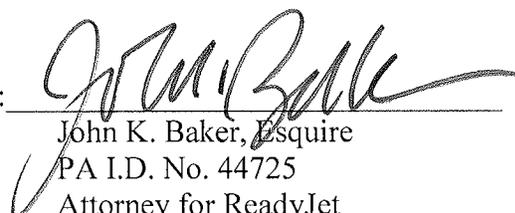
70. ReadyJet excepts to the ALJ's recommended Remedy and Order in their entirety as they are not justified by the record or under the Act or other legal principle, as ReadyJet did not violate the act in any respect. ALJ Dec. 26-30.

Respectfully Submitted,

WHITE AND WILLIAMS, LLP

Dated: November 9, 2016

By: _____



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² ReadyJet does not except to any findings or conclusions of law with respect to Rafael Marty as those findings/conclusions are consistent with ReadyJet's position and exceptions. ALJ Dec. 24-26.

CERTIFICATE OF SERVICE

I, John K. Baker, Esquire do hereby certify that on this 9th day of November, 2016, I served a true and correct copy of the foregoing Exceptions to the Decision of the Administrative Law Judge's Decision, upon the following persons via electronic mail and United States first-class mail, postage prepaid and addressed as follows:

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