

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

GREYHOUND LINES, INC,

and

LOUIS LITTLE, an Individual

CASE NO. 08-CA- 181769

**GREYHOUND LINES, INC.'s EXCEPTIONS TO THE DECISION OF
ADMINISTRATIVE LAW JUDGE THOMAS RANDAZZO**

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ATTORNEYS FOR RESPONDENT
Greyhound Lines, Inc.

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent, Greyhound Lines, Inc. ("Greyhound" or "Respondent"), respectfully files the following exceptions to the July 21, 2017, Decision and Order ("Decision") of Administrative Law Judge Thomas Randazzo ("ALJ").

EXCEPTIONS TO FINDINGS AND CONCLUSIONS

Respondent takes exception:

1. To the ALJ's finding that Louis Little was engaged in protected, concerted activity when he when he confronted manager Jon Heben on June 24, 2016, (D 20:29-30),¹ because Little's conduct was abusive, he delayed and disrupted Respondent's operations, and such a finding is contrary to law and fact.

2. To the ALJ's finding that Little's confrontation of Heben was union activity or a "pregrievance conversation" (D 7:1-3), because such a conclusion is contrary to law and facts, as no grievances were filed regarding any of the issues discussed in the confrontation, and Little admitted that he did not view Heben as a supervisor at the time of his explosive outburst. (GCX 30; Little 179).

3. To the ALJ's assertion that Heben "agreed" to meet with Little and Danielle Young on June 24, 2016, (D 23:9-10; 24:14-15; 39:23-25), as there is no evidence on the record to support such a finding, and in fact the record demonstrates that Heben never agreed to meet with Little and Young, and Little's confrontation of Heben was unexpected and unwelcome. (Young 268; Little 170).

¹ In these Exceptions and Greyhound's Brief in Support of Exceptions to Administrative Law Judge's Decision, Respondent uses the following abbreviated citations: hereinafter, "D __: __" refers to specific page and lines of the ALJ's Decision; "RX." and "GCX" refers to the Respondent Exhibits and General Counsel Exhibits, respectively; and "[Witness Name] __" refers to the witness and the transcript pages of the witness's testimony introduced at the hearing before the ALJ.

4. To the ALJ's finding that "Little's actions sought to bring to management's attention the complaints from Young and other female employees" (D 20:5-7), as the undisputed evidence demonstrates that Little never mentioned complaints of any "other female employees" to Heben or any other manager, and Little's confrontation was only with Heben and only about Heben's own conduct.

5. To the ALJ's finding that Little's conduct did not disrupt Greyhound's operations (D 20:14-16) where undisputed evidence demonstrates that Little unilaterally chose to remove Young from her job duties and confront Heben, without regard to the needs of the business or Heben's availability to meet, and Little's conduct further delayed the departure of a bus that was loaded with Greyhound customers, despite Heben repeatedly instructing Young to depart. (Little 172-74).

6. To the ALJ's finding that Little retained the protection of the National Labor Relations Act during Little's outburst on June 24, 2016 (D 21:30-31), because the ALJ misapplied the *Atlantic Steel* factors.

7. To the ALJ's finding that the location of Little's confrontation with Heben weighed in favor of finding that the conduct did not remove the protection of the Act (D 23:4-5), as such a finding is contrary to law and fact, and because the confrontation took place in a public place, in the presence of Greyhound employees and directly in front of a bus loaded with Greyhound customers.

8. To the ALJ's finding that Heben initiated the confrontation on the Platform and that Heben "continued to point his finger at [Little]" (D 23: 46-47), as such a finding is contrary to the record including video surveillance evidence that conclusively demonstrates this to be untrue. (RX 3).

9. To the ALJ's finding that the subject matter of the confrontation weighed in favor of protection (D 24:13-15), because the confrontation did not include any substantive discussion or disagreement, and primarily focused on Little's assertions that he had a right to use profane language at any time.

10. To the ALJ's finding that the nature of the outburst weighed in favor of protection (D 24: 29-30) because it is undisputed that Little engaged in a profane outburst where he repeatedly shouted "fuck you" at his manager and violently swung his arms while standing over his manager. (RX 3).

11. To the ALJ's finding that Little did not make physical contact with Heben when Little violently swung his arms in Little's direction (D 17:7-8), because such a finding is contrary to video evidence. (RX 3).

12. To the ALJ's reliance on the testimony of Danielle Young regarding the issue as to whether Little struck Heben (D 14:1-4), because video evidence conclusively demonstrates that Young's line of sight was blocked by Little. (RX 3).

13. The ALJ's finding that profanity was "commonplace at the Respondent's facility, and in particular, in and during union-management meetings where employee working conditions were discussed," (D 4:10-14) because this finding was erroneously based on testimony of events occurring many years ago, and were completely irrelevant to whether Little's profane outburst was protected by the Act.

14. To the ALJ's finding that "[p]rofanity, such as that used by Little, was used by both employees and management on a daily basis" (D 25:19-20), because there was no evidence that employees or managers used profanity on a "daily basis" and certainly not in the form of employees' shouting "fuck you" at a manager, which occurred in the present case.

15. To the ALJ's finding that Little's "outburst was provoked by Heben" (D 28:37-38), because Heben's conduct towards Little was reasonable and measured, while Little's response was grossly disproportionate to any alleged mistreatment by Heben. (Young 273; RX 3).

16. To the ALJ's finding that Little's conduct was not "insubordination" (D 28:1-6) when undisputed evidence demonstrates that Little repeatedly disregarded his supervisor's instructions to stop cursing at him, shouted "fuck you" and "fuck Greyhound" towards the supervisor, despite Heben's repeated requests for Little to stop cursing at him.

17. To the ALJ's finding that Little was terminated under unlawfully overbroad work rules (D 38:16-17), because the work rules at issue are not unlawfully overbroad and the record demonstrates that Little was terminated because his conduct constituted gross insubordination and he disrupted Greyhound operations.

EXCEPTIONS TO CONCLUSIONS OF LAW

Respondent takes exception:

1. To the ALJ's conclusion that "Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act by discharging employee Louis Little on July 13, 2016, because of his engagement in union and protected concerted activities." (D 43:10-12), as that conclusion is contrary to law.

2. To the ALJ's conclusion that "Respondent has engaged in unfair labor practices... in violation of Section 8(a)(1) of the Act for also discharging Little on the basis of, and pursuant to, unlawfully maintained and/or enforced conduct rules or policies.." (D 43:10-14), as that conclusion is contrary to law.

EXCEPTIONS TO PROPOSED ORDER

Greyhound takes exception:

1. To the ALJ's proposed Order compelling Respondent to "cease and desist from ... (a) Maintaining and/or enforcing rules or policies that: (1) prohibit employees from making any complaints, criticisms, or suggestions to or in the presence of passengers or the public, and which require employees to make any complaints, criticisms, or suggestions through appropriate internal Company channels; (2) prohibit conduct that challenges or coerces another employee, and requires employees to treat members of management with respect at all times; and (3) prohibits employees from divulging anything about the affairs of the company and prohibits permitting access to Company records or reports by any party outside the Company.," (D 45:9-18), as it imposes obligations on Respondent that are beyond the scope of the allegations in the Complaint and is not limited to Charging Party, the only employee for whom there was both an allegation and evidence presented in support of an alleged violation of Section 8(a)(1) and is not limited to employees within the meaning of Section 2(2) of the Act.

2. To the ALJ's proposed Order compelling Respondent to take "affirmative action" to "revise or rescind employee rules or policies that are overbroad, ambiguous, or otherwise limit employees' rights under the National Labor Relations Act," (D 45:31-34), as it is beyond the scope of the allegations in the Complaint and it imposes obligations on Respondent that are not limited to Charging Party, the only employee for whom there was both an allegation and evidence presented in support of an alleged violation of Section 8(a)(1) and is not limited to employees within the meaning of Section 2(2) of the Act.

3. To the ALJ's proposed Order compelling Respondent to take "affirmative action" to "Furnish all current employees with inserts for the current employee conduct policies that: (1)

advise employees that the above-mentioned unlawful policies or rules have been rescinded, or (2) provide employees with the language of revised lawful policies or rules on adhesive backing that will cover the above-mentioned policies; or (3) publish and distribute to employees policies that do not contain the above-mentioned unlawful rules or policies, or which contain or provide the language of lawful rules or policies," (D 46:1-8), as it imposes obligations on Respondent that are not limited to Charging Party, the only employee for whom there was both an allegation and evidence presented in support of an alleged violation of Section 8(a)(1).

4. To all other portions of the proposed Order that are based on conclusions and findings to which Respondent has excepted herein.

Respectfully submitted,

/s/ Jeffrey Seidle

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2017, a copy of the foregoing was electronically filed and served via U.S. mail upon the following:

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