

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

WISMETTAC ASIAN FOODS, INC.

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630

and

ROLANDO LOPEZ

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 630

Cases 21-CA-207463
21-CA-208128
21-CA-209337
21-CA-213978
21-CA-219153
21-CA-212285

**WISMETTAC ASIAN FOODS, INC.'S REPLY BRIEF TO COUNSEL FOR
THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF TO
RESPONDENT'S EXCEPTIONS TO THE DECISION ON REMAND OF
THE ADMINISTRATIVE LAW JUDGE**

Respectfully Submitted By:

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Attorney for Respondent
WISMETTAC ASIAN FOODS, INC.

I. LEGAL ARGUMENT

The conduct of Rolando Lopez was not protected under the Act. Irrespective of whether an 8(a)(1) and/or 8(a)(3) violation is alleged, the conduct of Mr. Lopez was not protected. If the Board adopts the arguments advanced by the General Counsel, this Agency could literally “second guess” an employer regarding an honestly held belief that conduct of an employee was insubordinate and impermissible. It is not for the General Counsel to define “misconduct,” that is the role of the Respondent in this case and in all cases under similar circumstances. Apparently, the General Counsel would have the Board adopt the ALJ’s two-minute rule, i.e., Mr. Lopez spoke for only two minutes and therefore his conduct was not disruptive and insubordinate. In effect, Mr. Lopez is getting a “pass” because he was a union supporter which the General Counsel has “bootstrapped” into a justification for protecting his misconduct.

This is a very straightforward situation. Mr. Lopez’ conduct was insubordinate, and it unreasonably disrupted a routine company meeting. He was issued a mere verbal warning for this conduct.

II. CONCLUSION

For the reasons stated above, the findings of the ALJ that Respondent violated the Act for disciplining Rolando Lopez should be reversed.

Dated: March 25, 2021

Respectfully Submitted By:

LAW OFFICES OF SCOTT A. WILSON



Scott A. Wilson, Esq.
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CERTIFICATE OF SERVICE

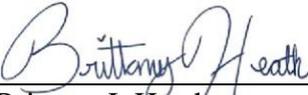
I, Brittany J. Heath, declare and state as follows:

1. I am at least 18 years of age, not a party to this action. I am employed at the Law Offices of Scott A. Wilson, which is located in San Diego County, California. My business address is 433 G Street, Suite 203, San Diego, CA 92101. My e-mail address is sawfrontoffice@pepperwilson.com.
2. I hereby certify that on March 25, 2021, a copy of **WISMETTAC ASIAN FOODS, INC.'S REPLY BRIEF TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE DECISION ON REMAND OF THE ADMINISTRATIVE LAW JUDGE** in Cases 21-CA-207463, 21-CA-208128, 21-CA-209337, 21-CA-213978, 21-CA-219153, 21-CA-212285, and 21-RC-204759 has been submitted by E-Filing to the National Labor Relations Board, Office of the Executive Secretary, in Washington DC.
3. On March 25, 2021, I served by e-mail, a copy of the document listed in item 2 on the parties as follows:

NAME OF PERSON SERVED	ELECTRONIC SERVICE ADDRESS
Elvira T. Pereda, Esq. Counsel for the General Counsel National Labor Relations Board, Region 21	elvira.pereda@nlrb.gov
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Rolando Lopez	catoria@yahoo.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Diego, California on March 25, 2021.

By: 
Brittany J. Heath
Assistant to Scott A. Wilson