

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28
BEFORE THE DIVISION OF ADMINISTRATIVE LAW JUDGES**

**MALCO ENTERPRISES OF NEVADA, INC. d/b/a
BUDGET RENT A CAR OF LAS VEGAS**

AND

Case 28-CA-213222

FRANCINE SCOLARO, an Individual

**RESPONDENT'S PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF
LAW**

NOW BEFORE THE NATIONAL LABOR RELATIONS BOARD ("NLRB"), comes Malco Enterprises of Nevada, Inc. d/b/a Budget Rent a Car of Las Vegas ("Budget") and submits the following proposed Findings of Fact and Conclusions of Law for the Administrative Law Judge's consideration:

The determinative issues of law and fact in this case come down to whether Budget's application of its lawful work rules resulting in the termination of Francine Scolaro was motivated by Ms. Scolaro's purported protected concerted activities ("PCA"). As found herein, General Counsel has failed to sustain his legal and evidentiary burden on all issues.

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

(A) With regard to the work rules alleged at the following Complaint paragraphs:

4(b) "[E]mployees should never speak negatively about one another on front of others whether it be customers, peers or management";

4(c) "What is expected of Budget Rent a car & Sales Employees... Always conduct him or herself in a polite, professional manner, treating customers and co-workers courteously and respectfully";

4(i)(1)(A) "[I]nsubordination or refusal to comply with instructions or failure to perform reasonable duties as assigned"; and

4(i)(1)(B) "[C]onduct which the company feels reflects adversely on the employee or company".

1. These rules on their face do not prohibit or interfere with the exercise of Section 7 rights guaranteed by the National Labor Relations Act (“Act”).
2. These rules are the type of “civility rules” expressly made lawful in Boeing.
3. These rules were not applied in this case to restrict employee protected concerted activity.
4. As such, Respondent did not violate the Act as alleged by the maintenance or application of these rules in this case.

(B) With regard to the written discipline alleged at Paragraph 4(c)(1) of the Complaint:

1. The General Counsel failed to establish that Charging Party Francine Scolaro was engaged in “concerted” activity within the meaning of Section 7 of the Act.
2. The General Counsel failed to establish the employer knew of the concerted nature of the employee’s activity.
3. The General Counsel failed to establish the alleged concerted activity was protected by the Act.
4. The General Counsel failed to establish the written discipline was motivated by the employee’s protected concerted activity.
5. Alternatively, and even if the General Counsel made such a showing in this case, Budget overcame any such unlawful inference by demonstrating it would have disciplined Ms. Scolaro for her disruptive conduct in a customer service area even in the absence of any such protected activity.
6. As such, Respondent did not violate the Act by issuing the written discipline alleged at Paragraph 4(c)(1) of the Complaint.

(C) With regard to the discharge alleged at Paragraph 4(i)(2) of the Complaint:

1. The General Counsel failed to establish Charging Party Francine Scolaro was engaged in “concerted” activity within the meaning of Section 7 of the Act on or about January 7, 2018.
2. The General Counsel failed to establish the employer knew of the concerted nature of the employee’s activity.
3. The General Counsel failed to establish the alleged concerted activity was protected by the Act.

4. The General Counsel failed to establish the discharge of the employee was motivated by the employee's protected concerted activity.
5. Alternatively, and even if the General Counsel made such a showing in this case, Budget overcame any such unlawful inference by demonstrating it would have discharged Ms. Scolaro for her insubordination and disruptive conduct in a customer service area even in the absence of any such protected activity.
6. As such, and even if such event is not time-barred by Section 10(b) of the Act, Respondent did not violate the Act by terminating Ms. Scolaro as alleged at Paragraph 4(i)(2).

Approved [as submitted] [as modified herein] this _____ day of _____

by:

Signed: _____

Judge Motomayor
Administrative Law Judge
National Labor Relations Board