

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

KAPSTONE PAPER AND PACKAGING CORPORATION

and

ASSOCIATION OF WESTERN PULP AND PAPER WORKERS LOCAL
153, AFFILIATED WITH THE UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA

Case Nos.	19-CA-160107
	19-CA-160108
	19-CA-160161
	19-CA-160175

**KAPSTONE PAPER AND PACKAGING CORPORATION'S REPLY BRIEF TO CHARGING PARTY'S
ANSWERING BRIEF TO GENERAL COUNSEL'S EXCEPTIONS**

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I. INTRODUCTION

The Association of Western Pulp and Paper Workers Local 153, Affiliated with the Brotherhood of Carpenters and Joiners of American ("the Union") submitted an "Answering Brief to General Counsel's Exceptions" ("Union's Answering Br.") on January 27, 2017, with the expressed purpose of "request[ing] that the Board grant the exceptions of General Counsel . . ." *Union's Answering Br. at 12*. Such a filing is not contemplated by the regulations of the National Labor Relations Board ("the Board"), which only permit an Answering Brief filed in opposition to another party's exceptions. The Union's brief, which is not permitted by the Board's rules and regulations, must be disregarded.

Even if the Union's brief could properly be considered by the Board, none of the arguments raised therein support the conclusion that the Administrative Law Judge's ("ALJ's") well-reasoned decision ("Decision") should be overturned. The ALJ correctly concluded that Melvin Elben, James Froberg, Jon Bouchard, and Steve Blanchard engaged in serious misconduct that did not invoke the protections of the National Labor Relations Act ("the Act") and that KapStone Paper and Packaging Corporation ("KapStone") did not violate Sections 8(a)(1) or (3) of the Act when it made its appropriate decisions to terminate their employment.

II. STATEMENT OF FACTS

KapStone hereby incorporates its Statement of Facts set forth in its Answering Brief to Counsel for the General Counsel's Exceptions ("KapStone's Answering Br.") at pages 1-23, as if set forth in full herein.

III. LEGAL ARGUMENT

A. **The Union's Brief Fails to Comply With the Board's Regulations and Should be Stricken**

The Union filed what it has characterized as an "Answering Brief to General Counsel's Exceptions." The Board's regulations governing exceptions provides that "a party opposing the exceptions may file an answering brief to the exceptions . . ."¹ 29 C.F.R. § 102.46(d)(1) (emphasis added); *see also Wilmington Fabricators, Inc.*, 332 NLRB 57, 57 n.1 (2000) (noting that Section 102.46(d)(1) and (2) "require that an answering brief be limited to issues

¹ 29 C.F.R. § 102.46(d)(2) further clarifies that the Answering Brief must respond to the exceptions and "specify those pages of the record which, in the view of the party filing the brief, support the administrative law judge's finding." (Emphasis added). The Union has taken precisely the opposite approach, which is not contemplated by the regulations.

raised in the opposing party's exceptions") (emphasis added). The Union, however, does not oppose General Counsel's Exceptions. Rather, it has filed a brief in support of General Counsel's Exceptions, asserting that it "joins Counsel for the General Counsel in their request that the Board grant the General Counsel's January 5, 2017 exceptions in full and reverse the ALJ's decision." *Union's Answering Br. at 2*. The Union's use of an "Answering Brief" to duplicate arguments already advanced by the General Counsel should be disregarded.

While the Union could have filed cross-exceptions pursuant to 29 C.F.R. § 102.46(e), such cross-exceptions would have been required to comply with 29 C.F.R. § 102.46(b). Had it filed cross-exceptions, the Union would have been required to specifically identify each exception as follows:

Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception.

. . . Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

29 C.F.R. § 102.46(b) (emphasis added); *see also* 29 C.F.R. § 102.46(e) (requiring cross-exceptions to comply with Section 102.46(b)).

The Union did not file cross-exceptions, nor do its general arguments substantially comply with the requirements for cross-exceptions. Instead, the Union only generally referred to General Counsel's Exceptions, which themselves do not comply with 29 C.F.R. § 102.46(b) and (c). *See KapStone's Answering Br. at 24-25*. Nowhere in its "Answering Brief" does the Union specifically identify any of General Counsel's 161 Exceptions or link them to any of the Union's arguments; its brief therefore must be disregarded. *See Daycon Prods. Co.*, 357 NLRB 508, 508 n.1 (2011) (disregarding cross-exceptions that "do not meet the minimum requirements of Sec. 102.46(b)); *Univ. Truss, Inc.*, 348 NLRB 733, 733 n.2 (2006) (same)

The Union's attempt to reiterate many of the same arguments already raised by General Counsel as to the same exceptions is not contemplated by the Board's regulations.² Its non-compliant "Answering Brief" must be disregarded by the Board. *See* 29 C.F.R. § 102.46(b)(2), (d)(1), (e). Even were the Union's arguments properly

² By calling its brief an "Answering Brief," the Union inappropriately limited KapStone to a 10-page reply to address, in essence, a brief supporting another party's exceptions. *See* 29 C.F.R. § 102.46(h).

before the Board, which they are not, they raise the same issues already voiced by General Counsel. As articulated in KapStone's Answering Brief, the record wholly supports the ALJ's correct conclusion that KapStone did not violate Sections 8(a)(1) or (3) of the Act.

B. The ALJ Correctly Concluded That The Picketers' Misconduct Was Not Within the Act's Protection

The Union first asserts that Blanchard, Elben, Froberg, and Bouchard's conduct was protected by the Act, arguing that it was not sufficiently serious to lose the protection of the Act and to warrant discharge. *See, e.g., Univ. Truss*, 348 NLRB at 734. "Because the General Counsel Bears the burden of proving that the misconduct is shielded by the Act, any ambiguity or equivocation in the evidence on the question of the conduct's seriousness 'must be resolved in favor of the employer[.]'" *Illinois Consol. Tel. Co. v. NLRB*, 837 F.3d 1, 39 (D.C. Cir. 2016) (quoting *Axelson, Inc.*, 285 NLRB 862, 864 (1987)). The General Counsel has not met that burden here.

1. The ALJ Correctly Concluded That Blanchard's Misconduct Was Not Protected Under the Act

Contrary to the Union's contention, Blanchard's undisputed conduct of kicking a third-party contractor's truck ("the Delta Fire Truck") as it drove by and, less than hour later, jumping onto the hood of another third-party contractor's vehicle ("the RMR Truck") and striking it with his picket sign was "sufficiently egregious (and coercive)' conduct to lawfully merit termination." *Union's Answering Br. at 6 (citing Decision at 20:28-29)*. KapStone hereby incorporates its detailed discussion of this issue set forth on pages 29-39 of its Answering Brief, but reiterates the following specific issues in response to the Union's brief. *See also KapStone's Answering Br. at 4-6, 16-20, 23 (discussion of the factual background)*.

As an initial matter, the Union incorrectly asserts that "[n]o damage was caused by Blanchard in either incident[.]" *Union's Answering Br. at 6*. The ALJ found that "Smith reviewed video footage, the photographs of the truck's rear panel, and incident reports from Security Officers Dimitri Shilov . . . and Farrant . . . who inspected and confirmed the truck's damage. Smith also confirmed with the owner that the vehicle had been damaged by Blanchard's kick." *Decision at 13:16-20* (emphases added). The substantial evidence noted by the ALJ supports the conclusion that Blanchard's kick dented the Delta Fire Truck. *See Tr. 69:14-17, 70:17-23, 72:15-17, 207:25-208:2, 275:16-277:18; GCX 5, 6; RX 20*. The only evidence to the contrary is Blanchard's self-serving and non-credible testimony that he did not notice any damage to the truck as it sped by. *Tr. 799:13-21; R. Ex. 19; see also KapStone's*

Answering Br. at 31. Sufficient evidence in the record also supports the conclusion that Blanchard contributed to the shattering of the RMR Truck's windshield. See *Tr. 155:19-22, 162:2-164:11, 195:24-25, 815:2-10; RX 7, 8; see also KapStone's Answering Br. at 32-33.*

That distinction is important, because the Union heavily relies on its erroneous contention that there was no damage in arguing that the misconduct was not sufficiently serious. Even the cases cited by the Union confirm that where there is damage to a vehicle, termination is appropriate. See, e.g., *Medite of New Mexico, Inc.*, 314 NLRB 1145, 1146-47 (1994), *enf'd* 72 F.3d 780 (10th Cir. 1995) (misconduct not deemed sufficiently serious where strikers "hit the foreman's car with cardboard picket signs, but . . . they did not damage the car.") (emphasis added). "Damaging a vehicle crossing a picket line constitutes serious misconduct under *Clear Pine Mouldings* and is grounds for discharge." *Detroit Newspaper Agency*, 342 NLRB 223, 224 (2004); see also *CalMat Co.*, 326 NLRB 130, 135 (1998).

Regardless of whether Blanchard caused damage, however, his misconduct was sufficiently serious to warrant termination. The Union points to *Siemens Energy & Automation, Inc.*, 328 NLRB 1175, 1176 (1999), for the proposition that an employee's misconduct was deemed serious when he caused \$1,200 in damage to vehicles. But the Union relies upon a fact brought up in the concurrent opinion of that case; the main part of the decision holds, without qualification based on damage to the vehicle, that "kicking a car entering or leaving the plant during the strike[] may reasonably tend to coerce or intimidate employees in the exercise of their right to refrain from participating in a strike." *Siemens Energy & Automation, Inc.*, 328 NLRB at 1175, 1179; see also *Soft Drink Workers Union Local 812 (Pepsi-Cola Newburgh)*, 304 NLRB 111, 115-17 (1991). "Conduct such as kicking. . . moving vehicles is intimidating in and of itself," constituting "violent conduct which may reasonably tend to coerce or intimidate employees in the exercise of their rights protected under the Act." *GSM, Inc.*, 284 NLRB 174, 174-75 (1987).

Nor did the ALJ's Decision "entirely overlook[] the fact that Mr. Blanchard was being struck by an SUV when he hit it with his picket sign" *Union's Answering Br. at 7 (emphasis omitted)*. The ALJ correctly concluded,

based on credibility determinations to which the Board owes great deference,³ that Blanchard's conduct towards the RMR Truck was not a mere reflexive action, but included intentional misconduct towards the truck driver. See *Kapstone's Answering Br. at 31-32, 37; Decision at 19:31-20:29*. The ALJ's frame-by-frame review of the video evidence led her to the same conclusion: that Blanchard jumped onto the hood of the truck and struck it only after the vehicle had come to a complete stop. See *Decision at 20:11-29; RX 19*.

This case is therefore distinguishable from *Massachusetts Coastal Seafoods*, relied upon by the Union, which held that where the ALJ's credibility resolutions led to his determination that the striker "kicked the car of a nonstriker in a reflex reaction to his almost getting hit by the car," serious misconduct did not occur. 293 NLRB 496, 496 n.1 (1989). This case is instead akin to *Richmond Recording Corp.*, in which the Court held that a picketer engaged in sufficiently serious misconduct when he struck the hood of the car with a stick as "an instinctive warding off of the car and a reflexive reaction to being struck," and as "a retaliatory act for being assaulted by the car." 280 NLRB 615, 616 (1986).

Finally, the ALJ's consideration of the picketers' swarming of the RMR Truck was entirely appropriate. See *KapStone's Answering Br. at 34-35*. The swarming was yet another factor in the ALJ's sound conclusion that Blanchard's conduct "began the chain of events in question," and involved an outburst towards the RMR Truck driver, rather than simple self-defense. *Decision at 7:25, 8:6-7, 19:31-20:29; see also Richmond Recording Corp.*, 280 NLRB at 616 (taking into account swarming and blocking of vehicle that led to accidental bumping by picketer of vehicle, when holding that reflexive and/or retaliatory striking of the vehicle's hood with a stick constituted serious misconduct).

2. The ALJ Correctly Concluded that Elben, Froberg, and Bouchard's Misconduct Was Not Protected Under the Act

The undisputed conduct of Elben, Froberg, and Bouchard in blocking a third-party contractor's truck ("the Gardner Truck") from exiting the Mill for nearly twenty minutes was also sufficiently serious to merit termination. KapStone hereby incorporates its detailed discussion of this issue set forth on pages 39-48 of its Answering Brief, but

³ See *Newcor Bay City Div. of Newcor, Inc.*, 351 NLRB 1034, n.3 (2007) ("The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect.").

reiterates the following specific issues in response to the Union's brief. See also *KapStone's Answering Br. at 7-16, 20-23 (discussion of the factual background)*.

The Union's description of the factual circumstances, (*Union's Answering Br. at 5*), does not comport with the overwhelming evidence in the record and the ALJ's credibility determinations. See *KapStone's Answering Br. at 7-16, 20-23, 39-48*; *Newcor Bay City Div. of Newcor, Inc.*, 351 NLRB 1034, n.3 (2007) ("The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect."). Elben, Froberg, and Bouchard stood in an area of Fibre Way regularly utilized by large trucks to navigate the tight left turn from the Mill's exit and blocked the egress of the Gardner Truck for nearly twenty minutes, refusing to move to the side to allow the truck to pass. See *KapStone's Answering Br. at 7-16, 20-23, 39-48*.

In arguing that the three picketers' misconduct was not sufficiently serious, the Union relies entirely upon cases that are easily distinguishable. In *Illinois Consolidated Telephone Co.*, a picketer "walked back and forth across the entrance to the driveway of the garage parking lot, and a van "stopped briefly in front of the pickets, who were moving back and forth." 360 NLRB 1284, 1287 (2014), *enfd in rel. part* 837 F.3d 1 (D.C. Cir. 2016). Notably, however, the picketer was not disciplined based on that particular conduct, but was instead suspended for allegedly striking the van. See *id.* at 1295. The Board noted that "[w]hile Maxwell impeded Flood's exit from the Taylorsville parking lot for a very short period of time, he did not engage in the conduct for which he was suspended:" the striking of the vehicle. *Id.* The case has no bearing on the present circumstances, as it involved a "very short" blocking of a vehicle, and as that conduct was not even at issue in the employer's decision. *Id.*

In *The Hotel Roanoke*, 293 NLRB 182, 217 (1996), the Board addressed the contention that picketers merely slowed the flow of traffic by patrolling and found that there was insufficient evidence of an actual disruption of traffic. However, the Board noted in that case that "it is possible for a picketer to disrupt traffic in a manner exceeding the permissible bounds of strike activity" *Id.* at 217. Similarly, *Consolidated Supply Co., Inc.*, 192 NLRB 982, 989 (1971), involved "blocking [a truck] momentarily." 192 NLRB 982, 989 (1971) (emphasis added). The picketer merely "blocked Jim Wood for a few moments as he was attempting to park in a freight loading zone" *Id.* (emphasis added).

In contrast to the cases cited by the Union, Elben, Froberg and Bouchard did not merely slow the flow of traffic or “momentarily” block access to the Mill. While “a momentary, noncoercive blockage [may] fall within that form of mischief classified as ‘minor acts of misconduct,’” as was the case in *Consolidated Supply Co. Inc.*, that is not what occurred here. *Ornamental Iron Work Co.*, 295 NLRB 473, 479 (1989) (emphasis added); see also *Consol. Supply Co., Inc.*, 192 NLRB at 989. Rather, Elben, Froberg, and Bouchard blocked the Gardner Truck’s egress from the Mill for nearly twenty minutes. Blocking a vehicle for any period of time beyond “a few moments” constitutes coercive conduct in violation of the Act. *Big Horn Coal Co.*, 309 NLRB 255, 258-59 (1992) (“Blocking of ingress and egress of employees even for a short period of time until broken up by police to allow entrance or exit has likewise been held to be violative of the Act.”); *Metal Polishers, Buffers, Platers & Helpers Int’l Union, Local No. 67*, 200 NLRB 335, 336 (1972) (blocking access of cars to the employer’s premises for only a few minutes constituted restraining and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act); *Iron Workers Local 455 (Stokvis Multi-ton)*, 243 NLRB 340, 346 (1979) (picketers who delayed a van exiting the premises for “several minutes” engaged in serious misconduct, “because blocking an entrance or exit even for a short period of time constitutes restraint and coercion within the meaning of the Act.”); see also *KapStone’s Answering Br. at 44-46*. The ALJ’s conclusion that Elben, Froberg, and Bouchard’s conduct was not protected by the Act was not, as the Union asserts, “entirely at odds with established Board precedent,”⁴ but was squarely aligned with the Board’s consistent holdings that “peaceful picketing does not include the right to block access to the employer’s premises.” *Big Horn Coal Co.*, 309 NLRB at 258.

C. The ALJ Appropriately Considered Smith’s Conclusions Regarding the Picketers’ Violations of Criminal Law and the TRO

The Union additionally argues that the ALJ erred in considering Smith’s testimony that he concluded, during KapStone’s investigation into the picketers’ misconduct, that Blanchard, Elben, Froberg, and Bouchard’s conduct violated Washington’s criminal statutes and the Court’s Temporary Restraining Order (“TRO”). The ALJ’s consideration of that testimony was wholly proper. See *Cibao Meat Prods., Inc.*, 349 NLRB 471, 471 (2007) (“[T]he

⁴ Union’s Answering Br. at 6.

Board affirms an evidentiary ruling of an administrative law judge unless that ruling constitutes an abuse of discretion.”); see also *KapStone’s Answering Br. at 28-29*.

While the Union may be correct that the legality of the employees’ conduct under state law is not dispositive on the issue of whether their conduct was protected under the Act, it is nevertheless a legitimate factor for the ALJ to consider as part of her analysis. Smith’s conclusions regarding the picketers’ likely violations of state criminal statutes were directly relevant to the issue of KapStone’s honest belief that they had committed misconduct, as opposed to run-of-the-mill picket line activities. His conclusions were also relevant to the question of whether the conduct at issue was sufficiently egregious to deny reinstatement. Evidence that the Court issued an injunction is also directly relevant to the question of whether KapStone had an honest belief that strike misconduct has occurred. See, e.g., *Precision Concrete & Building Trades Organizing Project*, 337 NLRB 211, 221 (2001) (pointing to fact “Respondent persuaded a state court judge to issue an injunction against picket line misconduct . . . , and McDevitt had a copy of the injunction at the time of the incident” in finding that the employer had an honest belief that misconduct occurred). The TRO is additionally relevant to the issue of Elben, Froberg, and Bouchard’s knowledge that their actions were not permissible.⁵

The Union further asserts that the ALJ should not have relied upon purported “self-serving opinion testimony of Respondent’s security manager Smith.” *Union’s Answering Br. at 9*. The criminal statutes and TRO at issue speak for themselves, and Mr. Smith’s testimony was not necessary to determine that the picketers’ conduct was in likely violation of them. Regardless, to the extent the ALJ relied upon Mr. Smith’s testimony, her credibility determination “may not be overturned absent the most extraordinary circumstances” *E.N. Bisso & Son, Inc. v. NLRB*, 84 F.3d 1443, 1444-45 (D.C. Cir. 1996). “The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect.” *Newcor Bay City Div. of Newcor, Inc.*, 351 NLRB at 1034, n.3.

D. The ALJ Did Not Ignore Evidence of Application of a Double Standard to Replacement Workers, as the RMR Truck Driver Was Not a Replacement Worker or Employee of KapStone

Finally, the Union argues that “the ALJ wholly failed to analyze evidence showing that the Respondent disregarded the misconduct of its non-striking contractor,” the driver of the RMR Truck. *Union’s Answering Br. at 11*

⁵ All three testified that they were aware of the TRO. *Tr. 634:16-23, 878:25-879:2*.

(*emphasis added*). It further asserts that “the ALJ erred by failing to subsequently find that the Respondent lost its privilege to discharge the strikers when it failed to also discharge the Tahoe driver for his reckless violence.” *Id.* at 12 (*emphasis added*).

The Union’s argument completely ignores the fact that the individual in question was not an employee of KapStone, but was the employee of a third-party contractor.⁶ See *Tr.* 149:5-14, 155:2-5. KapStone could not “discharge” or take disciplinary action against an individual who was not its employee, but was simply a visitor at the Mill. Its purported “failure” to take action where it had no authority to do so, as against a non-employee, is irrelevant to its appropriate actions taken with respect to its own employees.

The cases cited by the Union are inapplicable here. In the seminal case of *Aztec Bus Lines*, “the Board made clear its view that if the struck employer disciplines non-striking employees differently, i.e. more leniently, than strikers, such disparate treatment will serve to immunize equivalent misconduct by strikers which would otherwise be adequate to support a discharge.” *Wayne Stead Cadillac, Inc.*, 303 NLRB 432, 439 (1991) (*emphasis added*) (citing *Aztec Bus Lines*, 289 NLRB 1021 (1988)); see also *Champ Corp.*, 291 NLRB 803, 806-07 (1988) (employer discriminated against strikers where it “was aware that nonstriking employee Freddie Vallejos had physically assaulted [a] striker,” but “took no disciplinary action against Vallegos”) (*emphasis added*); *Domsey Trading Co.*, 310 NLRB 777, 778 (1993) (“We rely particularly on the Respondent’s failure to discipline employee Sam Padgett who, *inter alia*, physically assaulted two returning female strikers . . .”) (*emphasis added*); *Gibson Greetings, Inc.*, 310 NLRB 1286, 1303, 1312 (1993) (finding discrimination where employer failed to discipline a strike replacement for an attack on a striker’s automobile). The Union does not point to a single case holding that the conduct of a non-employee third party is at all relevant in this context.⁷

⁶ Elsewhere in its brief, the Union erroneously refers to the RMR Truck driver as “a reckless replacement worker,” without any citation to the record. *Union’s Answering Br.* at 6. That is incorrect. It is undisputed that the truck driver was the employee of a third-party contractor, RMR, that did not perform any bargaining unit work. See, e.g., *Tr.* 149:5-14, 155:2-5.

⁷ In a footnote, the Union mentions that the ALJ erred by refusing to consider evidence regarding alleged misconduct directed at picketers by other employees. *Union’s Answering Br.* at 11 n.8. But the record confirms that in every circumstance where KapStone could identify KapStone employees involved in strike misconduct, KapStone investigated the circumstances and, finding that misconduct had occurred, disciplined the employees. *Tr.* 51:14-18. There were many instances where KapStone could not identify the individuals involved and therefore could not take action against them. *Tr.* 51:14-18, 52:3-8, 60:17-22, 61:14-17, 271:4-7, 446:6-13, 456:14-20.

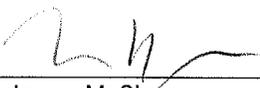
Furthermore, the Union is incorrect that "it is undisputed that the Respondent knew of the Tahoe driver's misconduct and permitted the contractor to continue working at the mill without imposing any discipline upon him." *Union's Answering Br. at 12*. Of course, KapStone could not "impose[] discipline" upon a non-employee, but the record demonstrates that KapStone did not, as the Union contends, "permit[] the contractor to continue working at the mill." *Id.* The RMR Truck driver never returned to the Mill after the incident in question.⁸ *Tr. 165:13-17, 1147:18-1148:1*.

IV. CONCLUSION

The ALJ's thorough and well-reasoned findings and conclusions with regard to all charges against KapStone should be affirmed. The record evidence and Board precedent clearly support the ALJ's decision that Blanchard, Elben, Froberg, and Bouchard engaged in serious strike misconduct and that denial of reinstatement of employment is warranted.

Respectfully submitted this 10th day of February, 2017.

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⁸ In addition, the RMR Truck Driver, did not, as the Union asserts, "fail[] to stop at a stop sign." *Union's Answering Br. at 11; see Tr. at 287:6-288:18*. As the ALJ correctly concluded, the Truck came to a complete stop before it was surrounded by swarming picketers and before Blanchard jumped on the hood and struck the vehicle with his picket sign. *See Kapstone's Answering Br. at 31-32, 37; Decision at 19:31-20:29*. Furthermore, KapStone concluded that the RMR Truck driver's action in subsequently driving away was understandable, as he otherwise "would have been subjected to further violence." *Tr. 292:22-293:3*. KapStone had no control over the status of the driver's license of the RMR Truck driver. *Tr. 293:13-16*.

DECLARATION OF SERVICE

I, Melissa Wood, hereby declare under penalty of perjury under the laws of the state of Washington that on February 10, 2017, I filed the foregoing Kapstone's Answering Brief to Counsel for the General Counsel's Exceptions with the National Labor Relations Board, and sent a true and correct copy via email to:

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SIGNED this 10th day of February, 2017.



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