

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

**EAST END BUS LINES, INC.**

**Respondent**

**and**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 1205**

**Charging Party**

**and**

**SHARON TARRY, An Individual**

**Charging Party**

<b>Case Nos.</b>	<b>29-CA-161247</b>
	<b>29-CA-162261</b>
	<b>29-CA-166857</b>
	<b>29-CA-169382</b>
	<b>29-CA-172090</b>
	<b>29-CA-178014</b>

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF IN SUPPORT  
OF THE ADMINISTRATIVE LAW JUDGE'S DECISION**

On November 21, 2016, Administrative Law Judge Ira Sandron issued his decision finding that Respondent committed numerous violations of the National Labor Relations Act in response to the organizing campaign of International Brotherhood of Teamsters Local 1205. While Respondent does not contest the vast majority of these findings – essentially conceding it repeatedly retaliated against employees for their union support – it nonetheless still denies it unlawfully retaliated against the one employee who first contacted the Union and whom Respondent held responsible for the campaign: Sharon Tarry. Despite the arguments Respondent makes in its exceptions, as the ALJ found, Respondent clearly demoted and discharged Tarry in violation of the Act. Respondent's exceptions should be rejected.

***There Is Clearly A Prima Facie Showing That  
Respondent Retaliated Against Sharon Tarry.***

As set forth in the ALJ's decision, there is undoubtedly a prima facie showing that Respondent demoted and discharged Tarry because of her protected activities. While Respondent makes perfunctory arguments against a prima facie showing, such arguments are simply not reasonable in this case. There is such overwhelming evidence throughout the record of Respondent's desire to retaliate against protected activity that Respondent does not even contest repeatedly violating the Act save for its retaliation against Tarry. With regard to Tarry specifically – where Respondent literally threatened her with retaliation for union activity just prior to the retaliation at issue – to argue against a prima facie showing is to argue against reality itself. Respondent has no reasonable argument against a prima facie showing of unlawful retaliation, and it is therefore more prudent to address how Respondent fails to meet the burden of its defense.

***Respondent Fails to Show It Would Have Taken the Same  
Actions Absent Sharon Tarry's Protected Activity.***

With a clear prima facie showing of unlawful retaliation, it is Respondent's burden under *Wright Line*<sup>1</sup> to show it would have taken the same actions even absent Tarry's protected conduct. Respondent fails to meet its burden.

First, Respondent argues that the testimony of its witnesses should have been credited, such that their claims of evenhandedness with regard to Tarry should be believed. But, as set forth in detail in the ALJ's decision, Respondent's witnesses did not testify credibly. As evidenced in the record, Respondent's witnesses repeatedly contradicted each other. They were

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<sup>1</sup> *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983).

evasive and defensive. Respondent's witnesses contradicted the documentary evidence.

Respondent's owner, John Mensch, when questioned by Counsel for the General Counsel while testifying under subpoena, was so hostile and misleading that Respondent declined even to call him as a witness in its own case. There is no basis to question the credibility determinations of the ALJ, and the Board's deference to his determinations is completely appropriate. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951).

Second, Respondent argues that the record demonstrates it would have discharged Tarry even in the absence of her protected activity. But that too is misleading. As set forth in the ALJ's decision, the evidence actually shows that Respondent deviated from its normal practices both in how it investigated alleged misconduct by Tarry, and then in the degree to which it punished her for that misconduct. In every way, Respondent's reaction to Tarry's misconduct was unprecedented. As the ALJ explained in his thorough analysis of Respondent's disciplinary records, comparable infractions by employees were historically punished with lesser degrees of discipline ranging from verbal warnings to short suspensions. ALJD pg. 54. Despite Respondent's insistence that it treated Tarry fairly, Respondent provides no basis to support its assertion that it would have treated her similarly in the absence of her protected activity.

In contesting the ALJ's determination that it unlawfully retaliated against Tarry, Respondent essentially argues that it had legitimate reasons for its actions. Respondent relies on the dubious testimony of its witnesses to argue it had a valid reason to both demote and discharge Tarry. But Respondent's argument is a misreading of *Wright Line*. Simply having a legitimate reason for an action is not sufficient to meet the burden of persuasion. *Williamhouse of California, Inc.*, 317 NLRB 699, 715 (1995). For Respondent's actions to be found lawful, it would need to demonstrate – not that it had a legitimate reason for what it did – but that it would

have acted the same way even absent Tarry's protected activity. As the ALJ found, and the evidence demonstrates, Respondent has not met its burden. Consequently, its exceptions should be rejected.

Dated January 4, 2017, Brooklyn, New York.



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