

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC and ADAM CUMMINGS, AN INDIVIDUAL	Case 34-CA-013051
AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC and SHANNON SMITH, AN INDIVIDUAL	Case 34-CA-065800 JANUARY 18, 2013

**RESPONDENT'S EXCEPTIONS TO THE
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to § 102.46 of the National Labor Relations Board's Rules and Regulations, American Medical Response of Connecticut, Inc. (hereinafter the "Respondent") files exceptions to the decision of the Administrative Law Judge (hereinafter "ALJ") in the above referenced matter. The Respondent's exceptions to the decision of the ALJ are as follows:¹

1. The Respondent excepts to ALJ's denial of its Motion to Defer. This decision is contrary to the record evidence and relevant law. (ALJD at p. 2, n.2; R Exh. 1.)
2. The Respondent excepts to ALJ's finding that NEMSA did not agree to the checklist policies set forth in the Standard Operating Procedures. This finding is

¹ References to the ALJ's decision are designated by "ALJD" followed by the appropriate page and line number. References to the official transcript are designated by their appropriate page number preceded by "Tr." References to the Respondent's exhibits are designated by the appropriate number preceded by "R Exh." References to the General Counsel's exhibits are designated by the appropriate number preceded by "GC Exh."

contrary to the record evidence and relevant law. (ALJD at p. 3, lines 29-41; Tr. 156-57, 162-63, 289, 359, 429, 431, 639, 780-82, 1010, 1072-1035; GC Exh. 4, 6, 19, 21, 24-25; R Exh. 2-3, 27.)

3. The Respondent excepts to ALJ's finding that NEMSA did not agree to Section 2.22 of the Standard Operating Procedures. This finding is contrary to the record evidence and relevant law. (ALJD at p. 3, lines 29-41; Tr. 156-57, 162-63, 282, 354, 429, 431, 780-82, 1010, 1027-1035; GC Exh. 4, 6, 21-22, 53; R Exh. 2-3, 27.)

4. The Respondent excepts to ALJ's decision not to credit the testimony of Sean Piendel regarding his conversation with Robert Zagami that the Union agreed to the new Standard Operating Procedures. This finding is contrary to the record evidence and relevant law. (ALJD at p. 3, lines 44-45, p. 4, lines 1-2; Tr. 156-57, 1027-35; GC Exh. 4, 19, 21-22, 24-25; R. Exh. 2-3, 27.)

5. The Respondent excepts to ALJ's finding that NEMSA did not assent to the proposed Standard Operating Procedures. This finding is contrary to the record evidence and relevant law. (ALJD at p. 4, lines 3-4; Tr. 156-57, 162-63, 289, 354, 429, 431, 780-82, 1010, 1027-1035; GC Exh. 4, 18-19, 21-22, 24-25; R. Exh. 2-3, 27.)

6. The Respondent excepts to ALJ's finding that the on April 6, 2011 Duane Drouin sent a new checklist to the supervisors. This finding is contrary to the record evidence and relevant law. (ALJD at p. 5, line 16; Tr. 207-09, 274-75, 638-39, 814-22, 824-26, 1036-39; GC Exh. 4, 6, 17-18, 53; R Exh. 2-3, 5, 10-15, 24.)

7. The Respondent excepts to ALJ's conclusion that Respondent did not notify NEMSA before requiring employees to complete the "Vehicle Inspection" checklists.

This finding is contrary to the record evidence and relevant law. (ALJD at p. 6, lines 34-35; Tr. 207-09, 814-22, 1039; GC Exh. 15, 18, 53; R Exh. 2, 10-15.)

8. The Respondent excepts to ALJ's decision that NEMSA did not waive its right to bargain over the Respondent's decision in April 2011 to require employees to complete and turn in a vehicle check list. This finding is contrary to the record evidence and relevant law. (ALJD at p. 6, lines 41-42; Tr. 207-09, 639, 814-22, 1039; GC Exh. 15, 21-22, 24, 53; R Exh. 2, 10-15.)

9. The Respondent excepts to ALJ's finding that after the contract was ratified, NEMSA did not agree to Standard Operating Procedures allowing the Respondent to require the procedures and checklists. This finding is contrary to the record evidence and relevant law. (ALJD at p. 6, lines 42-44 and p. 7, lines 44-45; Tr. 856-57, 907-10, 965; GC Exh. 4, 18-19, 21-22, 24-25; R Exh. 2, 27.)

10. The Respondent excepts to the ALJ's finding that Chris Dennis was a NEMSA union steward during the relevant time period. This finding is contrary to the record evidence and relevant law. (ALJD at p. 8, line 31; Tr. 1036-39; GC Exh. 17; R. Exh. 24.)

11. The Respondent excepts to ALJ's finding the requirements that employees check fuel and coolants on a daily basis and turn in checklists was unlawfully implemented. This finding is contrary to the record evidence and relevant law. (ALJD at p. 6, lines 46-47; Tr. 156-57, 162-63, 213, 289, 429, 431, 639, 856-57, 907-10, 1027-30, 1035, 1039; GC Exh. 4, 6, 18, 18-19, 21-22, 24, 53, 57-58; R Exh. 2, 10-15, 27.)

12. The Respondent excepts to ALJ's finding that any discipline issued to employees for failing to follow these procedures was unlawful. These findings are contrary to the

record evidence and relevant law. (ALJD at p. 6, lines 48-49; Tr. 156-57, 162-63, 213, 429, 431, 639, 856-57, 907-10, 965, 1027-30, 1039; GC Exh. 4, 6, 18-19, 21-22, 24, 53, 57-58, R Exh. 2, 10-15.)

13. The Respondent excepts to ALJ's finding the disciplines issued to employees from May 9 to 11, 2011 and on June 10, 2011 violate Section 8(a)(1) of the Act. This finding is contrary to the record evidence and relevant law. (ALJD at p. 7, lines 1-2; Tr. 156-57, 162-63, 213, 354, 429, 431, 639, 856-57, 907-10, 965, 1027-30, 1039; GC Exh. 4, 6, 53, 57-58, R Exh. 2, 10-15.)

14. The Respondent excepts to ALJ's finding that on April 8 Cummings sent an email to Sean Piendel with copies to Bree Eichler and two other union stewards. This finding is contrary to the record evidence and relevant law. (ALJD at p. 7, lines 30-31; Tr. 1036-39; GC Exh. 16, 44; R Exh. 24.)

15. The Respondent excepts to ALJ's finding that during the June 1st meeting Cummings stated that he did not instigate a work stoppage. This finding is contrary to the record evidence and relevant law. (ALJD at p. 9, lines 37-38; Tr. 1046-48; GC Exh. 4, 63; R Exh. 24.)

16. The Respondent excepts to ALJ's decision that the evidence does not support the Respondent's contention that Cummings incited a work stoppage. This finding is contrary to the record evidence and relevant law. (ALJD at p. 10, lines 20-21; Tr. 921-56, 1039-41, 1046-48; GC Exh. 4, 16, 39, 44, 57, 58, 63; R Exh. 20, 24.)

17. The Respondent excepts to ALJ's finding that there is nothing in the April 11 emails from Cummings which can reasonably be described as a call for employees to engage in a work stoppage of any kind. This finding is contrary to the record evidence

and relevant law. (ALJD at p. 10, lines 22-26; Tr. 1046-1048; GC Exh. 16, 44; R Exh. 20, 24.)

18. The Respondent excepts to ALJ's finding that there was no evidence that Cummings ever actually urged any employees to engage in a work stoppage and that there was no evidence that Cummings urged or solicited any employees to not perform any of their work functions, including the rules requiring daily oil and coolant checks and the submission of checklists. This finding is contrary to the record evidence and relevant law. (ALJD at p. 10, lines 36-48; Tr. 1046-48; GC Exh. 4, 16, 44, 57, 58, 63; R Exh. 2, 20, 24.)

19. The Respondent excepts to ALJ's finding that the Cummings' emails were made only to management and other shop stewards. This finding is contrary to the record evidence and relevant law. (ALJD at p. 10, lines 41-42; Tr. 1036-39, 1046-48; GC Exh. 16; R Exh. 24.)

20. The Respondent excepts to ALJ's finding that the Respondent's belief that Cummings was inciting a work stoppage was not supported by the objective facts. This finding is contrary to the record evidence and relevant law. (ALJD at p. 11, lines 1-2; ; Tr. 1046-48; GC Exh. 4, 16, 44, 57, 58, 63; R Exh. 2, 20, 24.)

21. The Respondent excepts to ALJ's finding that it violated Section 8(a)(1) and (3) of the Act by discharging Cummings because of his union and protected concerted activities. This finding is contrary to the record evidence and relevant law. (ALJD at p. 11, lines 4-5; Tr. 1046-48; GC Exh. 4, 16, 44, 57, 58, 63; R Exh. 20, 24.)

22. The Respondent excepts to ALJ's conclusion of law that by unilaterally changing its policies regarding the checking of oil and coolants and the requirement that the

employees fill out daily checklists, the Respondent has violated Section 8(a)(1) and (5) of the Act. This finding is contrary to the record evidence and relevant law. (ALJD at p. 13, lines 8-10; Tr. 213, 249, 431, 856-57, 907-10, 965, 1027-30, 1039; GC Exh. 4, 6, 53, 57-58; R Exh. 2, 27.)

23. The Respondent excepts to ALJ's conclusion of law that by issuing disciplinary warnings to employees for allegedly not checking oil and coolants and the filling out daily checklists the Respondent violated Section 8(a)(1) of the Act. This finding is contrary to the record evidence and relevant law. (ALJD p. 13, lines 12-13; Tr. 213, 249, 431, 856-57, 907-10, 965, 1027-30, 1039; GC Exh. 4, 6, 53, 57-58; R Exh. 2, 27.)

24. The Respondent excepts to ALJ's conclusion of law that by discharging Adam Cummings because of his union and protected concerted activities, the Respondent violated Section 8(a)(1) and (3) of the Act. This finding is contrary to the record evidence and relevant law. (ALJD p. 13, lines 15-16; ; Tr. 1046-48; GC Exh. 4, 16, 44, 57, 58, 63; R Exh. 20, 24.)

25. The Respondent excepts to ALJ's conclusion that the Board has authority to act in this matter. This finding is contrary to relevant law. (ALJD p. 13, n. 12.)

26. The Respondent excepts to ALJ's recommended Remedy as it is not supported by the record evidence or relevant law. (ALJD at p. 13-14.)

27. The Respondent excepts to ALJ's conclusion that Cummings' "statements with his [facebook] profile picture" do not constitute a threat of violence against Respondent. This finding is contrary to the record evidence and relevant law. (ALJD at p. 13, n. 11; GC Exh. 49.)

28. The Respondent excepts to ALJ's recommended Order, as it is not supported by the record evidence or relevant law. (ALJD at p. 14-15.)

**AMERICAN MEDICAL RESPONSE OF
CONNECTICUT, INC.**

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January 18, 2013

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JANUARY 18, 2013

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing RESPONDENT'S EXCEPTIONS TO THE THE ADMINISTRATIVE LAW JUDGE'S DECISION has been served by email this 18th day of January, 2013, to the following:

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