UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.

MICHIGAN BELL TELEPHONE COMPANY, AND AT&T SERVICES, INC., JOINT EMPLOYERS	
	Cases 07-CA-161545
Respondent	**07-CA-165384**
	07-CA-166130
and	**07-CA-170664**
	07-CA-176618
LOCAL 4034, COMMUNICATIONS WORKERS OF AMERICA (CWA), AFL-CIO	**07-CA-177201**
	07-CA-182490
	07-CA-184669
Charging Party	**07-CA-190631**

THE GENERAL COUNSEL'S CROSS-EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S SUPPLEMENTAL DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the General Counsel respectfully files cross-exceptions to the Supplemental Decision of Administrative Law Judge Ira Sandron in the above matter dated December 8, 2020.[1] The General Counsel takes exception to the following findings, conclusions, and recommendations of the Administrative Law Judge on the grounds that they are contrary to the law and evidence, and not supported by the record. The General Counsel further excepts to the Administrative Law Judge's failure to make certain findings and conclusions on the grounds that the failure to do so is contrary to the mandate of Section 102.45 that an Administrative Law Judge's Decision "must

[1] The following references to the record are used in these Exceptions and the supporting brief:

Administrative Law Judge's Decision: ALJD (followed by page number)
Administrative Law Judge's Supplemental Decision: ALJSD (followed by page number)
Michigan Bell Telephone Company, 369 NLRB No. 124 (2020): Board Decision (followed by page number)
Transcript: Tr (followed by page number)
General Counsel Exhibit: GC (followed by exhibit number)
Respondent Exhibit: R (followed by exhibit number)
Union Exhibit: CP (followed by exhibit number)

include findings of fact, conclusions, and the reasons therefore, upon all material issues of fact, law, or discretion presented on the record."

CROSS-EXCEPTIONS

1. The General Counsel takes exception to the Administrative Law Judge's failure to conclude that the asserted reasons for the discipline Respondent issued to Hooker for "misuse of time" are inherently pretextual because when Respondent issued the discipline, it knew that it had assigned Hooker to perform the work only for the purpose of retaliating against him because of his Union activity [Board Decision at 1; ALJD at 38].

2. The General Counsel takes exception to the Administrative Law Judge's failure to make a specific finding that Respondent's on-going animus toward Hooker is inherent in its continued application of its discriminatory decision to assign him to work in the load.

3. The General Counsel takes exception to the Administrative Law Judge's failure to make a specific finding that if Respondent's animus toward Hooker for his protected activity had stopped, Respondent would not have continued to assign him to work in the load on the fabricated basis that he was "needed" for work purposes [Board Decision at 1; ALJD at 38].

4. The General Counsel takes exception to the Administrative Law Judge's failure to make a specific finding that <u>each time</u> Respondent assigned Hooker to work in the load – including the days for which it issued discipline to Hooker for "misuse of time" – it did so for the unlawful purpose of retaliating against him and interfering with his Union activity.

5. The General Counsel takes exception to the Administrative Law Judge's failure to make a specific finding that because Hooker was a full-time Union official prior to Respondent's

discriminatory and unilateral decision to assign him to work in the load, each time it assigned him to work in the load – including the days for which he received discipline for "misuse of time" – Respondent directly interfered with his Union activity.

6. The General Counsel takes exception to the Administrative Law Judge's conclusion that Respondent had a legitimate basis for concluding that Hooker misused time on February 14 [ALJSD at 7].

7. The General Counsel takes exception to the Administrative Law Judge's conclusion that Respondent rebutted the presumption of unlawful motivation with regard to discipline issued to Hooker, in part, for alleged misuse of time on February 14 [ALJSD at 7].

8. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Hooker had never performed the type of work (i.e., BPC or bad plant condition) assigned to him the morning of February 14, and he was given no description of the problem he was assigned to fix [Tr. at 571-573].

9. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that on February 14, Respondent assigned Hooker to a job that didn't require any work [Tr. at 571].

10. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding that there is no evidence that Respondent ever explained to Hooker before February 14 that it sometimes assigns techs to BPC's even though they do not require any work [Tr. at 1288-1289].

11. The General Counsel takes exception to the Administrative Law Judge's conclusion that Respondent rebutted the presumption of unlawful motivation with regard to discipline issued to Hooker, in part, for alleged misuse of time on February 21 [ALJSD at 8].

12. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that at 9:28 a.m., on February 21, Hooker sent an e-mail to Manager Brash, Supervisor Sharp and to AT&T Ethics [R-34(a); Tr. at 1319-1320] in reference to an e-mail that Sharp had sent to his crew on January 27 [R-35], directing:

> **You should NEVER go to lunch, take a break, do trainings, or anything for that matter not dispatched on something.**

13. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Sharp's order that the tech's always be dispatched on a job, directly contradicted Respondent's Tech Expectations which states: **"Technicians should not be dispatched on a job during their meal period"** [R-5 at 3].

14. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Respondent's Code of Busines Conduct (COBC) mandates that employees "prepare our business records and financial reports with integrity and honesty, whether they are externally reported or used internally to oversee the Company's operations" [R 64 at 8].

15. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Respondent's COBC further states: "no one has the authority to direct any employee to violate the law, this Code, or AT&T's policies" [R 64 at 10].

16. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Respondent's COBC requires employees to: "report when we observe a violation, or what reasonably appears to be a violation, of the law, this Code, or Company policies and guidelines" [R 64 at 10].

17. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Sharp's directive to his crew to "NEVER go to lunch, take a break, do trainings, or anything for that matter not dispatched on something" [R 35] directly violated company policies (the Tech Expectations), Hooker reasonably believed this was a violation of the COBC and, as required, he reported the matter to his supervisors and to AT&T Ethics [R 34(a)].

18. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that there is nothing in the COBC, nor any other evidence, indicating that ethics concerns may not or should not be raised during work time; and it is implicit from the text of the COBC that such issues be raised immediately [R 64].

19. The General Counsel takes exception to the Administrative Law Judge's inadvertent misstatement that Respondent rebutted the presumption that "this warning [i.e., the March 3 warning] was issued because of Hooker's protected activity" [ALJSD at 8], as it conflicts with the Judge's conclusion: "I have found unlawful the March 3 warning" [ALJSD at 15, LL 43].

20. The General Counsel takes exception to the Administrative Law Judge's finding that Respondent had "good cause to believe Hooker was misusing time on September 20 and 21" [ALJSD at 14].

21. The General Counsel takes exception to the Administrative Law Judge's conclusion that Respondent rebutted the General Counsel's prima facie case of unlawful discrimination with respect to the events of September 20 and 21 [ALJSD at 14].

22. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Hooker requested to be off work for Union business September 20 and 21, and Brash denied the request even though he knew that Respondent had assigned Hooker to perform the work only for the purpose of retaliating against him because of his Union activity and not because it needed him to perform the work [Board Decision at 1; ALJD at 38; Tr. at 1579, 1617; R 56].

23. The General Counsel takes exception to the Administrative Law Judge's finding that the number of problems that Hooker reported experiencing on September 20 and 21 was "quite extraordinary and beyond the realm of normal" as it directly contradicts the ALJ's finding that Supervisor Sharp testified that he never accused Hooker of falsely reporting the problems he encountered on those days [ALJSD at 14].

24. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Respondent's "Manager's Guide to Corrective Action" states:

> Unless an employee's behavior is so severe that it warrants immediate corrective action, it is the responsibility of management to coach each employee on his or her behavior before it reaches an unacceptable level and prior to implementing corrective action [R 32 at 1].

25. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding of fact that Respondent's "Manager's Guide to Corrective Action" requires that

"[d]ocumented coaching must be done prior to the commencement of the corrective action process." [R 32 at 10].

26. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding that there is no evidence that Respondent ever coached Hooker regarding working unauthorized overtime prior to implementing corrective action on March 3.

27. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding that there is no evidence that Respondent ever coached Hooker regarding misuse of time prior to implementing corrective action.

28. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding that there is no evidence that Respondent has ever failed to coach an employee prior to implementing corrective action other than Brian Hooker.

29. The General Counsel takes exception to the Administrative Law Judge's failure to make a finding that there is no evidence that Respondent gave Hooker a verbal warning before issuing him a written warning on March 3 [R 32 at 3].

30. The General Counsel takes exception to the Administrative Law Judges failure to make a finding that notwithstanding Hooker's extended hiatus from performing technical work and his inexperience with new technology, there is no evidence of any complaints about Hooker's performance from the techs with whom he worked; there is no evidence of any complaints from customers; there is no evidence of any issues raised by other managers with whom Hooker worked.

31. The General Counsel takes exception to the Administrative Law Judges failure to find that Respondent's unlawful motive regarding the termination is further demonstrated by its disparate treatment of Hooker, including not terminating an employee that left work and went to his residence without permission on at least 10 occasions [R-38 at 2].

32. The General Counsel takes exception to the Administrative Law Judge's finding that the General Counsel "abandoned" the Complaint allegation regarding the September 6 discipline Respondent issued to Brian Hooker for attendance violations [ALJSD at 3].

33. The General Counsel takes exception to the Administrative Law Judge's failure to conclude that even if Hooker had engaged in intentional misuse of time as Respondent claims, the discipline it issued to him and the termination of his employment violated the Act under well-established Board precedent that a discharge is unlawful if it resulted from a refusal to comply with an order which interfered with an employee's Section 7 rights.

34. The General Counsel takes exception to the Administrative Law Judge's failure to clarify in his Supplemental Decision that, regardless of whether Respondent acted with Union animus, Hooker is entitled to make whole relief under Section 8(a)(5) [See ALJD at 40, LL. 18-29].

Dated at Grand Rapids, Michigan, this 22nd day of February 2021.

Respectfully submitted,

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