

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

IGT d/b/a INTERNATIONAL GAME
TECHNOLOGY,

Respondent,

-against-

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL UNION 501, AFL-CIO,

Charging Party.

Case Nos. 28-CA-166915
28-CA-173256
28-CA-174003
28-CA-174526

RESPONDENT'S REPLY BRIEF

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Contrary to the assertions of Counsel for the General Counsel, a filing is not untimely just because it was inadvertently filed with the wrong office at the NLRB. In *Eldeco, Inc.*, 336 N.L.R.B. 899, 900 (2001), the employer’s notice to show cause, although filed on the correct due date, was inadvertently sent to the Region instead of the Board. Accepting the filing as timely, the Board properly held that while it “generally does not accept late-filed answers [it] has made an exception where the answer was timely filed but with an incorrect office of the Agency.” *Id.* See also, *Rainbow Reproductions, Inc.*, 330 N.L.R.B. 1163, 1163 (2000)(accepting as timely notice to show cause inadvertently filed on its due date with the Division of Judges instead of the Executive Secretary’s Office).

Here, on February 26, 2020, which was the due date for timely filing exceptions, Respondent’s Exceptions and Brief in Support of Exceptions were inadvertently filed with the Regional Director. After discussions with the Executive Secretary’s Office, the Executive Secretary transferred Respondent’s filing to the Board on or around March 5, 2020. This was confirmed by the following March 10, 2020 email from the Office of the Executive Secretary to Respondent’s counsel, Theo Gould:

Mr. Gould,

Per our conversation, this email confirms that the filing of the exceptions and brief in support e-filed on February 26, 2020 was uploaded into the correct filing. I’ve rejected the duplicate filings of the documents that were e-filed with the board on Marc [sic] 5, 2020.

Thanks

LaShan Carter
National Labor Relations Board
Paralegal Specialist
Executive Secretary Office
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(See attached March 10 email). As such, Respondent's Exceptions and Brief in Support of Exceptions were timely filed.

Regarding the merits of the Complaint, we draw the Board's attention to *Baylor University Medical Center*, 369 NLRB No. 43 (March 16, 2020) that issued after Respondent's Exceptions were filed. There, the voluntary separation agreement contained a non-disparagement provision similar in all material respects to the one at issue here. It stated the former employee agreed to "not make, repeat, or publish any false, disparaging, negative, or derogatory remarks" concerning the employer. Applying the *Boeing* framework, the ALJ held the provision was a lawful Category I civility standard but held that provisions concerning confidentiality and "no participation in claims" were unlawful. 369 NLRB No. 43 slip op. * 4.

Citing *Shamrock Foods Co.*, 366 NLRB No. 117 (2018), the Board held that the separation agreement was lawful in its entirety because it did not interfere with any Section 7 rights. Specifically, the Board held that signing the separation agreement was voluntary and thus not a condition of employment. 369 NLRB No. 43 slip op. * 1. Second, the Board held that the separation agreement was lawful because it only applied post-employment and did not impact terms and conditions of employment. Third, the separation agreement was not proffered as a result of an unlawful discharge or under circumstances that would infringe on the separated employee's Section 7 rights. 369 NLRB No. 43 slip op. * 2.

Here, the non-disparagement provision contained in the separation agreement is lawful for all the same reasons. The agreement does not interfere with and would not reasonably be interpreted as interfering with any Section 7 rights. Additionally, it was proffered on a post-employment and voluntary basis and, therefore, like the separation agreement above, not a term or condition of employment or an interference with the exercise of any Section 7 rights. In fact, it is

nearly impossible to see how upholding the ALJ's decision would be in any way consistent with the Board's decision in *Baylor University Medical Center*.

Respondent respectfully requests the ALJ's supplemental decision be dismissed in its entirety.

Dated: March 25, 2020

/s/ Theo E.M. Gould

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 25th day of March 2020, the foregoing pleading was filed via e-mail on the following individuals:

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Attorney for the Charging Party

/s/ Nicole Aubin

Nicole Aubin, Legal Secretary