UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWELVE

In the Matter of:	
Union Tank Car Company,	Case No.: 12-RC-221165
Respondent Employer,	
and	Case Nos.: 12-CA-210779 12-CA-219374 12-CA-220822 12-CA-222661
INTERNATIONAL ASSOCIATION OF, SHEET METAL, AIR, RAIL, AND TRANSPORTATION WORKERS (SMART)	
Charging Party Union,	

RESPONDENT'S CROSS-EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Respondent Union Tank Car Company ("Respondent" or "UTLX") excepts to the Decision (JD-03-19) of Associate Chief Administrative Law Judge Arthur J. Amchan ("ALJ" or "ALJ Amchan") in the above captioned case:

1. UTLX excepts to the ALJ's conclusion that UTLX's Use of Telephone rule, "as written, clearly prohibits cell phone use in non-work areas at any time during the workday and is presumptively invalid." [ALJD 7:33-34].[1] UTLX's Use of Telephone rule prohibited employees from using their cell phones at times when they were supposed to be working on the shop floor – not when they were on break or at lunch. [Tr. 137].

[1] ALJ Amchan's decision is cited herein as "ALJD ___." References to the hearing held on November 14, 2018 will be "Tr. __."

2. UTLX excepts to the ALJ's finding that "Respondent has not provided any convincing justification for the [Use of Telephone] rule as written and thus has not overcome the presumption" that the rule is invalid. [ALJD 7:35-37]. However, the valid justification for the rule was to help ensure employee safety in the hazardous working conditions within the plant. [Tr. 137]. This outweighed any potential impact it may have had on Section 7 rights.

3. UTLX excepts to the ALJ's citation to the case *The Boeing Company*, 365 NLRB No. 154 for the proposition that "the fact that Respondent rescinded the [Use of Telephone] rule establishes that the employer's justification for the rule did not outweigh the potential adverse impact on protected rights." [ALJD 7:39-41]. In doing so, ALJ Amchan erred in considering UTLX's rescission of this rule while weighing the importance of its justification against its potential impact on Section 7 rights. [ALJD 7:39-41].

4. UTLX excepts to the ALJ's determination that Ridge Wallace's testimony was more credible than Graham Bridges. [ALJD 5:28]. UTLX offered credible testimony that supports the conclusion that at no point did Graham Bridges impliedly or directly inform Ridge Wallace that his 30-day suspension would have been a written warning if not for SMART.

5. UTLX excepts to the ALJ's failure to consider the testimony of Michael Weeks when making his credibility determination regarding Graham Bridges' alleged remarks to Ridge Wallace. [ALJD 5:21-30]. During the hearing, Wallace testified that Michael Weeks was the only other hourly employee there. [Tr. 104]. When UTLX called Weeks to testify, he specifically denied that Bridges ever told Wallace that his discipline was harsher because of the Union. [Tr. 169-170].

6. UTLX excepts to the ALJ's factual finding that Supervisor Graham Bridges told employee Ridge Wallace "that if it were not for the Union, he would have received a written warning instead of a 30-day suspension." [ALJD 5:27-28]. Wallace testified that Bridges told him

that, if it was not for the union, he would have only received a "written training." [Tr. 102-103, 149-150].

7. UTLX excepts to the ALJ's conclusion that "Respondent, by Jody James, violated Section 8(a)(1) by confiscating the union's flyers in the breakroom." [ALJD 8:25-26]. In reality, James removed three flyers from the breakroom tables right before worktime was starting again and after every employee in the room had the opportunity to review the information. [Tr. 186, 193, 199, 218-219].

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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2019, the foregoing Respondent's Cross-Exceptions to the Decision of the Administrative Law Judge was served as follows:

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