

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**IMERYS CARBONATES USA, INC.**

**And**

**Case 10-C-232952**

**ROBERT JOSEPH BLANTON, an Individual**

**UNITED STEEL, PAPER AND  
FORESTRY, RUBBER,  
MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL  
UNION, AFL-CIO**

**and**

**UNITED STEEL, PAPER AND  
FORESTRY, RUBBER,  
MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL  
UNION, LOCAL 254-06, AFL-CIO**

**and**

**Cases 10-CB-232953  
10-CB-240168**

**ROBERT JOSEPH BLANTON, an Individual**

**RESPONDENT EMPLOYER'S BRIEF TO THE ADMINISTRATIVE LAW  
JUDGE**

Comes now IMERYS CARBONATES USA, INC. and submits this Brief on behalf of the Respondent Employer ("Employer" or "Company"). Employer's arguments herein are on behalf of itself only; no position is taken regarding the allegations against other parties.

## **I. INTRODUCTION**

Imerys Carbonates, Inc. operates a mining facility in Whitesone, Georgia. Employees at that site are represented by United Steelworkers Local 254-06. On December 6, 2018, the Employer learned that Charging Party, Robert Blanton, had been involved in an incident with another bargaining unit employee, Joe Young, a Union Steward. Shannon Smith, the Employer's Human Resources Manager, was informed of the incident and proceeded to investigate. His investigation revealed that Blanton and Young had been engaged in a verbal exchange, culminating in Blanton shoving and pushing Young. Shannon Smith and the Employer's Operations Manager decided to terminate Blanton for violation of the Employer's Work Rule that made "being the aggressor in a fight", a terminable offense. The Union grieved the discharge but decided not to arbitrate the matter. After investigation by Region 10, various Complaints were issued, leading to trial before the Honorable Arthur Amchan on December 9, 10, and 11, 2019. This brief is submitted pursuant to the Board's Rules and Regulations and an extension of the time to file briefs until February 14, 2020, granted on January 8, 2020.

## **II. ALEGATIONS AGAINST THE EMPLOYER**

The Complaint alleges that the Employer discharged Robert Blanton because he “engaged in anti-union activity and concerted activities and to discourage employees from engaging in these activities.” Complaint, Paragraph 14, emphasis added. The Complaint deems that by these actions, “Respondent Employer has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby encouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.” Complaint, Paragraph 15.

### **III. SUMMARY OF EMPLOYER’S ARGUMENT**

Counsel for the General Counsel is apparently arguing two alternative theories, 8(a)(1) protected concerted activity, and 8(a)(3) discrimination. With regard to the protected concerted activity claim, Charging Party’s conduct was neither concerted nor protected. His behavior in the incident that caused his discharge was a personal dispute not involving any action on behalf of or in the interests of others. Even if concerted, Blanton forfeited any protection under the Act by his abhorrent action of assaulting a fellow employee.

With regard to the discrimination case, there is no evidence in the record that would support an inference that Blanton’s anti-Union activities were a motivating factor in his discharge. Indeed, the Employer had no knowledge of Blanton’s anti-Union activities other than the disputed and minimal information learned during the

investigation of the incident leading to his discharge. Further, no evidence of animus against his anti-Union activities was offered, doubtless because no such evidence exists. Finally, Employer demonstrated that it would have properly fired Blanton despite any anti-Union activity and animus toward that activity because of his assault of a fellow employee.

#### **IV. ARGUMENT AND APPLICABLE AUTHORITY**

##### **A. Review of the Facts**

Allegations against the Employer center on an incident that occurred on December 6, 2018, at the Employer's facility. About all that is undisputed about the incident is that it began with employee Joe Young trying to speak to employee Robert Blanton, followed by Blanton yelling vile and abusive language at Young, and that it ended with Blanton physically assaulting Young by pushing or shoving him.

All parties agree that on December 6, 2018, Young approached Blanton's work station and motioned for him to come down the stairs to talk. TR. 45, 217. Blanton acknowledges that he then came down the stairs and immediately began cussing Young. TR.252. Blanton admits calling Young "motherfucker several times, asshole, fucking liar, and son of a bitch." TR.114-115. Here the stories diverge.

##### **1. Blanton's version:**

Blanton contends that Young immediately began “chest bumping” him when he came down from his work station and also repeatedly threatened to “kick his ass.” TR.45-48. Blanton claims that Young then followed him 50-75 yards to the breakroom, repeatedly and viciously “chest bumping” him all along the way. TR.46-47. Then, according to Blanton, Young “slams into my back and knocks me through the doorway” of the breakroom, TR.47, and then chest bumped him again while “chasing me around the fucking table.” TR.48. Blanton’s version concludes with his admission that he physically pushed Young: “I turned around and I pushed him.” TR. 47.

Is Robert Blanton’s testimony credible? In answering this question, it is helpful to examine his reputation for untruth, along with his demeanor and temperament. Blanton’s own testimony and that of every individual who testified at the hearing reveals that he is an arrogant, aggressive, foul mouthed individual with anger management issues. How did he appear on the witness stand? Rather than appearing to be credible and truthful, Blanton presented himself as angry, arrogant and vengeful. See, for example TR. 39-40, 114-115.

Fellow employees have observed Blanton’s vicious nature. Blanton and Haul Truck Driver Doug Harper have a good relationship, according to Blanton. TR.98. Even so, Harper testified that Blanton has a temper and anger problem.

I had seen a lot of times Bobby he had a bad temper or anger problem I guess you'd say. I'd seen him get real upset before, not to that extent. That's probably the worst that I'd seen, but I had actually seen him get very upset about other things before and toward other coworkers.

TR. 271.

Harper told of Blanton violently kicking a door down in anger:

And he jumped up from the table and he said, F that son of a bitch, and went over and he kicked the door open. It yanked the bolts out. We had to have the door fixed.

TR. 271

Harper also related Blanton's angrily throwing and breaking his hard hat:

He just busted his hard hat. He got mad at some -- some point when he was loading he got mad and then he actually busted his hard hat.

TR.271-272.

Harper concluded:

Everybody kind of looked at him as a very angry, I guess, disgruntled employee. He just -- basically not long after he came there, he was very outspoken and very angry. He -- it didn't take anything much to trigger his anger.

TR.275.

Even the sole witness who attempted unsuccessfully to support his case (Tylor Waters) said Blanton has a reputation of being a "hothead" TR.171.

What about Blanton's credibility in other matters? He clearly has a propensity to exaggerate or outright misrepresent. One good example of Blanton's making unsubstantiated claims is his allegation that the Union and the Company were engaged in a nefarious embezzlement scheme. Blanton admitted that he alleged that Darri Ford "was getting paid off or bribed by the Company." TR. 106. Blanton claimed "thousands of dollars are changing hands" TR.313-314, 317. Blanton said to Ford, "you are in bed with the Company and they are paying you thousands of dollars and you are a motherfucking liar" TR.317. Of course, Blanton never offered any proof of these baseless allegations.

Blanton's account of the events leading to his discharge is manifestly unbelievable because of his background, his demeanor while testifying, and the clear exaggeration of events.

## **2. Young's version:**

Young described the initial verbal attack:

Just as soon as his feet hit the ground right there, he told me he didn't want to hear anything from my fat lazy ass. To get back across the creek... then he went to cuss at me using big-boy words, we might say. And I told him, I said I'm just trying to explain what's going on and he just -- he wouldn't give me time to talk to tell him what was going on. There was just a constant redicret (sic) of cuss words, you know.

Q · Did you curse back at him? 20 ·

A · No, sir.

TR. 215.

According to Young, he wished to talk to Blanton to clarify a rumor started by Blanton regarding the ability of the Union to strike. TR.216-217.

Q. Okay. So Bobby comes down and starts, as you say, starts cursing at you, right? What did you do in reaction to that?

A. I just kept on saying listen, let me explain it to you. Listen, let me explain. Why did you feel that it was important to explain it Well, it wasn't as much to explain to him. It was if I could get to understand it, he could explain it to the 53 people that he was telling wrong. Okay. You know, if I could correct him, he wouldn't be telling everybody else the wrong statement anymore. Okay. Because I mean I've talked to several people since that day and nobody tells me that you can ever go on strike and be paid standing in the middle of the road. And I, you know -Yeah. I just wanted my crew to understand that before they started making strike signs up.

TR. 216-217.

Young followed Blanton to the breakroom but did not "chest bump" him along the way. TR. 200,225,251.

After he cusses me, let's -- the whole time, our whole time at this station probably lasted 45 seconds, maybe 50 at the most. He turns and starts walking to the breakroom

or in that general vicinity, so I went with him. And I was probably at the edge of this would be his back and I would be right here. And halfway he stopped and turned and then there we are; we're right at each other. A couple more cuss words, he walked some more, stops and turns, a couple more cuss words. TR.218.

Q. Okay. And did you come into contact with him while you were walking behind him?

A. I don't think we actually physically touched. He did turn twice and cursed me some more, but when he stopped I stopped, so there was no ... contact, no -- no physical touching.

TR. 254.

...

Q. Okay. And so tell the Judge what happened when you got the breakroom.

A. As soon as he went through the door, I was behind him. I put my hand on the door, but he stopped me from coming in the door. That's where he give me just a little nudge, two hands on my chest, and then he walked on in and I walked on in, too. TR. 220.

Q. Okay. So you got to the breakroom; he gave you a shove. Then what happened?

A. We took a couple more paces. We got a big picnic table in our breakroom; it takes up 90 percent of it. Well, we made it about even with the time clock, which is about three steps into the breakroom. He give me another little shove there. The same ordeal. He said I'm not listening to; get the blank away from me. He went on around the picnic table, went out the door.

Q. What did you do in reaction to that?

A. Sit there stunned. There was two people in the breakroom and one of them asked me, said he's went plum crazy. And I just done like that.

TR. 220-221.

...

Q. Okay. Now, so after you -- then you got into the breakroom and you talked some more, right? Do you recall what you said to him in the break room? What were you trying to get through to him?

A. I just kept saying I'm trying to explain it to you.

Q. And what was his reaction?

A. Saying curse words, saying I don't want to hear, I'm not listening, saying curse, curse, curse out the door.

Q. So why did you feel it was important to explain to him what was going on?

A. I thought if he understood what was going on he would be more relaxed and not try to get everybody there started up on going on strike or -- or -- you know, we got a lot of elderly gentlemen works at our facility and you know they -- I guess they believe whatever's being told to them the most.

Q. Okay. So you were trying to counteract what he was saying?

A. Yes

TR.254-255.

In summary, Young says that he never chest bumped Blanton and that Blanton physically pushed him twice. Unlike Blanton, Young appeared to be a calm, deliberate witness, whose testimony was simply more believable than Blanton's. In

sharp contrast to Blanton, Joe Young has a reputation of being calm and non-aggressive. Fellow employee Ruel Johnson, who had daily contact with Young, described Young's demeanor: "He's always just like Joe. You know, Joe is an easy-going person, talks, I never did see him get mad or nothing like that" TR.238. Employee Doug Harper confirmed to Shannon Smith that Young was calm during the incident. TR.446-447, Union Exhibit 4.

### **3. Testimony of Eye Witnesses**

Disinterested eye witnesses belie Blanton's description of the incident and support Young's version. Young's account is supported by three hourly employees who saw various parts of the incident.

Ruel Johnson, an Oiler Mechanic, drove the "mule" carrying himself and Young to Blanton's work station, and was 20-30 feet from the initial interaction between Young and Blanton. TR.233-234. He did not see any physical contact or chest bumping by Young. TR.237. Because he has a hearing problem and was wearing hearing plugs, he could not hear the conversation. TR. 234, 241. During the investigation of the incident, Johnson told Shannon Smith that Young was calm and Blanton was agitated. Union Exhibit 4, TR.446-447.

Doug Harper, a Haul Truck Driver, was in the breakroom and witnessed that part of the incident. TR. 262, 265. He heard Blanton cursing: "Bobby was pretty well calling

Joe every name in the book...” TR. 267. In contrast, Harper noted that Young “did not curse or raise his voice.” TR.267-268. Harper saw Blanton shove Young and say “Leave me the fuck alone.” TR.268. Harper also recalled hearing Blanton threaten Young, saying “I can work your fucking dick in the dirt, and you SOB.” TR.268. Harper was so concerned about Blanton’s conduct that he called the Plant Manager, Sonny Pierce. TR. 268-269. His concern was sparked by his knowledge of Blanton’s bad temper and anger problem. TR. 271.

Jeremiah Jerrit, a Plant Operator, was also in the breakroom and witnessed Blanton’s conduct. Jerrit was standing by the door looking out of the window as Blanton and Young approached the breakroom. TR. 306. In sharp contrast to Blanton’s account of his being violently shoved through the door by Young, Jerrit testified that Young did not touch Blanton. TR. 301-302. Jerrit heard “a lot of cursing” by Blanton, but not by Young. TR. 302. Jerrit did not see Young chest bump or touch Blanton either on their way to the breakroom or after they entered the breakroom. TR. 301. Most importantly, Jerrit is certain that Blanton shoved Young. TR. 301-302.

### Tylor Waters

The ONLY attempted corroboration of Blanton’s tale comes from a discharged employee with a reputation for lying who could not have actually witnessed the incident and who has told different versions of his testimony during the processing

of Blanton's case. Former employee Tylor Waters testified that he saw Young chest bump Blanton "a few times" TR.149. He claimed that he saw Blanton walking away from Young, then saw Blanton turn around and say to Young "Get the fuck away from me" TR. 178. Waters added "and that's when the chest bumping that I saw" TR.178. Waters says this all occurred as the two *left* the breakroom. TR.169-172.

What is wrong with Waters' testimony? First, Waters admits that he could not hear the conversation, contradicting his claim that he heard Blanton yell "Get the fuck away from me" TR.149. No wonder, since he was working on a silo some 80 feet off the ground. TR.160-161, 456. See Union Exhibit 1. More importantly, Waters could not have seen the incident as he claims from his work location. TR. 450. According to Waters, what he saw happened "around the breakroom." TR.170. Yet he conceded that the breakroom is not visible from his silo workplace. TR.160-161. Finally, Waters says what he saw occurred as Young and Blanton were leaving the breakroom and that he did not see anything before they entered the breakroom. TR. 169-172. Another blunder since Blanton left the breakroom alone after the altercation. TR. 449. Blanton himself stated to Shannon Smith that he left the breakroom alone after the altercation and that Young did not follow him. TR.449. Young testified that he left the breakroom 20-30 seconds after Blanton. TR.255.

In addition to the obvious inconsistencies and inaccuracies in Waters' testimony, he has a reputation for dishonesty. Hourly employee Doug Harper described Waters as a habitual liar.

Q. Did Mr. Waters -- what kind of reputation did Mr. Waters have at the plant?

A. Kind of a whole lot like a kid. He was -- everybody kind of made fun of him. He was a habitual liar. He -- he always making up different kind of things and telling unbelievable stories. And everybody was kind of always made kind of fun of him because of what he -- just kept making up stuff.

TR.282-283.

Mr. Harper offered several instances to support his characterization of Waters as a habitual liar, such as his falsely claiming to have a Commercial Driver's License and delivering hay to Garth Brooks and Tricia Yearwood. TR.283-284. Even Blanton acknowledged that Waters "was not a good employee." TR.63.

Tylor Waters never told anyone from the Company what he saw. TR.155, 191. He only offered his "evidence" to the Union after Blanton was terminated. TR.152. Even then, what he told Union Representatives changed several times. Initially, he told Alex Perkins that he did not see any chest bumping. TR. 337-338, 340. Waters told Kelley Smith that he had only seen Young and Blanton walking but did not mention any physical contact. TR.422-423. Darl Ford asked Waters to provide him

with a written statement as to what happened, but “never heard from him again.” TR.389.

So, what is Waters’ testimony worth? Zero. And by Blanton’s own admission, Waters is the “only witness that corroborated my story.” TR.73.

#### **4. The Inexorable Conclusion Regarding the Facts**

What are we left with after all of the testimony is considered? On one hand, the self-serving fantasy told by an aggressive “hothead” with anger management issues, supported only by a habitual liar whose testimony is so massively flawed as to be totally unbelievable. On the other hand, a totally credible account by Joe Young of having been assaulted without provocation, provided by a person with a reputation for calm, supported by disinterested eye witnesses.

The inevitable conclusion is that Blanton laid hands on Joe Young and shoved or pushed him without provocation. Blanton admits this transgression, albeit with a lame excuse of self-defense.

#### **B. Legal Analysis**

The Complaint alleges two violations by the Employer: (1) Illegal termination because Blanton was engaged in protected concerted activity and (2) Discriminatory termination of Blanton because of his anti-Union activities.

## 1. Protected Concerted Activity

Blanton was not engaged in concerted activity during the incident that led to his termination. Certainly, an individual can act in such a manner as to render his or her actions “concerted.” For example, a single employee’s conduct can be “concerted” if it is engaged in “with or on the authority of other employees, and not solely by and on behalf of the employee himself.” Meyers Industries (Meyers I), 268 NLRB 493, 496(1984). Circumstances under which a single employee’s actions could be “concerted” include cases where individual employees “seek to initiate or to prepare for group action” or bring “truly group complaints to the attention of management.” Meyers Industries (Meyers II), 281 NLRB 882, 887 (1986). However, to so qualify, the individual must be acting on behalf of or in the interests of others, and not solely by and on behalf of the employee himself, Meyers Industries I and II, supra.

Recent Board decisions have substantially narrowed the scope of what is considered to be concerted activity. In Alstate Maintenance, 367 NLRB No.68 (2019), the Board held that an individual employee’s complaint about a tip issue was not protected concerted activity even though the complaint was made in a meeting of employees. The Board found the individual complaint was a “mere gripe,” not a “concerted” complaint made on behalf of, or to induce action by, his co-workers. The Board additionally found that the employee’s complaint did not meet

the second prong of the PCA analysis – i.e., it was not for “purpose of mutual aid or protection. See also, Quicken Loans, Inc., 367 NLRB No.112.

Also, in a recent Memorandum from the Division of Advice (General Motors, 7-CA-053570), it was found that an employer did not violate the Act when it terminated an employee for posting a derogatory comment on the Employer’s Facebook page, noting that the comment contained no language suggesting that the Charging Party sought to initiate or induce co-workers to engage in group action. Therefore, the Charging Party’s conduct was not concerted... [and] “the Charging Party did not engage in conduct that, though not concerted, nonetheless implicated common concerns underlying Section 7 of the Act, i.e., conduct with regard to subjects such as wages that would be protected if it were concerted.”

Alstate, Quicken, and General Motors make it clear that the current Board requires employee conduct to be both concerted and for the purpose of mutual aid or protection in order to obtain protection under the Act. Absent actual proof of both essential elements, an individual employee’s conduct or complaints at or about work (or complaints made on an employee’s own behalf) will not be protected.

Nothing in Blanton’s conduct in the incident that resulted in his discharge was “concerted” or “for the purpose of mutual aid or protection”. The entire incident arose out of Blanton’s individual dissatisfaction with the Union and his personal

animosity toward Joe Young. As he told Shannon Smith during the investigation, “Young approached him in an aggressive manner asking what he was doing calling the Union above him.” TR.457, Union Exhibit 4. Based on the current Board’s recent narrowing of the scope of “concerted”, that this is simply not enough.

Judging from the questions asked at the hearing, Counsel for the General Counsel believes that simply because the discussion between Young and Blanton involved “union business” that the incident constituted concerted activity. TR. 457-458.

It is important to note that at no time during the incident did Blanton make any statements or do anything that could be interpreted as other than making an individual “gripe” about his individual issues with the Union. He was not engaged in activity with or on the authority of other employees or raising matters of group concern. He was acting solely by and on behalf of himself and was not seeking “to initiate or to induce or to prepare for group action.”

Blanton’s activities PRIOR to the incident with the incident itself should not be confused with his conduct during the incident that led to his discharge. Yes, he previously protested the Union’s actions or lack thereof, such as railing against the Union’s acceptance of limitations on overtime negotiated in the most recent collective bargaining agreement. See, for example, TR.21-22,32,38,99,104,110-112. All of Blanton’s protests were before the incident with Joe Young on

December 6th and without the knowledge of the Employer. None of the elements required to constitute “concerted” were present in the incident with Joe Young. The mere fact that the underlying reason for the altercation involved “union business” cannot in itself make the conduct “concerted.”

Even if Blanton’s conduct were deemed concerted, his physical assault on Young forfeited any “protection.” It is well established that the Act’s protection of concerted activity is lost by repugnant conduct. See, for example, KHRG Employer, LLC d/b/a Hotel Burnham & Atwood Café, 366 NLRB No. 22 (2018). “The Board balances employees’ right to engage in concerted activity, allowing some leeway for impulsive behavior, against employers’ right to maintain order and respect.” Here the Employer did indeed allow ample leeway for impulsive behavior. Shannon Smith testified that Blanton was not fired for his verbal abuses, which obviously were repugnant and disgusting (“motherfucker several times, asshole, fucking liar, and son of a bitch.”). TR. 452. Blanton was fired consistent with the Employer’s “right to maintain order and respect.” Blanton violated one of the most important of all workplace rules: physical assault of another employee. This transgression can be labelled “being the aggressor in a fight” (General Counsel Exhibit 3), laying on of hands, shoving/pushing, or any of a thousand other descriptors. Whatever the moniker, physically assaulting another person in the workplace is simply intolerable.

As Shannon Smith testified:

Q. Now, you heard the testimony of Mr. Young saying he didn't think it was a very big deal, didn't you?

A. I did.

Q. Did you think it was a big deal?

A. The company thinks it's a big deal.

Q. Why is that?

A. Because you cannot assault another employee.

Q. I can't hear you.

A. Because you cannot assault another employee. It's against our -- our rules and policies.

TR. 452.

See also, Crown Plaza LaGuardia, 357 NLRB 1097 (2011) (employee made physical contact with manager, thereby losing any protection under the Act) and Starbucks Coffee Co., 354 NLRB 876 (2009), enfd. in relevant part 679 F.3d 70 (2<sup>nd</sup> Cir. 2012).

## **2. Discriminatory Termination**

This allegation is properly analyzed under the burden shifting formula of Wright Line 251 NLRB 1083 (1980) and subsequent cases clarifying that analysis. Under Wright Line, the General Counsel bears the initial burden to demonstrate that the Section 7 activity was a motivating factor in the decision to discharge the employee. Doing so requires two elements: that the Employer knew of the Union activity (here anti-Union activity) and that the Employer had "animus" regarding the activity. A recent Board decision has clarified what proof is required to carry the initial burden.

In Tschiggfrie Properties, Case 25-CA-161304, (2019) the Board ruled that in demonstrating that protected conduct was a motivating factor, General Counsel must show sufficient evidence of animus to support a finding of a causal relationship between the employee's activity and the employer's adverse action, not merely that there is evidence of animus. The Board's decision makes it clear that General Counsel must demonstrate motivating causal animus before the burden shifts to the employer to demonstrate the same action would have been taken in the absence of the unlawful motive.

The record in this case is devoid of any evidence that Blanton's anti-Union activities were a motivating factor in Blanton's discharge. Indeed, Blanton's anti-Union activities were unknown to the Employer before its investigation of the incident between Blanton and Young. Shannon Smith testified:

Q. Did Mr. Blanton's complaint about the Union not representing him well have anything to do with your termination of him?

A. I had no idea of that.

Q. Do you know whether or not Mr. Blanton had threatened to decertify the Union?

A. I do not.

Q. Did you have any good [knowledge] of any antiunion conduct on the part of the -- on Mr. Blanton's part before this incident?

A. No.

TR.453.

Even during the investigation, the Company only became aware of a dispute between the two employees and learned virtually no information about Blanton's alleged anti-Union activities. Yes, it is now abundantly clear that Blanton vehemently opposed many aspects of the Union's representation. From the testimony at the hearing, it is certain that he cursed and belittled Union leadership and complained repeatedly to various Union personnel. However, there is nothing in the record that any of Blanton's grotesque activities were ever made known to the Employer. Based on the record from the hearing, it is clear that the first and only time that the Employer had any inkling of any form of anti-Union activity by Blanton occurred during the investigation of his assault on Joe Young. Even that testimony is not enough to demonstrate Employer knowledge of Young's anti-Union activity. Shannon Smith testified that he had no knowledge of Blanton's complaints about the Union or that Blanton had threatened to decertify the Union. TR.453. Smith only knew that Blanton had told him that Young approached him in an aggressive manner asking "what he was doing calling the Union above him." TR. 457, Union Exhibit 4. General Counsel has failed to provide proof of the threshold and essential element of Employer knowledge of anti-Union activity.

Secondly, there is no evidence whatsoever of any animus toward the alleged anti-Union activity, much less the *causal* animus required under Tschiggfrie Properties . Although it is certainly possible that an Employer could have animus against

activities that were critical of the Union and in support of decertification, no such evidence was presented here. As explained by Shannon Smith, the relationship between the Company and the Union is neither particularly good or bad.

Q. How's your relationship with the Steelworkers Union?

A. Well, you know, we have a professional relationship. We -- we weren't friends, we weren't enemies. We conducted business professionally.

Q. Have you ever done anything to -- to help support the Union?

A. No.

Q. Are you aware of anything the company has ever done to support or assist the Union in any way?

A. No.

TR.453.

Of course, animus can be inferred from disparate treatment, i.e. showing that other employees with no similar anti-Union activity have not been terminated for the same offense. Once again, there was no such evidence presented at the hearing. There is no evidence that any Imerys employee engaged in Union activity-pro or con- and was not terminated for the same or similar offense as Blanton.

General Counsel has not met the standard required by Wright Line and Tschiggfrie Properties to prove a prima facie case. Blanton's anti-Union activities were not a motivating factor in the Employer's decision to fire him.

Even if General Counsel had shown knowledge and causal animus, thus establishing motivation, the Employer demonstrated that it would have taken the same action in the absence of the anti-Union activity. As noted previously, Blanton violated one of the most important of all workplace rules: physical assault of another employee. Whether the assault is called "being the aggressor in a fight" General Counsel Exhibit 3., laying on of hands, shoving/pushing, or by any other name, physically assaulting another person in the workplace is simply intolerable. As Shannon Smith testified:

Q. Now, you heard the testimony of Mr. Young saying he didn't think it was a very big deal, didn't you?

A. I did.

Q. Did you think it was a big deal?

A. The company thinks it's a big deal.

Q. Why is that?

A. Because you cannot assault another employee.

Q. I can't hear you.

A. Because you cannot assault another employee. It's against our -- our rules and policies.

TR. 452.

Smith summarized that the Company fired Blanton not for his any alleged anti-Union activity, complaints, or any other reason than “because you cannot assault another employee” TR.452-453.

In his opening statement, Counsel for the General Counsel stated: “Under the standards set by the Supreme Court in NLRB v. Burnup & Sims, Incorporated, 379 U.S. 21, (1964), Respondent Employer violated the Act by terminating Blanton, an employee who was not guilty of misconduct and who was engaged in activity protected by Section 7 of the Act.” TR.10. His reliance on Burnup & Sims is misplaced. That case involved an Employer’s termination of an employee based on an honest but mistaken belief that the employee had threatened another person. In reality, the Charging Party in Burnup had not actually committed the acts alleged. In this case, Blanton did commit the act for which he was discharged. Unlike the Employer in Burnup, there was no “honest but mistaken” belief of the assault. The evidence here clearly shows that Robert Blanton physically assaulted Joe Young without provocation.

#### **V. CONCLUSION**

Respondent Employer did not violate the Act by terminating Robert Blanton. Accordingly, Employer requests that all allegations against it in the Complaint be dismissed in their entirety.

Respectfully Submitted this 12<sup>th</sup> day of February, 2020.

A handwritten signature in blue ink, appearing to read "J. Thomas Kilpatrick", written over a horizontal line.

J. Thomas Kilpatrick

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BEFORE THE NATIONAL LABOR RELATIONS BOARD  
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IMERYS CARBONATES USA, INC.

and

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Cases 10-CB-232953  
10-CB-240168

ROBERT JOSEPH BLANTON, an Individual

Certificate of Service

This will certify that I have this day served Respondent Employer's Brief to the Administrative Law Judge by e-filing on the NLRB's electronic filing site, and on the following by e-mail and depositing same in the U.S. Mail with adequate postage attached.

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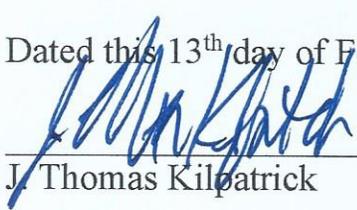
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\_\_\_\_\_  
J. Thomas Kilpatrick