

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

AMAZOM.COM SERVICES, LLC

and

Case 28–CA–281240

AMBER LACEY, an Individual

Nestor Zarate-Mancilla, Esq.
for the General Counsel.

Brian Stolzenbach, Esq., Harrison Kuntz, Esq.
for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on multiple dates between January 31, 2023, and May 9, 2024. The record was held open to permit transcription of certain audio exhibits. I entered those exhibits and closed the record on October 11, 2024.

Charging Party Amber Lacey (Charging Party or Lacey) filed the original charge on August 10, 2021, and an amended charge on October 28, 2021.¹ The General Counsel issued the complaint on April 1, 2022, which alleges Amazon.com Services (the Respondent or Amazon) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by: prohibiting employees from discussing an ongoing investigation of employee complaints about harassment and supervision, taking work away from Lacey, more closely supervising her work, issuing a documented coaching to her (which contained threats and promulgated overly-broad rules), and suspending and discharging her. The complaint further alleges a variety of rules in the Respondent's Owner's Manual and Guide to Employment, detailed below, are overly broad.² The Respondent filed a timely answer denying all material allegations and setting forth affirmative and other defenses.

¹ All dates are in 2021 unless otherwise indicated.

² The General Counsel withdrew complaint paragraph 4(e) which alleged the Respondent more closely supervised and monitored Lacey's work.

On the entire record, including my observation of the demeanor of the witnesses,³ and after considering the briefs filed by the General Counsel and Respondent, I make the following

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FINDINGS OF FACT

I. JURISDICTION

At all material times, Amazon.com Services has been a limited liability company with an office and place of business in Las Vegas, Nevada, and has been engaged in the retail sale and distribution of goods throughout the United States. During the relevant time period, the Respondent derived gross revenues in excess of \$500,000 and purchased and received at its Las Vegas facility goods valued in excess of \$5,000 directly from suppliers outside the State of Nevada. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

15

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and the Respondent's Operations

20

This case concerns LAS-7, an Amazon fulfillment center in North Las Vegas. The facility is about a million square feet with four levels. During the relevant time period, there were 4,000–4,500 employees at LAS-7. The inbound department, at issue here, covers about half of the facility. Inbound is where the Amazon trailers full of product pull up to the dock and

³ A credibility determination may rest on various factors, including “the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole.” *Hills & Dales General Hospital*, 360 NLRB No. 70, slip op at 7 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness’s testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950).

The Board has agreed that “when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge.” *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). This is particularly true where the witness is the Respondent’s agent. *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006). Moreover, an adverse inference is warranted by the unexpected failure of a witness to testify regarding a factual issue upon which the witness would likely have knowledge. See *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the “strongest possible adverse inference” regarding such fact).

Testimony from current employees tends to be particularly reliable because it goes against their pecuniary interests. *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978); *Georgia Rug Mill*, 131 NLRB 1304, 1304 fn. 2 (1961); *Gateway Transportation Co.*, 193 NLRB 47, 48 (1971); *Federal Stainless Sink Div. of Unarco Industries*, 197 NLRB 489, 491 (1972).

Where there is inconsistent evidence on a relevant point, my credibility findings are incorporated below.

employees unload them and stow them. Other employees scan the items and place them into pods for storage.

5 Some of the tasks, such as scanning items, are trackable, and are referred to as direct work. Other duties, such as driving a forklift, are not trackable, and are referred to as indirect work. Generally, indirect tasks are assigned to employees who have performed well on direct tasks and shown they can be trusted to complete work assignments. Amazon offers training classes for employees to become certified on certain jobs, such as driving the forklift and serving as a process guide, as discussed below.

10 The LAS-7 facility is loud, and there are decibel checks to ensure it remains at a safe volume. Amazon also provides hearing protection to employees. The facility contains some standing communal desks where managers can recharge their laptops and look up reports. Employees can use the desks to plug in devices and meet with managers. The facility has kiosks
15 where employees can check their performance metrics. There is also a human resources (HR) station on the floor where a couple of HR representatives serve as a resource for employees.

20 Amazon employees use an app called “A to Z” to access their schedules and submit their time. A to Z also houses information on benefits and employee policies and changes to policies. (Tr. 521–523.)⁴

25 Amazon refers to its employees in terms of “tiers.” Tier 1 and Tier 3 employees are considered associates, with Tier 1 being the lowest level.⁵ Certain Tier 1 associates, referred to as ambassadors, train new associates. In addition, certain Tier 1 associates, who are considered to be high performers and dependable, can be chosen as process guides (PGs).⁶ The PG position can be a gateway to become a process assistant.

30 Tier 3 associates are process assistants (PAs). They have more responsibilities and are paid more than Tier 1 associates. PAs generally come to work earlier and stay later than other associates and earn roughly \$5 more per hour than Tier 1 associates. (Tr. 321, 420.) Tier 4 and above are supervisory and management positions.

35 The first level of management consists of area managers (AMs), who oversee certain areas of the warehouse. Each area manager reports to an operations manager (OM). Amber Ponce was an operations manager during most of the relevant time period. She had previously served as an inbound area manager.⁷ Cesar Romero was an inbound area manager from February 1, 2021, until October 16, 2022. About 90 employees reported to him. He oversaw the

⁴ Abbreviations used in this decision are as follows: “Tr.” for transcript; “R Exh.” for the Respondent’s exhibit; “GC Exh.” for the General Counsel’s exhibit; “GC Br.” for General Counsel’s brief” and “R Br.” for Respondent’s brief. Although I have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited but rather are based my review and consideration of the entire record.

⁵ There are no Tier 2 associates.

⁶ Amazon refers to “paths” employees can be on, including the process guide path.

⁷ Ponce was promoted to area manager in February 2021. Prior to becoming a manager, Ponce was a shift assistant, process assistant, and an associate.

receiving portion of the inbound department, which consisted all product coming into the building.

Shifts start with a sync meeting, where the operations managers and area managers relay goals and expectations for the volume they were receiving. They communicate how many associates are needed for particular roles during the shift. The sync meetings do not include Tier 1 associates but include the process assistants. During the meetings, the area managers plan the staffing assignments for their group based on the amount of incoming volume and convey this to the PAs. The staffing board, sometimes referred to as the white board, or just the board, is a large white bulletin board containing magnets with associates' pictures on them. Based on the information at the sync meeting, the PAs, and at times the PGs, assign the associates to certain tasks or "lines" by placing the magnets accordingly. (Tr. 20, 215.) When determining which employees to perform on the different lines, the PAs consider the tasks for which the employee is trained. (Tr. 211.)

Process assistants are hourly employees. They do not hire or recommend hiring, transfer or make recommendations to transfer, discipline or recommend discipline. They provide coaching to employees, but if more serious action was required, they would involve the area manager. They are not involved in layoffs or recalls, promotions, determining employee compensation, or evaluating employee performance. (Tr. 201–204; GC Exh. 4.) As Tier 3 associates, PAs can see everyone's performance ratings. Tier 1 associates can only see their own. (Tr. 414.)

As noted above, PGs are associates who management has chosen based on good performance and reliability. They fill in for the PAs when the PA is on leave or there is otherwise a gap in staffing. (Tr. 109–110). PGs do not necessarily work as PGs every day, but rather serve in that role only when needed. (Tr. 112, 205, 452.) They receive no additional pay or benefits and must apply to open positions to be considered for PA vacancies.

B. The Standards of Conduct

The Respondent's Standards of Conduct lists two categories of offenses. (Jt. Exh. 1.) Category 1 offenses are considered extremely serious and can lead to termination, even for a single offense. Category 2 offenses are less serious and can lead to some form of corrective action such as a documented coaching, but can also lead to termination if sufficiently egregious. (Tr. 120–123.) The provisions at issue here provide:

Category 1

The following work conduct infractions are regarded as extremely serious, and termination of employment may result following one offense:

- Assaulting, threatening, intimidating, coercing, or interfering with supervisors or fellow associates

...

- Unauthorized removal of company documents

...

- Leaving company premises without permission during assigned work hours (unpaid meal periods and paid rest breaks are not “work hours” for purposes of this policy)

5 Category 2

The following work conduct infractions are considered serious and generally result in corrective action:

- 10 • Unauthorized absence, excessive absenteeism, or any absence without notice
 . . .
- Abusive, vulgar, or harassing language to a supervisor, fellow associate, or vendor
 . . .
- 15 • Failure to adhere to starting time, quitting time, or break time policies, or wasting time
 . . .
- 20 • Leaving a company-assigned work area during scheduled working hours without permission

 A “seek to understand” is a conversation with the employee that is not documented. Verbal coachings are not signed.⁸ The levels of formal discipline are documented coaching, first written warning, final written warning, and termination. These do not necessarily proceed in order. HR business partners can approve documented coachings and first written warnings. (Tr. 25 498–501, 552.) The senior operations manager decides on higher level discipline in consultation with HR. Human Resources Associates (HRAs) can approve regular discipline, but if there are questions about it, a Human Resources Business Partner (HRBP) reviews it. If it is a significant escalation, a senior HR manager would be involved. (Tr. 114–115.)

30 Employees can take complaints or concerns to HR, which investigates them. Investigations can entail talking to witnesses and looking at surveillance video. Employees are instructed not to discuss ongoing investigations and to keep them confidential. (Tr. 167–168.) Jess Desautels, senior operations manager (SOM), stated that if employees want to tell others 35 about HR investigations, they do so. (Tr. 169.)

C. Charging Party Amber Lacey

40 Amber Lacey was a Tier 1 associate. When she started, she reported to Ponce, the area manager at the time. When Ponce became operations manager, Jason Wiggins became the area manager.⁹ When Wiggins transferred, Cesar Romero took over as area manager. Wiggins and Romero reported to Ponce. Ponce reported to SOM Desautels.

⁸ They are tracked through a system called ADAPT, as are positive feedback conversations.

⁹ Wiggins was no longer employed by Amazon as of about August 2021.

Lacey was trained on the forklift and had her PIT license. She was also trained in various other areas. (GC Exh. 12.) She served as an ambassador, training associates in various roles in the dock.

5 When Ponce was Lacey’s area manager, Lacey described their relationship as “fine.”
 In about October 2020, Lacey and Ponce had a disagreement about the procedures for clocking
 out. The Respondent’s attendance policy includes a 5-minute grace period for clocking in and
 out.¹⁰ (R Exh. 9.) Lacey carpooled to work with coworkers Ruby Reed and Paul Vilscek. In
 10 October 2020, Lacey felt like Ponce was “constantly on me about leaving my work area early” to
 go punch out. Lacey perceived that at times, when everyone was leaving to clock out, she would
 be pulled aside and spoken to about leaving work early. She told Ponce that if she was going to
 be held accountable for leaving early, everyone should be. (Tr. 602–604, 829–830.) Ponce
 15 recalled approaching multiple associates who were leaving early, telling them the shift was not
 over, and they needed to go back to work because the grace period did not permit associates to
 leave early. Lacey approached Ponce and asked for clarification, and said if she was going to be
 held to the grace policy, everyone should be, and Ponce agreed. (Tr. 367–368.)

1. Lacey and Robertson chosen as process guides and ensuing conflict

20 The inbound PA became unavailable in December 2020. Wiggins asked Lacey and Kyle
 Robertson to serve as PGs to fill in the gap while they looked for another PA.¹¹ Robertson began
 as a PG in inbound in January 2021.¹² Lacey worked as a PG from January 3 to at least April
 2021. (Tr. 822, 847.) PGs only do the staffing board when there is no PA present. (Tr. 458–459.)
 25 Lacey and Robertson performed staffing board duties from January until the new PA, Daisy
 Loeza, was hired on March 21, 2021. (Tr. 434–435.) After Loeza was hired, Wiggins told
 Robertson and Lacey that Loeza would take over regular staffing board duties. (Jt. Exh. 2;
 Tr. 459.)

30 In January or February 2021, Robertson told Lacey that he was confused as to why
 Wiggins had picked her as a PG because other associates were eligible. Lacey responded that it
 was confusing to herself and others that Robertson was selected. Robertson recalled Lacey said
 that she was more than capable and just needed continued training. (Tr. 435–436, 626–627.)
 Robertson expressed a similar sentiment to another associate. When asked why, he explained,
 35 “Well, from my personal experience, I felt Amber [Lacey] was more standing around talking to
 her friends than she was assisting in the processing guide paths or assisting workflow and things
 like that. I was constantly having to locate her in regards to asking a question when she was
 running the staffing board or something like that.” (Tr. 438.) Shortly thereafter, Lacey arrived to

¹⁰ The grace period does not “allow for an early departure from your work station at the end of shift.” (R Exh. 9.)

¹¹ Robertson applied for a PA position in May or June 2021, was selected, and started in August 2021. (Tr. 450.) In the complaint, Robertson is alleged as a supervisor based on his PA role. Because he was not a PA during the time period relevant to this complaint, it would make no sense to determine whether, as a PA, he was a supervisor. Wiggins trained Lacey and Robertson. (Tr. 429–431, 570, 581.) Lacey also approached Robertson for additional training, but he said he was trying to learn the job himself. (Tr. 624–626.)

¹² Robertson had previously been a vendor PG on a small section of the dock during the holidays in the latter part of 2020.

work and could hear Robertson telling PA Loeza he disliked how Lacey did her job. After this incident, Lacey kept her distance from Robertson and did not want to engage with him. (Tr. 636.) Loeza told Lacey that Robertson was speaking negatively about her and advised Lacey to talk to HR.¹³ Lacey went to HR on March 22, and spoke with two representatives about her problems with Robertson and the workplace culture.¹⁴ (Tr. 643–644.) Lacey recorded the meeting.¹⁵ (GC Exhs. 20, 31.)

Lacey communicated her concerns about Robertson and her complaint that HR was not doing anything about it with other employees, including Trish Pitchios, Ruby Reed, and LaToya. Pitchios told Lacey she should skip HR and go straight to Desautels because she had a reputation for caring and getting to the bottom of things. (Tr. 657–660.)

In March, Wiggins stepped in when Lacey and Robertson had a disagreement. He told them they needed to figure out a way to work together to ensure workflow was being managed. (Tr. 443, 576–577.) That same day, Robertson offered Lacey a ride home from work so that they could talk. On the ride, they discussed how they could work better together and assist each other. They agreed that one of them would run the staffing board in the morning and the other would assist in getting the rest of the dock going. Robertson mentioned that he had served in the military, and because of his PTSD, he tended to block out emotions and just focus on his job. He said everyone jokes that he’s an asshole because he is very straightforward. (Tr. 446–447.) Lacey recalled Robertson apologized about how he had been treating her. They talked for a long time about Robertson’s military career and how he was a “shit talker” and he asked her to call him out if he was out of line. (Tr. 640–642.)

Wiggins did not recall other employees having issues with Robertson, or Lacey approaching him with complaints from other employees about Robertson or Ponce. Wiggins recalled Lacey talking about the culture but never anything concrete or actionable, and he recommended that she speak with HR. Wiggins was not aware of other employees in the department complaining about work culture issues. (Tr. 577–578, 587.) Lacey told Wiggins she had heard several complaints about Robertson. (Tr. 657.)

Wiggins was transferred to outbound shortly after March 21, 2021. (Tr. 575.) Cesar Romero took over for Wiggins.

On March 29, Lacey and Ponce had a conversation about staffing. Lacey recorded the meeting. (GC Exhs. 22, 33.) Lacey expressed frustration that things kept changing and said she was concerned she would be in trouble because of staffing. Ponce assured Lacey she was not in trouble. Lacey told Ponce she had heard Ponce say she (Lacey) was not allowed to work on the board anymore. Ponce responded that she needed Loeza to learn how to do it because as PA, Loeza should be staffing the board. Ponce stated, “She will not learn if you guys are doing it for

¹³ Loeza did not testify. Any statements attributed to her are hearsay. Whether or not I rely on any such statements will depend on whether they are corroborated in line with the Board’s standards, which will be explained in context. *CEMEX Construction Materials Pacific, LLC*, 372 NLRB No. 130, slip op. at 4 n. 24 (2023), citing *Meyers Transport of New York, Inc.*, 338 NLRB 958, 969 (2003).

¹⁴ Lacey could not recall the representatives’ names.

¹⁵ The transcript of the meeting is 76 pages long. Lacey’s complaints in this meeting largely mirror those in her May 5 meeting with Desautels and Bendix, described in detail below.

her.” That same day, Lacey talked with PA Loeza.¹⁶ Lacey said that Ponce did not communicate with her personally and a lot of her instruction had been coming from Wiggins. Lacey talked about the issue with Robertson talking badly about her, some more of her issues with staffing and other concerns, and how nobody was willing to come forward with what they told her. Lacey
5 noted that she had cussed out Robertson the previous day.¹⁷

2. Lacey’s complaints to SOM Desautels and others

Lacey reached out to SOM Desautels in April 2021, complaining of favoritism.
10 Specifically, Lacey stated she believed OM Ponce treated Kyle Robertson more favorably than her. (Tr. 175–176.) Desautels messaged OM Ponce and AM Wiggins that she was meeting with Lacey on April 12. Ponce replied, “she skipped talking to me I see, this will be about Kyle just a heads up I’d like to loop you in . . .” Wiggins chimed in stating that both Lacey and Robertson were good PGs, but they couldn’t seem to get along. He said he had talked to them both, Lacey
15 seemed to have a chip on her shoulder about something with Robertson, and she tended to hold a longer grudge about things. Wiggins noted that during an in-depth conversation with Lacey, she referred to a broken culture and complained about the way people looked at and treated her. Wiggins said she did not give specific information and described the conversation as “venting.” Ponce responded that she would fill Desautels in further and said this went beyond Lacey’s
20 recent complaint. After the meeting, Desautels said she would send notes and follow-up items. (R Exh. 1.)

Lacey and Desautels met on April 12. Lacey recorded the meeting. (GC Exhs. 21, 32.)¹⁸
25 Lacey told Desautels about her problems with Robertson after they were both asked to serve as PGs. Lacey said Robertson made it “hell” for her. Lacey conveyed that Robertson told her he was confused as to why Lacey was chosen as a PG, and her response that she was likewise confused about why he was chosen. Lacey said she was supposed to be learning from Robertson, but he was distant from her and did not teach her anything. Lacey complained that Robertson was talking negatively about her throughout the dock, telling coworkers Lacey did not know
30 what she was doing and she just stood around. Lacey complained that HR was never really able to get to the bottom of anything. She also said she got challenged by others because of the athletic manner of how she performed her duties, and she did not intend to make anyone else feel less confident. Desautels asked Lacey about her requests for others to come forward with statements. Lacey responded, “Nobody seems to want to be, like, listening. I don’t know if they
35 have a fear of being involved with something, and again, on their record or following them.” Lacey continued to voice how bad things were and that she was unable to sleep and was exhausted. She said she felt like Robertson had everyone’s ear and recalled when she heard him talking about her to another associate.

40 Lacey conveyed that one morning Robertson asked her if everything was okay, and she said no, it was not, and told him she knew he had been talking shit about her, and he found every opportunity to exploit her. Lacey said people became more standoffish with her because of what

¹⁶ Lacey’s conversation with Loeza was part of the same recording.

¹⁷ Lacey testified that Loeza emphatically state that Ponce said Lacey in particular could no longer staff the board. This was not reflected in the recording, even though Lacey recorded the entirety of the conversation. (Tr. 839–840.)

¹⁸ The transcript of the recording misidentifies Jess Desautels as “Cynthia.”

Robertson was saying. Lacey conveyed more, in great detail, about her problems with Robertson. Lacey recounted meeting PA Loeza and warning her that there were “snakes in the building” and she would be shocked to learn who they were. She told Desautels that Loeza said she could “list” her, and told her that Robertson had talked a lot of crap to her about Lacey and Loeza thought it was unprofessional. Lacey said that on Loeza’s advice, she went to HR.

Lacey next told Desautels that her rapport with OM Ponce was drastically different. Lacey said Ponce would not respond to her and it seemed like she did not want to talk to her because she and Robertson were close.¹⁹ Lacey wondered if Robertson said something to Ponce about her. Lacey expressed her belief that Robertson tried to make her the fall guy for everything that went wrong. Lacey described in detail more issues about staffing and feeling mistreated. Desautels asked Lacey if it was okay if she spoke to OM Ponce, AM Wiggins, Robertson, and PA Loeza, and Lacey said she did not mind. Lacey described some more conflict with Robertson, including the incident where she said the F-word, described below, and recounting how several associates complained to her about Robertson’s tone and disrespect. She also discussed the ride home Robertson gave her and his apology. After more elaboration on Lacey’s part, the meeting ended.

SOM Desautels met with PA Loeza on April 14. Loeza shared that she felt like she was in the middle of the dispute between Lacey and Robertson. During Loeza’s first week in the department, she trained with Lacey. Robertson commented that he would “really train” her the following week. Loeza said she shared Robertson’s comment with Lacey, and she wished she had not because it had reignited their feud. Loeza also reported that when she trained with Robertson, she felt like he held back a little bit and she sensed some jealousy that she got the promotion to PA. (Tr. 227–228.) That evening, Loeza informed Lacey that she saw OM Ponce with HR. (GC Exh. 27.)

After Desautels and Loeza met, HR met with Robertson. (Tr. 260.) Robertson was not aware of any complaints against him in March or April 2021. Robertson described himself to his coworkers as a “self-proclaimed asshole.” He described it as a joke regarding him because he is very straightforward and needs to remind himself of what he is saying.²⁰(Tr. 441–448.)

Later that day, SOM Desautels met with AM Wiggins and OM Ponce. After the meeting, Wiggins and Ponce put together a PG rotation schedule to ensure fairness.²¹ They also asked an experienced PG named Francisco²² to train Loeza for two weeks. (Tr. 229; R Exh. 2.)

On April 27, Lacey asked Loeza to tell Wiggins about an incident between Lacey and an employee named Gina Cruz. In response to Cruz walking past Lacey laughing and shaking her

¹⁹ Ponce provided firsthand testimony that she and Robertson were not friends outside of work, and they have never socialized together. On one occasion she went to breakfast with her son and she saw Robertson. They said hello and Ponce proceeded to have breakfast with her son. (Tr. 1094.) I credit this testimony, as Lacey did not explain the basis for her belief that Robertson and Ponce were close.

²⁰ Robertson admitted to cussing at work, but has never cussed at an Amazon associate or cussed while talking to a coworker.

²¹ Lacey agreed it was an equal rotation. (Tr. 844.)

²² Francisco’s nicknames were Cisco and Frisco.

head while “talking smack,” Lacey “balled up her fist and was getting ready to take a step toward Gina, but Dante immediately ran over to her and said, No, no, no, no.²³” (Tr. 848–849.)

Desautels met with Lacey and Lauren Bendix, HR business partner (HRBP), on May 5. Lacey recorded the meeting. (GC Exhs. 23, 34.) Desautels mentioned Lacey’s concern about the PG role, and that Lacey felt Robertson had not properly trained her. Desautels mentioned the rotation schedule and said that she had spoken with Loeza. Desautels then mentioned Lacey’s concerns about Robertson making her uncomfortable and talking behind her back. Desautels mentioned she did not have confirmation about that, and said she did not know where that put them, because she knew Lacey was frustrated. Lacey said she felt like she knew the job pretty well, but Robertson did no training whatsoever. Desautels mentioned that was why they set up the rotation schedule and additional training. Desautels asked what had been going on since their previous meeting. Lacey responded that Robertson was talking behind her back, telling AM Wiggins how he felt about Lacey in the PG role, and taking information to OM Ponce.

Desautels mentioned that now that a PA was in place they did not need a PG every day and that was why they instituted the rotation. Lacey responded that she did not want to keep getting jerked around, and then went on at length about her frustrations with the culture and Robertson talking about her. Lacey said that at one point Robertson was at a desk with all the other Leads talking about her. Desautels asked Lacey if she remembered when that was. Lacey responded, “I do. But I’m getting to a point now, to be honest with you, just I feel like this stuff has a way of just turning and coming back to bite you and I still got to come in here and work.” Lacey said she had no faith in the HR process, and she asked to speak with Desautels because she had a good reputation. Lacey continued to express frustration about everyone knowing what was going on, and how Robertson’s words impacted how management treated her. Lacey mentioned that Robertson and Ponce were close and stated that Ponce wanted nothing to do with her. Desautels asked for an example, and Lacey replied there were multiple times when she greeted Ponce, and Ponce did not respond. Lacey said that when Ponce saw her coming, she would go the other way. Lacey also said that Ponce always communicated with Robertson even if it involved something Lacey was overseeing that day. Lacey then talked about how people did not give her their okay to be called in and asked about these instances.

Lacey continued at length to express frustration about staffing and how things changed quickly, and how she believed she was being blamed for things that went wrong on the dock. Desautels at some point redirected the conversation to ask about the work environment in light of the training and rotation schedule. Lacey said she was still not happy with it and continued to express frustration that nobody else would speak up about the problems. Lacey said it was PA Loeza who encouraged her to come talk to Desautels on her second day on the dock.²⁴

Bendix then mentioned Lacey had brought up certain names, and asked if the culture concerned all the names she mentioned, and Lacey responded yes. Bendix then asked for examples of issues that had come up the last two weeks. Lacey said she felt there were restraints on her when she worked the PG role. She gave an example of trying out some different staffing, and when PA Loeza told AM Wiggins about it, he told Loeza to keep an eye on it for him.

²³ Dante refers to Dante Brown, a fellow associate. (Tr. 850.)

²⁴ Previously, Lacey said Loeza told her to go to HR, and it was Pitchios who advised her to meet with Desautels.

Lacey again talked about how others felt the same way as she did but were not willing to talk about it, so she might need to just look for ways to get away from the toxicity at the dock. More conversation ensued, and Bendix asked Lacey for her ideal resolution. Lacey responded that it was fairness. Bendix suggested “courageous conversations” with Robertson and Ponce, and said she would be happy to help facilitate these conversations. Lacey agreed to try. Bendix asked Lacey who she had the most conflict with, and Lacey responded it was Robertson. She then described in detail her interactions with Robertson, including him driving her home and apologizing to her. Lacey talked about a few other things, including Loeza telling her that Robertson had been talking about her.

Lacey said she had tried not to interact with Robertson. She recounted an incident when Robertson approached her in the decant area and was watching her and standing close to her. Lacey slammed the tote down on the work station and said, “What the F—do you want?” Robertson asked if she was okay, noting that she had not said a word to him all day and they had not spoken in a week and a half. Lacey then talked about her workload and how she felt like she was worked like a horse. Bendix asked if Lacey thought it was just her. Lacey elaborated on her workload at length and her perception that others did not work as hard.

Bendix said there were some things she and Desautels could do to get a sense of what it was like in Lacey’s work area. Bendix said she would talk to people in inbound and get a pulse. Bendix asked that everything in the meeting be kept confidential.²⁵ Lacey expressed that other things she had brought to HR’s attention had made it back out to the floor, and said she felt like she had been left hanging when she raised concerns in the past. Bendix asked Lacey to name three things she liked about the building and her job. Lacey mentioned a couple things, including some of the positive relationships she had made. Lacey then said she wanted to discuss at another time the toxic culture and how she believed it was dangerous and setting people up for failure. Lacey said she had decided not to speak on anything else unless others were willing to talk. More conversation ensued, and Bendix mentioned the possibility of a fresh start at a nearby facility. Lacey then said she just thought of something important to raise, and stated:

So it was the beginning of last week, Jason [Wiggins] and Amber [Ponce] called me over to the ops desk and the three of us had a conversation that I wasn’t particularly comfortable with because I had my mind set on the layout that you had given me with as far as what we were going to be doing next to try to get to the bottom of all of this. So I was just really just kind of hanging on and waiting for you to call me in for us to meet again and then going from there with the meetings that we were supposed to have. Yeah. They called me to the ops desk and began to discuss how the rotation for PG was going to happen going forward. And then Amber started to kind of dial into, you know, all of this, what I came to meet with you guys, with you about. And I wasn’t really comfortable having that conversation with her because I already knew that at this point I’ve already come to you. I want to see it through, you know, on that path. And then when it’s time for the three of us to have that conversation, that’s when I, how I wanted it to go. She started saying that, you know, you know, is this about people saying things, because you know we can’t control what people say, and yada, yada, ya. And let me see; what was my

²⁵ Bendix testified she told Lacey she would keep her issues confidential, but did not tell Lacey not to talk about the meeting. (Tr. 515.) Bendix testified that there is an HR internal confidentiality policy for investigations (Tr. 537–539.)

5 response to her. I'm not even sure if I did have a response to that. I could have possibly said something like, you know, I just, I want to wait for this to happen, you know, this conversation here. I did tell her that, you know, it's more than just that, you know, and I alluded to the situation where Kyle had me at the station. What else -- what else happened.

10 She then said, you know, sometimes I just feel like you kind of sort of, and then she cut herself off and said like let me, let me figure out how to say this so I don't make it sound like, and it just -- I kind of -- it felt like I knew where she was getting ready to go with that, so I finished the statement for her. I said what, sensitive. Like I thought she was going to say sometimes I kind of feel like you're, you know, a bit sensitive. And so she said no, I wasn't going to say that, but I kind of do feel like you have a tendency to not let things go. And I didn't think that was appropriate because what do you want me to let go. You know, do you even know what I even came in here fully to meet with Jess about? I mean are you speaking from a point of actual not like you know what all of this is even about, you know, to tell me I'm not letting something go? And as an Ops Manager, and you have an employee who has busted their ass for you specifically, you know, I don't bring any problems in here with me. And that's why, another thing. I was like, you know, just ask around. Maybe you can also ask people how they feel about me as an employee.

20 Desautels told Lacey she met with PA Loeza and OM Ponce on the 12th, met with Loeza on her own, and she also met with Robertson. She also said she met with Ponce and AM Wiggins to set up the rotation and training schedule. Desautels told Lacey that she and Bendix would look into the situation because they wanted a good working environment for everyone. Lacey asked what kind of message it was sending for the ops manager to tell people to let things go. Desautels asked Lacey if she was recording the meeting, and Lacey responded she was not. More back and forth along similar lines as previously discussed took place. Desautels ended the meeting by saying they would follow up with Lacey the following week. (GC Exh. 23.)

30 Following the meeting, HRBP Bendix talked to several employees in the department chosen at random to investigate Lacey's complaints. They conducted roundtables with 3–4 employees at a time. (Tr. 545.) She did not find anything to substantiate Lacey's complaints.

35 At Desautels' request, on May 10, AM Wiggins wrote a statement reporting that Lacey, who was working as a PG, was frustrated that PA Loeza assigned her to walk the floor at the beginning of the shift and ensure things were starting as they should. Lacey had come to Wiggins and informed him she wanted to stay at the assignment board and meet new hires. Wiggins reiterated Loeza's instruction, as he saw matters on the floor that needed attention. About four hours into her shift, Lacey complained to Loeza that other PGs did not do what she was doing, and were instead assigned to the desk or board. She told Loeza she was done and went to break. (R Exh. 3.)

45 Loeza also wrote a statement, saying that when she asked Lacey to go to the floor and keep an eye out, Lacey got upset, asking why there was a problem with her working on the board. Loeza explained that when she (Loeza) is on the board, she needed Lacey to be her eyes on the floor helping out to start the shift. Lacey became upset and commented that whenever she is PG she has to do something different, but when other PGs assist Loeza, they just hang out at the board. (R Exh. 3.)

SOM Desautels and HRBP Bendix met with Lacey again on May 12. Lacey recorded the meeting. (GC Exhs. 24, 35.) Desautels asked if there were any new issues. Lacey discussed the new rotation for the PGs, and how she felt that as time went on, the changes only pertained to her. Lacey described in great detail the double standard she perceived and aired many grievances in the same vein as in her previous meetings. Bendix reported that she found no concerns and that part of her investigation was closed. They then discussed the events of May 10. Lacey said she was upset and she was done being a PG. Desautels advised her to take some time to think about it because she did not want her to quit something she had worked for out of emotion. Lacey seemed unsatisfied with Bendix closing the investigation. Lacey expressed concern that HR was telling other associates about her complaints, and that other associates were looking at her and talking behind her back. Bendix responded that anything brought to HR is confidential, and instructed Lacey to make sure she was not saying anything if she did not want others to know. The following day was Bendix's last day at LAS-7, so Desautels set up a follow-up meeting with Lacey and HRBP Alane Jackson.²⁶ (Tr. 238–240.)

At 4:54p.m. on May 12, Bendix messaged Ponce, and the following exchange ensued:

Bendix, Lauren <labendix@amazon.com>
whats with amber lacey

Bendix, Lauren <labendix@amazon.com>
help me understand here

Ponce, Amber <ponamber@amazon.com>
I honestly wish I knew. Do you remember last year when she had a similar issue with a AA named Adam.

Bendix, Lauren <labendix@amazon.com>
Yes

Bendix, Lauren <labendix@amazon.com>
and she just told me that she doesnt believe I get her or want to help her

Bendix, Lauren <labendix@amazon.com>
like i cant

Ponce, Amber <ponamber@amazon.com>
I completely understand. I don't know what we all can do that will make her feel satisfied.

Ponce, Amber <ponamber@amazon.com>
If I could help you know I will.

Bendix, Lauren <labendix@amazon.com>

²⁶ Bendix testified that Lacey did not want Bendix involved anymore and asked for Alane Jackson, one of the HR business partners. (Tr. 543.) Bendix handed off her notes to Jackson. (Tr. 543.)

thanks

Bendix, Lauren <labendix@amazon.com>
wooftaaaa

5

Bendix, Lauren <labendix@amazon.com>
sorry that shes yours

Ponce, Amber <ponamber@amazon.com>

10

its ok I been through this last time hopefully we can figure something out

Ponce, Amber <ponamber@amazon.com>

I'll pop in next week when I get back on site so I can get an update on next steps and see if we can come up with a solution's to make her happy that is reasonable.

15

Ponce, Amber <ponamber@amazon.com>
Sorry this keeps dragging on.

Bendix, Lauren <labendix@amazon.com>
no worries

20

(R Exh. 27.) The reference to the AA named Adam concerned a verbal altercation between Lacey and an associate named Adam and his spouse. Ponce recalled Lacey was unhappy with the outcome from HR and she kept going back to HR regarding altercations with Adam. (Tr. 1097.)

25

On May 13, Bendix messaged Desautels and asked if Lacey was staying on as PG, or were they “nixing her out.” Desautels responded that Lacey had said no, but Desautels felt the conversation was rushed, so she set up a meeting with OM Ponce, HRBP Jackson,²⁷ and Lacey. Desautels said she wanted to get information to confirm what other PGs did during their shifts and confirm if the duties were different for any of them. Bendix and Desautels discussed that it was hard to pinpoint when Lacey believed the different treatment occurred, so it would be hard to pull footage to confirm her claims. Desautels said she would get details from Ponce. Desautels concluded by saying she did not know “if my brain can take another meeting” but she wanted to make sure she was researching any claim that someone was being treated differently. (R Exh. 4.)

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On May 17, Desautels, Jackson, and Ponce met with Lacey.²⁸ In their initial meeting, Lacey had told Desautels about an incident where Lacey felt Ponce ignored her and didn't say hello. Lacey and Ponce talked through that, and they both agreed it was a misunderstanding. Jackson told Lacey she would investigate her concerns about the staffing board. Lacey confirmed there had been no further incidents with Robertson and raised no additional complaints. She also confirmed she no longer wanted to be a PG. (Tr. 243–244.) Lacey mentioned that Ponce did not smile at her, and there was a day when Ponce put her head down when she walked by Lacey. Ponce apologized and said she did not realize she was doing this. Things between Ponce and Lacey ended amicably. (Tr. 318, 322– 323.) Desautels felt a lot of positivity came out of that

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²⁷ Jackson no longer worked for the Respondent at the time of the hearing.

²⁸ Desautels confirmed with Lacey that she was okay with Ponce attending the meeting before she invited Ponce to attend.

meeting, and that Lacey understood that some small misunderstandings had led to some bad feelings.

5 On May 19, Loeza texted Lacey that Ponce had gotten Robertson and her together and started asking them questions because Ponce had just met with HR. (GC Exh. 28.)

10 On May 25, SOM Desautels and HRBP Jackson met with Lacey again. Jackson reported that she did not find anything to substantiate Lacey’s claims about different treatment on the staffing board, so they were closing out that part of the investigation. Lacey said she understood but she still felt uncomfortable at work. Desautels told Lacey that if anything new happened to bring her concerns to her and Jackson and they would personally help. Desautels could tell Lacey was still not happy, but did not know how else to move forward. Desautels was not aware of any concerns from other employees about toxic culture or other matters Lacey raised. (Tr. 245–247.)

15 Lacey had conversations with other employees and said she was not the only one with issues. When asked what issues she discussed with other individuals, Lacey stated, “Everybody’s issues were different, you know. Just about, again, the culture was a part of the dialogue.” Lacey described that “upper management was working us harder and not smarter. Frustrations, you know, with regards to that would be a general sense of kind of a lot of the concerns. The
20 management not knowing how to speak to people.” (Tr. 927.)

3. June 2 incident with PA Yanos and documented counseling

25 Toward the end of May, senior leadership at LAS-7 determined that more employees should be trained on the stow function. Employees trained in groups of 5–8 at a time over multiple training sessions. On June 2, Lacey approached PA Joel Yanos to ask if he could assign her to a different stow station. Her original assignment was at the location where a friend and coworker had recently committed suicide at work. Lacey described Yanos’ reaction as follows:

30 He already knew what I -- well, he was -- he just kind of went off on -- he exhibited frustration. Like, he, well, he said, like, “I can’t, I can’t be in, in 10 places at one time. I, I had some stations available,” and he’s yelling and, you know, very -- his tone is very loud, and he’s very demonstrative, and he’s exhibiting frustration right in front of me. And the tone and the way he was speaking, I -- it, it was abrasive to me. I didn’t -- I was
35 uncomfortable with it. And he said that he had some, some, some stations reserved, but someone had took them or something, and he was speaking about not being able to be in 10 places at one time, and -- but, again, there was this, like there was this abrasiveness with his tone and the way he was speaking to me, and I thought it was very unprofessional. I didn’t like it. Then, I asked him to, to find a different way to talk to me
40 or to change his tone. I said something to that effect, to that tune to him.

Q. Okay. And –

A. And –

45

Q. -- what happened after you told him –

A. It continued, and I couldn't get a -- I really couldn't get a word in edgewise with Joel, so I just said, "That's it, I'm going to go and find --" I was going to go find Amber Ponce to report this to her, which she wasn't -- well, before I even got down there, I didn't know whether she was at her desk or not. I'm going down the stairwell to the first floor to go speak with an, an Area Manager, and Joel came down the stairs behind me, like I'm, I'm walking down the stairs in a normal pace, but he's kind of running down the stairs; and I looked over my shoulder and he's like right behind me, so I stepped to the side so he can kind of blow past me, and he gets to the bottom of the stairwell and begins with that same energy and tone, telling -- there was an Area Manager down there by the name of Daniel -- [Brief pause] Yeah, I'm trying to recall exactly what he said. He was framing -- no, I don't want to say "framing", but basically, the way he explained it was like I, I provoked this out of him. And I interjected to Daniel, the Area Manager -- I didn't speak to Joel anymore. I didn't address him. I, I spoke directly to Daniel in that moment and said, "I, I can't just stand by and allow him to accuse me of, of creating, creating this moment or creating this energy, you know. The same energy that he's showing you right here, right now, is what he gave me upstairs just for asking for a stow station, or trying to ask for a stow station."

(Tr. 708–710.) At some point, Lacey clapped her hands a couple times and yelled "Joel, Joel."

(Tr. 851.) According to Lacey, Yanos took off his vest, threw his radio, and said "I don't get paid enough for this shit." Lacey reported the incident to Ponce, who, according to Lacey, told her she had done nothing wrong, and she wanted to speak with Yanos to get his side of the story. (Tr. 710–713.) Lacey also spoke to HR about the incident.

Robertson recalled seeing Lacey asking PA Yanos for a stow station, and saying she did not want to go to the station he assigned her because a coworker and friend had recently committed suicide there. He heard Yanos tell Lacey to give him a minute to find another station, and then he (Robertson) walked out of earshot (Tr. 463–464.)

Nicole Hudson was an AM in the inbound department during the relevant time period.²⁹ She directly observed Lacey and Yanos interacting on June 2 on the first floor for about 30 seconds to a minute. She stepped in to deescalate the situation because Lacey and Yanos were yelling back and forth. She observed Yanos yelling at Lacey to drop it, and she observed Lacey following Yanos, and said it "seemed like she was not going to stop following him." Hudson perceived Yanos was frustrated and saw he started to take off his vest. She did not see him throw his laptop or radio. Hudson pulled Yanos off to the side to talk to him and AM Daniel Davis spoke with Lacey. Yanos told Hudson that Lacey had an accommodation not to work in a particular area, and he was trying to find somewhere to move her and her training group. Yanos told Hudson he did not need to be at Amazon if he was going to be treated this way. After their conversation, Yanos left for the day. Hudson sent a message to Yessenia Esquivias in HR about the situation about 5 to 10 minutes later. (R Exh. 20; Tr. 1037–1041, 1060–1062.) About two hours later, Hudson wrote a statement and followed up with two revised statements later that afternoon. (R Exhs. 20, 21.)

AM Davis observed Lacey and Yanos walking toward him. Yanos was in front and Lacey was right behind. Davis observed, "It was pretty clear that they were kind of a little

²⁹ At the time of the hearing, Hudson worked for the Respondent as a finance manager.

agitated with each other.” Yanos came over and dropped his laptop and radio on the desk. Lacey was behind him, escalating that she needed him to do something. Davis tried to deescalate the incident and separated Lacey and Yanos. Lacey said she did not want to work in the area where she had been assigned, which Davis found understandable. He noted that it was the start of the shift and Yanos was really busy trying to get the entire floor staffed. Davis perceived Lacey’s tone as agitated and demanding, and Yanos’ tone as elevated and agitated. Davis perceived that with a little bit of patience they would have been able to figure out the assignments, and he perceived Yanos was frustrated. He described it as a “poking the bear” situation. Management ended up getting Lacey a new assignment. At HR’s request, Davis wrote a statement. (Tr. 1208–1211.)

That same day, Lacey messaged HRBP Jackson saying she wanted to talk to her about transferring out of the department. (Tr. 854.) Lacey asked to meet with Jackson because the situation with Yanos made her think she needed to get away from the dock, and they had previously discussed Lacey transferring. They met on June 17, and Lacey recorded the meeting. They discussed the potential opportunities and the incident with Yanos. Jackson explained that both Lacey and Yanos could have handled the situation differently, and explained to Lacey that interactions can look different to different people depending on their perspective.³⁰ (GC Exhs. 25, 36.)

Priscilla Edwards was a senior HRA at LAS-7 during the relevant time period. She worked at the HR desk assisting associates with their needs. She received daily complaints about various issues. (Tr. 1135–1136.) HRA Esquivias sent an email to Edwards and others in HR on June 4, about the incident between Lacey and Yanos. This was the first Edwards had heard about the situation. In the email, Esquivias asked Justina Ribero, an HR business partner, to have a seek to understand conversation with Yanos. (Tr. 1143; R Exh. 29.) Senior HRA Justina Hawkins responded that she had such a conversation with Yanos, and attached his statement. (Tr. 1145; R Exh. 29.) Edwards spoke with Ribero and Jackson about the situation and decided to give both Lacey and Yanos documented coachings. Yanos’ documented coaching was never issued because he resigned.³¹ They did not discuss any of the complaints Lacey had made to HR. Ponce played no role in the decision to issue the documented coaching and had no role in drafting it, nor did Robertson, Wiggins, Bendix, Romero, or Loeza. (Tr. 1148–1155.)

On June 20, 2021, AM Romero issued Lacey a documented coaching for the June 2 incident. The documented coaching states:

On 6/02/21 it was brought to HR’s attention that you had behaved in an unprofessional manner towards another associate, by raising your voice and being discourteous. A seek to understand conversation took place with you to which you stated you were “just waiting for the PA to have a moment to speak since he looked busy and he was rude and would not let you speak when you were trying to explain the situation.” You also mentioned that towards the end you do not recall getting upset and raising your voice, because you felt he was telling the Area Manager something that was not accurate.

³⁰ According to Lacey, she asked Jackson if she would be written up for the incident and Jackson said no. (Tr. 718.) This was not reflected on the recording.

³¹ Records show Yanos resignation was effective June 21, 2021. (Jt. Exh. 4.)

During the course of the investigation, it was found that you did behave in an unprofessional and discourteous manner overall.

5 The documented coaching stated Lacey committed a Category 2 offense as “Abusive, vulgar, or harassing language to a supervisor, fellow association or vendor.” The coaching instructed Lacey that her language and actions were expected to be professional going forward, without the use of profanity and appropriate for the workplace. It notified her that failure to comply with these expectations may result in further discipline, up to and including termination.³² Edwards considered Lacey’s behavior abusive and harassing toward fellow associate Yanos. (Tr. 1155.)

10 Romero is listed as the manager on the document, but he did not write it. As Area Manager, he presented the document to Lacey.³³ (Tr. 78.) Lacey told Romero she would not sign it, and the document was inconsistent with what HR had told her. Lacey met with OM Ponce, who explained the documented coaching was not something that would follow her around and she was pretty certain coachings fell off after a certain amount of time. (Tr. 327, 721.)

15 Lacey and HRBP Jackson met again on June 21, and Lacey recorded the meeting. (GC Exh. 36.) Jackson explained the purpose of a documented coaching. Lacey expressed her belief that Jackson had said no discipline would issue, and Jackson denied making such an assurance. 20 Jackson told Lacey that both parties had been held accountable and stated, “We can all agree that whatever transpired, there is probably an issue on both ends. There was probably an opportunity on your end. And an opportunity on his end as well.” Lacey continued to explain that she had not acted unprofessionally, and she had not done anything wrong. She explained the incident again and also brought up other times Yanos had acted unprofessionally. Lacey asked if there was 25 anything she could do to appeal, and Jackson told her how she could escalate it, and assured her she had every right to do so because sometimes there are mistakes.

30 Lacey decided to appeal to the general manager (GM), Tom Smotrich.³⁴ She met with him right after meeting with Jackson. Lacey told Smotrich in detail about her issues with Robertson and the problems she faced on the dock.³⁵ She then turned to the reason for their meeting, which was the incident with Yanos. Lacey said that Yanos and Robertson were good friends. She described the incident from her perspective and said she did not agree with the documented coaching. Smotrich said he could look into the issue to make sure the documented coaching was justified, and noted that they typically review the issue thoroughly, including 35 looking at video footage. Lacey circled back to issues with Robertson and favoritism on the dock and the disrespectful environment. She then talked about Perry Williams, the general manager (GM), and how he did not give off the greatest energy, but she could not accuse him of being the “root of the toxic tree.” Lacey then turned back to the incident with Yanos and the investigation. She expressed her aspirations to move up at Amazon, and was concerned the documented

³² Ponce was not involved in the decision to issue Lacey the documented coaching or in preparing it. (Tr. 363.)

³³ Romero received document coachings for various performance and behavioral issues regarding his employees on a daily basis through the ADAPT and delivered them to his employees. (Tr. 86–87, 89.)

³⁴ Lacey’s conversation with Smotrich is included in the recording. Smotrich replaced Perry as the GM.

³⁵ All of the specific issues Lacey raised are detailed elsewhere and need not be reiterated here.

coaching would harm this effort. Smotrich assured her that management did not base decisions on old write-ups. Lacey and Smotrich said goodbye.

4. Lacey’s suspension and discharge

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June 22 was a hectic day in inbound. Lacey had been assigned to drive a forklift on the staffing board. They were understaffed and Ponce said they needed “all hands on deck” in stow. According to Lacey, that afternoon, she received a message from OM Ponce to report to the operations desk. She went to the desk, and while waiting for Ponce, she spoke with Sean McCright,³⁶ who was a new PA in the dock area. Ponce then came over and told Lacey she needed her to check in with Jessica Sainz, the area manager in decant, who would tell her where to go next. According to Lacey, she put her hands on Ponce’s shoulders and said, “Okay I got you,” and walked away. (Tr. 736.)

10

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According to Ponce, Lacey was called up to the ops desk. She spoke with PA McCright who was at the other end of the desk. After speaking with McCright, Lacey approached Ponce and expressed frustration that she was being sent back to stow again, and then she was being pulled out of stow to go to decant. Ponce explained that there had been some staffing changes and all stowers that were trained in decant needed to go back to decant. As Ponce described it, Lacey “made a choking motion, like a pretend choking motion in the air, and then she extended her hands, and then she placed them, and she squeezed right here, like at my collarbone line.” Nobody else in the area observed this. Lacey then turned and walked away. Ponce went to safety and asked if they had footage.³⁷ (Tr. 330–333.)

20

25

PA McCright and AM Davis were 3–5 feet away.³⁸ According to McCright, he and Davis were standing at the desk looking at a computer, working on pulling associates from inbound stow to the inbound dock. He could not hear Ponce and Lacey talking. After the incident, Ponce asked McCright and Davis if they had seen what happened. Ponce said Lacey had put her hands on her neck. McCright described Ponce’s body language as “[p]anicked, distressed” and her tone of voice as “panicked.” McCright had never seen Ponce exhibit this demeanor. The next day, at HR’s request, McCright wrote a statement. On his statement he says Ponce said, “Did you see her just fake choke me?” (Tr. 1112–1116, 1239.)

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Davis recalled he was standing with McCright moving people from stow to decant.³⁹ Davis looked up from his laptop and could tell that Ponce was a little distraught. She asked if they saw Lacey choke her. Davis said he did not see. He had never seen Ponce exhibit this demeanor. They discussed that the matter should be escalated, and that Ponce should report it to loss prevention or HR. At HR’s request, Davis provided a statement. (Tr. 1213–1219.)

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At 2:19 p.m. Ponce messaged Clarence Patrick from the safety department asking if the ops desk was visible on a camera. Patrick responded that it was barely visible and asked what Ponce was looking for. She responded, “an AA pretending to choke me but actually touching

³⁶ McCright’s last name is misspelled in the transcript as McWright.

³⁷ The only available video footage is GC Exh. 13. It is impossible to discern anything other than the most rudimentary movements from the video and I find it unhelpful to prove what occurred.

³⁸ McCright and Davis, gave statements saying they did not witness the incident. (R Exhs. 15–16.)

³⁹ Davis noted that Lacey, like many others, did not like working in decant.

me.” When Patrick asked Ponce how she was, she responded she was “ok not happy.” (GC Exh. 14).

At 2:26 p.m. on June 22, Ponce messaged Desautels saying she had a problem and would like to meet with her, and conveyed she was embarrassed about crying. (R Exh. 5.) They met in the main office a couple of minutes later. Ponce was shaking and crying, and said, “Amber touched me.” GM Smotrich came over to make sure Ponce was okay because she was visibly shaking. Ponce said Lacey put her hands around her neck. Desautels said they would start the investigation right away. They then met with HR. (Tr. 249–250.) Someone from loss prevention approached Ponce and asked questions like whether she had a playful demeanor with associates, and whether she let associates touch her. Ponce said she did not have a playful demeanor, she did not let other associates touch her, and nothing like the incident with Lacey had happened to her in the seven years she worked at Amazon. They asked Ponce if she wanted to press charges, and she declined. (Tr. 336.)

Ponce then returned to her desk to write her statement. At 3:40 p.m. Ponce sent Jackson an email factually describing the incident.⁴⁰ She stated that Lacey extended her hands toward her, placed them close to her collarbone location, and lightly squeezed. Ponce said she kind of chuckled because she did not know what to say, and then told Lacey to report to Sainz. (GC Exh. 15; R Exh. 13.) Ponce talked to Javier Mendez, the HR manager, and told him that because so many things happened the day of the incident, she had left things out.⁴¹ (Tr. 364.) Mendez told her she could revise her statement if she wanted to. Ponce sent a revised and expanded statement to Mendez and Jackson on June 24. This statement factually described both the incident and the ensuing interactions with HR, and then described Ponce’s emotional reaction and feelings. She concluded, “I am fearful that the actions of Amber Lacey could escalate and I don’t feel safe working in a building with her there.” About 40 minutes later, Ponce sent a revised statement largely mirroring the previous one, but concluding with, “I do not feel safe working in the building with Amber Lacey. I am fearful that her actions towards me might escalate further and that she will harm me.” (GC Exhs. 18–19; Tr. 338–339.) Ponce eventually returned to the workroom floor. Ponce finished her shift, and asked Jackson if someone could escort her to her car. After her shift, at Ponce’s request, Romero walked her to her car, and she went home. Ponce worked the following day. (Tr. 336–338.) It is undisputed nobody called the police or sounded an alarm, and Lacey was not charged with assault.

Oriya Azulay, a loss prevention specialist, was assigned to investigate the incident. She had not heard anything about the relationship between Ponce and Lacey. She first read Ponce’s statement.⁴² Azulay viewed the video but could not see the incident. She then called Lacey for an interview. Azulay interviewed Lacey about the incident with HRA Rachel Bernard present. The interview began at 5:23 p.m. and ended at 6:10 p.m. Azulay observed that Lacey initially appeared to be unaware of an issue with Ponce, but when asked about it she became very upset. She stated that it was a joke and done endearingly, but confirmed that she had placed her hands

⁴⁰ Ponce mistakenly thought the date was June 21. Ponce made minor corrections to her statement the next morning.

⁴¹ Mendez was no longer HR manager at the time of the hearing.

⁴² Azulay was not provided with Ponce’s revised statements but would have considered them if she had them. (Tr. 808.)

on Ponce’s collarbone. For her safety, Azulay asked her not to demonstrate on her body, but to demonstrate it in the air. Lacey demonstrated in the air and on herself. (Tr. 772–776; R Exh. 13.)

5 After the interview, Lacey stayed onsite and prepared a statement from 6:22 p.m. to
7:35 p.m. She said that the inbound dock had been extremely chaotic, and she and others had
been feeling that Amazon had been working its associates harder, not smarter. Lacey then
reported that she had been met with discrimination and retaliation by management. She said that
10 after meeting with Desautels, Jackson, and Ponce, she felt like her relationship with Ponce was
back on track and things would be better. She expressed shock that she needed to explain the
incident they were investigating. She then described the incident, stating, “In a joking manner, I
proceeded to hold my hands up in front of me in a squeezing motion (as if to say this building is
so all over the place + scrambled in workflow). Then I placed my hands on Amber’s shoulders
and gave a light squeeze.” She concluded by expressing her perception that Ponce seemed okay
with it and appeared to understand Lacey’s intentions. (R Exh. 13.)

15 HRA Bernard’s notes stated that Lacey admitted to putting her hands on Ponce’s
shoulders/collarbone.⁴³ Lacey said that it was not meant to come across as aggressive but more as
a sign of endearment, and she thought her relationship with Ponce was friendly. Lacey then said
she felt retaliated and discriminated against and personally victimized. Lacey reported that she
20 and Ponce had hugged before, so she thought they had that kind of relationship. (R Exh. 13.)

Azulay interviewed Davis, who said he did not see the incident, but recalled Ponce
appearing distressed, and asking him if he had seen what just happened. Azulay interviewed
McCright, who also said he did not witness the incident but noticed distress coming from Ponce.
25 Azulay did not interview Ponce and did not know if anyone else did. (Tr. 786–796.) She said it
was Amazon’s practice to not interview someone at a higher level. (Tr. 806, 809.)

30 Lacey testified it is not acceptable workplace behavior to place your hands on a coworker
or supervisor without their consent, but said there was some gray area. She acknowledged that
Ponce did not verbally consent to Lacey touching her. (Tr. 885–886.)

35 While Lacey was working in decant, AM Romero approached her and asked her to grab
her things and come with him to HR. Romero directed Lacey to a conference room in HR where
three individuals she had not met were waiting. They asked her to explain the incident with
Ponce, and she said, “What incident?” because she did not know what they were referring to.
Someone asked Lacey if there had been contact between her and Ponce, so Lacey described what
had transpired, using her shoulders to demonstrate where she placed her hands on Ponce. Lacey
was asked if she was aware of the social distancing rule, and she said she was. Lacey tried to
convey that it was a very innocent moment. Lacey was told she would be on paid suspension
40 during the investigation. (Tr. 741–745.)

45 Ponce messaged Desautels on June 25, asking for Lacey’s status and stating that she
would not want to come back to work and be surprised. Desautels responded that if, for some
reason, Lacey returned, she would send her to another department and expressed that hopefully
Lacey would not return. (R Exh. 7.) Desautels hoped that Lacey would not return because she
saw how it affected Ponce, and felt like Lacey committed an act of violence, a Category 1

⁴³ Lacey never said she touched Ponce’s collarbone. (Tr. 793.)

offense, and should be terminated. Desautels did not review video before determining Lacey’s conduct was an act of violence. (Tr. 254–256.)

5 Edwards, Ribero, and Jackson from HR made the decision to terminate Lacey’s employment. In arriving at the decision, they reviewed the documents loss prevention provided, including witness statements. They decided on termination because Lacey had violated the standards of conduct by placing her hands on somebody else in a threatening manner. They did not discuss Lacey’s previous complaints to management when determining how to discipline her. As a Category 1 offense, the termination was not part of progressive discipline. Ponce was not involved in the decision, nor was Wiggins, Desautels, Bendix, Robertson, or Loeza.⁴⁴ (Tr. 1156–1172.)

15 Lacey’s termination document states, “Your recent job performance is not meeting Behavioral expectations.” The “details” section states, “On June 22, 2021, you made an inappropriate action to Operations manager Amber Ponce, when during a conversation on the floor you lifted your hands and made a chocking (sic) gesture towards her, then placed both hands on Amber’s shoulders/collarbone while lightly squeezing. During the course of the investigation you admitted making the chocking (sic) gesture and placing your hands on OM Amber’s neck.” (R Exh. 32.)

20 On June 25, a manager from LAS-7 called Lacey and told her the investigation had concluded, and she was being terminated effective immediately. Lacey appealed on June 26, but the appeal was denied. (Tr. 746–747; R Exh. 12.) In her appeal, Lacey stated she thought she was terminated in retaliation for having reported to HR Robertson badmouthing her and Ponce being rude to her and taking away her staffing board duties. (R Exh. 12; Tr 892.) On July 2, Marisa Leininger sent Lacey a message saying that due to the nature of her termination, her feedback to the hotline was ineligible for appeal, her termination was upheld, and the decision was final and binding. (GC Exh. 30.)

30 On August 18, 2021, associates named Anthony and Jerry reportedly got into an altercation where they bumped into each other in an aggressive manner. They were terminated on August 22 and August 23, respectively. (R Exh. 8.) Edwards, Jackson, and Ribero were involved in the decisions to terminate them. (Tr. 1166.)

35 III. ANALYSIS AND DECISION

A. Requests for Adverse Inferences

40 1. General Counsel

The General Counsel argues that I should draw an adverse inference based on the Respondent’s failure to produce Daisy Loeza to testify at the hearing or to call her as a witness. No adverse inference is drawn from the failure of a respondent to call a former manager or supervisor who is no longer under its control and cannot reasonably be assumed to be favorably

⁴⁴ The hearing was the first Edwards knew that Ponce had written different versions of her statement. She did not recall if she saw the video. (Tr. 1171–1172.)

disposed toward it.⁴⁵ See *Heart and Weight Institute*, 366 NLRB No. 53, slip op. at 1 n. 1 (2018),
 enfd. 827 F. Appx. 724 (9th Cir. 2020); *Reno Hilton Resorts*, 326 NLRB 1421, n. 1 (1998), affd.
 196 F.3d 1275, 1284 (D.C. Cir. 1999); and *Goldsmith Motors Corp.*, 310 NLRB 1279 n. 1
 (1993).

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For a few reasons, I find an adverse inference is unwarranted. First, though the General
 Counsel attempted to serve Loeza with a subpoena, she was never served, as she no longer
 worked at the LAS-7 facility where the subpoena was sent. I permitted the General Counsel time
 to attempt serving Loeza at her current address and seek enforcement, if necessary, but the
 General Counsel did not seek subpoena enforcement proceedings. Respondent’s counsel
 indicated that he spoke with Loeza, who told him she had never been served with a subpoena,
 she did not work at LAS-7 anymore, and had relocated to a facility in Phoenix. At the time of the
 hearing, Loeza was no longer a process assistant, she had recently returned to work after a long
 medical leave of absence due to a car accident that had left her traumatized, she was in the
 process of re-learning her job, and had no interest in coming to Las Vegas to have anything to do
 with the trial. Though counsel’s statements are not evidence, he is an officer of the court, and I
 accept his word in the absence of anything contradicting it. I do not find, under the
 circumstances, that Loeza would have been favorably disposed to support the General Counsel’s
 case, and I therefore decline to grant an adverse inference.

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2. Respondent

The Respondent requests that I draw an adverse inference based on Lacey’s failure to
 timely comply with the subpoena duces tecum the Respondent served on her, citing to *Shamrock*
Foods Co., 366 NLRB No. 117, slip op. at 1 n. 1, and 15 n. 29 (2018) (imposing adverse
 inference on employer for failure to produce subpoenaed documents), enfd. per curiam 779 F.
 Appx. 752 (D.C. Cir. 2019). The Respondent contends that though Lacey was served with the
 subpoena in April 2023, with a due date of May 8, 2023, she did not produce several responsive
 lengthy audio recordings and text message records until the middle of the week of February 4,
 2024, during the resumption of the hearing.

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Under the circumstances present here, I decline to grant an adverse inference. Lacey
 testified that after her termination from Amazon, she moved three times, and experienced a
 period of being unhoused, living in her car. She then moved to the Shade Tree shelter in Las
 Vegas. (Tr. 899–900.) Though this occurred in 2022, I am inclined to give Lacey the benefit of
 the doubt that this period of instability had a continuing effect on her ability to organize her
 belongings and comply with the subpoena in a timely manner.

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B. The Rules

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1. Legal Standards

Under Section 8(a)(1) of the Act, it is an unfair labor practice for an employer to interfere
 with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of the
 Act. The rights guaranteed in Section 7 include the right “to form, join or assist labor

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⁴⁵ As discussed herein, I make no finding as to whether Loeza, as a PA, was a supervisor when she
 worked at LAS-7. At the time of the hearing, it is undisputed she was not.

organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .” The basic test for a violation of Section 8(a)(1) is whether under all the circumstances the employer's conduct reasonably tended to restrain, coerce, or interfere with employees’ rights guaranteed by Section 7. *Mediplex of Danbury*, 314 NLRB 470, 472 (1994); *Sunnyside Home Care Project*, 308 NLRB 346 fn. 1 (1992), citing *American Freightways Co.*, 124 NLRB 146, 147 (1959).

An employer violates Section 8(a)(1) when it maintains workplace rules or policies that would reasonably tend to chill employees in the exercise of their Section 7 rights. See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999). With respect to facially neutral work rules that may be reasonably interpreted to restrict Section 7 activity, the Board interprets these rules from the perspective of an employee who is economically dependent on the employer, and who contemplates engaging in protected concerted activity. *Stericycle, Inc.*, 372 NLRB No. 113, slip op. at 9 (2023).⁴⁶ If the General Counsel carries her burden to show such an employee could reasonably interpret the rule to have a coercive meaning, the rule is presumptively unlawful, even if the rule could also be reasonably interpreted not to restrict Section 7 rights and even if the employer did not intend for its rule to restrict Section 7 rights. *Id.* at 9–10. The employer may rebut this presumption by proving that the rule advances a legitimate and substantial business interest, and the employer is unable to advance that interest with a more narrowly tailored rule.⁴⁷ *Id.* at 10. The Board must give the rule under consideration a reasonable reading and ambiguities are construed against its promulgator. *Lutheran Heritage Village-Livonia*, 343 NLRB 646, 647 (2004); *Lafayette Park Hotel*, 326 NLRB at 828; and *Cintas Corp. v. NLRB*, 482 F.3d 463, 467–470 (D.C. Cir. 2007).

If a rule is not facially unlawful, it may still violate Section 8(a)(1) if the General Counsel can prove it was promulgated in response to union or other protected activity, or has been enforced or applied to restrict the exercise of Section 7 rights. *Lutheran Heritage*, above at 647.

2. Standards of Conduct

In paragraph 4(b) of the complaint, the General Counsel asserts that certain rules in the Respondent’s Owner’s Manual and Guide to Employment, Appendix – Standards of Conduct violate Section 8(a)(1) of the Act.

⁴⁶ The Board held that *Stericycle* is to be applied retroactively.

⁴⁷ I am bound to and will adhere to *Stericycle* and do so here. I find it somewhat counterintuitive and inefficient, however, to require employers to prove a negative, *i.e.* that they cannot advance a more narrowly tailored rule. It seems a more useful approach would be for the General Counsel, as the representative of the agency with expertise, to prove that the employer’s business justifications could be advanced by a more narrowly tailored rule, and to propose such a rule. This would more directly and assuredly advance the purposes of the Act, as opposed to asking employers to try to figure out what, if any, more narrowly tailored rule would pass muster under Section 8(a)(1) in a complex and dynamic legal landscape. Such an approach would still require employers to try their best to narrowly tailor rules to avoid liability, and therefore would not condone overly broad rules.

a. Workplace civility rules

Two rules, the first a Category 1 and the second a Category 2 offense, concern employees' behavior toward others in the workplace. The rules prohibit:

- Assaulting, threatening, intimidating, coercing, or interfering with supervisors or fellow associates (Complaint paragraph 4(b)(1))
- Abusive, vulgar, or harassing language to a supervisor, fellow associate, or vendor (Complaint paragraph 4(b)(5))

With regard to the first rule, the General Counsel asserts that the proscription against “interfering” with supervisors or fellow associates encompasses a broad range of activity, such that the rule could be interpreted to prohibit Section 7 activity, including concerted work actions. As to the second rule, the General Counsel asserts that it prohibits overly broad and vague actions which can reasonably interfere with employees' rights to engage in protected concerted activities, including concerted work actions directed at management.

In *Palms Hotel & Casino*, 344 NLRB 1363 (2005), the Board found a rule prohibiting “conduct which is or has the effect of being injurious, offensive, threatening, intimidating, coercing, or interfering with fellow Team Members or patrons” did not violate Section 8(a)(1). The Board in *Palms Hotel* pointed to the D.C. Circuit’s decision in *Adtranz ABB Daimler-Benz Transp., N.A. v. NLRB*, 253 F.3d 19 (D.C. Cir. 2001), denying enf. in part to 331 NLRB 291 (2000). In *Adtranz*, the D.C. Circuit vacated as “utterly without merit” the Board’s finding that a handbook prohibition against the use of “threatening or abusive language” potentially chilled the exercise of Section 7 activity, stressing that “threatening and abusive language are not inherent aspects of union organizing or other Section 7 activities.” The Board found the *Adtranz* case applied with equal force to the rule at issue in *Palms Hotel* prohibiting conduct that was “injurious, offensive, threatening, intimidating, coercing, or interfering with fellow Team Members or patrons.” See also *Lutheran Heritage*, above, at 646 (prohibitions against “abusive and profane language,” “harassment,” and “verbal, mental and physical abuse” are lawful).

Although I find the rules are not facially overly broad, I nonetheless will set forth the Respondent’s business justifications in the event a reviewing authority disagrees with me. The corporate-level individual responsible for policy updates, Director of PTX Transformation Shaunta Hyde, testified about the business justifications for the rules at issue. Hyde testified that the business interest behind the above workplace civility rules is having a workplace that is emotionally and physically safe for Amazon’s employees so that they are able to do their jobs and carry out their responsibilities. Hyde explained that having employees in a workplace permitting harassing language or abuse could lead to attrition and expose Amazon to legal liability. The business reason for prohibiting interfering with supervisors or employees is to enable people to do their jobs. (Tr. 1020–1023.) Assuming the General Counsel met its initial burden, I find the Respondent has established legitimate business justifications for its rules that cannot reasonably be more narrowly drawn.

Based on the foregoing, I recommend the dismissal of paragraphs 4(b)(1) and 4(b)(5).

b. Unauthorized removal of company documents

Complaint paragraph 4(b)(2) alleges the following prohibition, violation of which is a Category 1 offense, is overly broad:

- Unauthorized removal of company documents

The General Counsel alleges that, because “company documents” is not defined, employees could reasonably interpret the term to include an individual’s own personnel file, disciplinary actions, memoranda, notices, and rules or handbooks. The General Counsel argues that employees have a Section 7 right to share such documents with third parties and government agencies, and requiring prior authorization to share such documents unlawfully restricts Section 7 rights. I find the General Counsel has shown a reasonable employee could interpret this rule as restricting Section 7 rights.

When stating the business justification for this provision, Hyde referred to the provision regarding theft in the same section of the Standards of Conduct. That provision prohibits “[t]heft or inappropriate removal or possession of property.” Amazon considers unauthorized removal of company documents to be theft, as they are Amazon’s property, and the company does not want employees to remove documents that do not belong to them. (Tr. 1024.) The Respondent also asserts that Desautels interpreted the provision to apply to documents marked “confidential”

The rule itself is not limited to documents marked “confidential” and I find that a reasonable employee would not read that into the rule.⁴⁸ I agree with the General Counsel that employees have a protected right to their personnel files, and a right to share the information in them. See *Hyundai America Shipping Agency*, 357 NLRB 860, 860 (2011) (rule unlawfully prohibited “[a]ny unauthorized disclosure of information from an employee’s personnel file.”) The same is true for employer rules and handbook provisions that deal with wages, hours, and other terms and conditions of employment. See *Freund Baking Co.*, 336 NLRB 847 (2001). Accordingly, I find the General Counsel has proved that the rule is overly broad in violation of Section 8(a)(1).

c. Attendance rules

The General Counsel alleges the following rules related to attendance violate Section 8(a)(1). The Category 1 rule prohibits employees from:

- Leaving company premises without permission during assigned work hours (unpaid meal periods and paid rest breaks are not “work hours” for purposes of this policy)(Complaint paragraph 4(b)(3))

Category 2 rules prohibit employees from:

⁴⁸ Even if the rule did apply only to documents marked “confidential”, without some foundation regarding the process for determining and marking what are deemed to be confidential documents, the term is too vague to be useful.

- Unauthorized absence, excessive absenteeism, or any absence without notice (Complaint paragraph 4(b)(4))

...

5 • Failure to adhere to starting time, quitting time, or break time policies, or wasting time (Complaint paragraph 4(b)(6))

...

10 • Leaving a company-assigned work area during scheduled working hours without permission (Complaint paragraph 4(b)(7))

As to the “leaving company premises without permission during assigned work hours” rule, the General Counsel first asserts that any rule requiring employees to secure permission to engage in protected concerted activity during an employee’s free time and in nonwork areas is unlawful. The General Counsel, citing to *Our Way, Inc.*, 268 NLRB 394 (1983), correctly argues that rules using the term “working time” are presumptively invalid and rules using the term “working hours” like the rule here are presumptively invalid in cases involving solicitation and distribution. The Board explained, however, that the term “working hours” is presumptively invalid because it “connotes periods from the beginning to the end of workshifts, periods that include the employees’ own time.” *Id.* at 395. The instant rule explicitly excludes from the term “work hours” any unpaid meal periods and paid rest breaks. The same rationale holds true for the “leaving a company-assigned work area during scheduled working hours.” See *Heartland Catfish Co.*, 358 NLRB 1117, 1118 (2012) (reasonable employee would read rules prohibiting employees from leaving their workstations during working hours to prohibit only unauthorized leaves or breaks, not to prohibit conduct protected by Section 7). The policy, which is less than two pages long, explicitly excludes lunch and break times. I find this effectively, using plain and easily understood language, rebuts any legal presumption.⁴⁹

Turning to the “unauthorized absence and excessive absenteeism” and the “failure to adhere to starting time, quitting time, and break time” rules, the General Counsel asserts that these rules could be interpreted to prohibit employee work actions, including strikes. The rules about unauthorized absences and excessive absenteeism and adherence to starting, quitting, and break times, are in line with standard attendance policies most employees are subjected to in almost any workplace. The rules do not call attention to protected activities and seek to restrict them. See *2 Sisters Food Group*, 357 NLRB 1816, 1817–819 (2011) (rule prohibiting employees from “walking off” reasonably interferes with protected activity given the common use of the term “walkout” as a synonym for a strike). The General Counsel has not explained how these

⁴⁹ Certainly, most employees would be able to understand from this language that their lunch and break times were excluded from the rule. It is much clearer than expecting an employee to know the legal nuances in labor law that distinguish “working time” from “working hours” generally in the Board’s caselaw.

If we are viewing the rule through the lens of the Board’s caselaw, it could be more narrowly drawn to substitute “work time” for “work hours” and then have the same disclaimer language for meals and breaks. As I have noted previously, any rule within a handbook could always be more narrowly drawn by explicitly stating after every conceivable ambiguous term or phrase that the term or phrase does not infringe on specifically referenced broad Section 7 rights. Viewing the rule using a plain language layperson’s reasonable interpretation, I find that it is sufficiently narrowly drawn.

rules would reasonably be read, in lay terms, to chill employees from legitimate strikes or walkouts or other protected activities.

For the reasons discussed above, I find these rules are not facially overly broad. I nonetheless will set forth the Respondent’s business justifications in the event a reviewing authority disagrees with me. Hyde stated that the business interest for the attendance rules is ensuring employees know the standards for when to show up to work, and to do their jobs, because that is what Amazon pays them for. (Tr. 1024.) Desautels explained that the rules protect against time theft. She also said that clear attendance expectations are important because Amazon provides employees unpaid time off, a policy that allows employees to arrive late and leave early with notification to their managers. (Tr. 162–165; R Exh. 9.) Assuming the General Counsel met its initial burden, I find the Respondent has established legitimate business justifications for its rules that cannot reasonably be more narrowly drawn.

Based on the foregoing, I recommend dismissal of complaint paragraphs 4(b)(3), (4), (6), and (7).

3. Rules allegedly promulgated in Lacey’s documented coaching

Complaint paragraph 4(g) alleges that, on or about June 20, 2021, the Respondent, by Cesar Romero, in a documented coaching, promulgated certain rules, detailed below, in violation of Section 8(a)(1).

Complaint paragraph 4(g)(2): promulgation of a rule or directive stating that all associates, regardless of position, are responsible for ensuring that the workplace is free from offensive behavior and harassment.

Complaint paragraph 4(g)(3): promulgation of a rule or directive stating that all associates must avoid any conduct that may be perceived as offensive and/or harassing.

Complaint paragraph 4(g)(4) promulgation of a rule or directive stating that employees’ language and actions are expected to be professional, without the use of profanity, and appropriate for the workplace.

The General Counsel did not present any evidence to establish the Respondent shared Lacey’s documented coaching with any employees other than Lacey. Lacey’s documented coaching served to reprimand “one employee specifically” and “could not reasonably be interpreted as establishing” a new rule. *St. Mary’s Hospital of Blue Springs*, 346 NLRB 776, 77 (2006).⁵⁰ See also *Shamrock Foods Co.*, 369 NLRB No. 5 (2020) (Indeed, the Board has repeatedly held that a statement made to a single employee is not the promulgation of a rule for the entire work force), citing *Flamingo Las Vegas Operating Co., LLC*, 361 NLRB 1047 (2014), affirming and incorporating by reference 359 NLRB 873 (2013), rev. granted in part on other grounds mem. 2016 WL 3887170 (D.C. Cir. June 10, 2016) (per curiam); *St. Rose Dominican Hospitals*, 360 NLRB 1130, 1131 (2014); *Teachers AFT New Mexico*, 360 NLRB 438, 438 fn. 3

⁵⁰ See also the ALJ’s reasoning in *S.R. Key Plumbing & Mech. LLC & Georgia Carolina Pipe Trades Associated a/w United Ass’n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. of the United States & Canada, Afl-Cio*, No. 10-CA-291436, 2023 WL 8002685 (Nov. 17, 2023)

(2014); *Flamingo Las Vegas Operating Co.*, 360 NLRB 243, 243 & fn. 5 (2014); *St. Mary's Hospital of Blue Springs*, supra. Moreover, for the reasons set forth in the discussion of the Standards of Conduct above, I do not find these directives to be overly broad. Accordingly, I recommend dismissal of these complaint allegations.

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4. Prohibition on discussing investigations

Complaint paragraph 4(c) alleges that in late April or early May, the Respondent, by Lauren Bendix, prohibited employees from discussing an on-going investigation of employee complaints about harassment and supervision, in violation of Section 8(a)(1).

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Stericycle, supra, overruled *Boeing*, 365 NLRB No. 154 (2017), which served as the framework for *Apogee Retail*, 368 NLRB No. 144 (2019). *Apogee* had held that investigative confidentiality rules were lawful whereby their terms they applied for the duration of any investigation. The Board instead returned “to a particularized analysis of specific rules, their language, and the employer interests actually invoked to justify them.” *Stericycle*, slip op. at 2. “Employees have a Section 7 right to discuss discipline or ongoing disciplinary investigations involving themselves or coworkers. Such discussions are vital to employees’ ability to aid one another in addressing employment terms and conditions with their employer.” *Banner Health Sys.*, 362 NLRB 1108, 1109 (2015). Accordingly, an employer may restrict those discussions only if it establishes a legitimate and substantial business justification that outweighs employees’ Section 7 rights. *Hyundai America Shipping Agency*, 357 NLRB No. 80, slip op. at 15 (2011).

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The recording clearly states that HRBP Bendix asked that everything in the May 5 meeting, the facts of which are detailed above, be kept confidential. While the Respondent points out that Lacey expressed concerns about her issues not being kept confidential, she expressed that “other things that I’ve brought to HR’s attention have made it back out there on the floor.” (GC Exh. 23.) Lacey’s concern, however, was that HR was sharing information, which would not touch on employee protected activity. More broadly, Bendix testified that there is an HR internal confidentiality policy for investigations. In addition, SOM Desautels testified that employees are instructed not to discuss ongoing investigations and to keep them confidential.

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The Respondent asserts that investigation integrity considerations constitute legitimate and substantial interests that could not be supported by a more narrowly tailored instruction. Specifically, the Respondent asserts that nothing other than confidentiality could prevent an employee from tainting an investigation by sharing interview discussions with others. This rationale, however, lacks an “individualized preliminary review to determine whether such confidentiality was objectively necessary.” *Banner Health*, above at 1110, citing *Hyundai*, above.

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Based on the foregoing, I find the General Counsel met her burden to prove complaint allegation 4(c).

C. Alleged Threats

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Complaint paragraphs 4(g)(1), (6), and (7), allege that on or about June 20, 2021, Cesar Romero, in a documented coaching, threatened employees in violation of Section 8(a)(1).

In assessing whether a remark constitutes a threat, the appropriate test is “whether the remark can reasonably be interpreted by the employee as a threat.” *Smithers Tire and Automotive Testing of Texas, Inc.*, 308 NLRB 72 (1992). The actual intent of the speaker or the effect on the listener is immaterial. *Id.* The “threats in question need not be explicit if the language used by the employer or his representative can reasonably be construed as threatening.” *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970). The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. *KSM Industries*, 336 NLRB 133, 133 (2001).

Paragraph 4(g)(6) alleges Romero threatened employees with disciplinary action, up to and including termination of employment, for violating overly broad rules or directives described above in paragraphs 4(g)(2) through 4(g)(4). Because I have found no such rules were promulgated, I recommend dismissal of this complaint allegation.

Paragraph 4(g)(1) alleges Romero threatened employees with unspecified reprisals for engaging in protected concerted activities. The General Counsel argues the following statements in the documented coaching were threats of unspecified reprisals for engaging in protected activities:

On 06/02/21, it was brought to HR’s attention that you had behaved in an unprofessional manner towards another associate, by raising your voice and being discourteous.

...

During the course of the investigation, it was found that you did behave in an unprofessional and discourteous manner overall.

The General Counsel argues that by characterizing Lacey’s protected activity as unprofessional, raising her voice, and discourteous in a disciplinary document, the Respondent threatened employees with unspecified reprisals for engaging in protected concerted activities. This argument fails, as the facts do not establish that Lacey was engaged in protected activities during her interaction with Yanos on June 2, 2021, which is detailed above. What the evidence shows is that Lacey, understandably, wanted to work in a different area. No evidence whatsoever was presented to establish that Lacey was acting at the behest of or on behalf of any other employees during her interaction with Yanos that day.

As to paragraph 4(g)(7), alleging the documented coaching threatened Lacey with future discipline, the General Counsel, in closing brief, offered only argument that the language threatened discipline up to and including removal in relation to violation of the alleged overly broad rules. No argument was submitted as to how this language constituted an unlawful threat. Because, as discussed below, I find the discipline was lawful, I do not find the remarks about potential future discipline to be unlawful threats.

Based on the foregoing, I recommend dismissal of complaint paragraphs 4(g)(1), (6), and (7).

D. Alleged Unlawful Removal of Duties, Discipline and Termination

Complaint paragraph 4(d) alleges that on around April 27, 2021, the Respondent took away work responsibilities or duties from Lacey, including making white board assignments and operating the forklift. Complaint paragraph 4(f) alleges that on or about June 20, 2021, the Respondent issued a documented coaching to Lacey. Complaint paragraphs 4(h) and (i) allege that on June 22, 2021, and June 25, 2021, Lacey was respectively suspended and discharged. All of these complaint paragraphs allege that these actions were taken because of Lacey’s protected concerted activity, in violation of Section 8(a)(1).

1. Legal Standards

a. Mixed motive discrimination

The Board’s framework in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), applies to discrimination allegations when mixed motives are presented, whether the alleged discrimination was because of protected concerted activity or union activity.⁵¹ Under *Wright Line*, the General Counsel must first make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer’s decision. The elements commonly required to support the General Counsel’s initial burden are: (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) antiunion animus, or animus against protected activity, on the employer’s part. See *Intertape Polymer Corp.*, 372 NLRB No. 133 (2023).

To be considered protected concerted activity under Section 8(a)(1), the “employee conduct must be both ‘concerted’ and engaged in for the purpose of ‘mutual aid or protection.’” *Fresh & Easy Neighborhood Market*, 361 NLRB 151, 153 (2014). The Board has held that activity is 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 (1984), revd. sub nom *Prill v. NLRB*, 755 F. 2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Issues raised “solely by and on behalf of the employee himself are not concerted.” *Meyers II* at 885.

A discriminatory motive may be established by circumstantial evidence, which can include, among other factors: the timing of the employer’s adverse action in relationship to the employee’s protected activity; the presence of other unfair labor practices; statements and actions showing the employer’s general and specific animus; the disparate treatment of the discriminatee(s); departure from past practice; shifting, false or exaggerated reasons offered for the action; and failure to conduct a meaningful investigation. See *Intertape Polymer Corp.*, above,, slip op. at 6 (2023); *Safety System, LLC*, 370 NLRB No. 90, slip op. at 1 (2021). The Board will infer an unlawful motive or animus where the employer’s action is “‘baseless,

⁵¹ As there is no formal hiring process for the barista trainer position, and it is within the store manager’s discretion to select barista trainers, I do not apply the additional factors set forth in *FES*, 331 NLRB 9 (2000). See *Webasto Sunroofs*, 342 NLRB 1222 (2004) (*Wright Line*, without additional application of *FES*, applies to hiring process where formal job openings are not a meaningful consideration).

unreasonable, or so contrived as to raise a presumption of unlawful motive.” *J. S. Troup Electric*, 344 NLRB 1009 (2005) (citing *Montgomery Ward*, 316 NLRB 1248, 1253 (1995)); See also *ADS Electric Co.*, 339 NLRB 1020, 1023 (2003); *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966).

5

If the General Counsel meets this prima facie burden, the burden of proof shifts to the employer to demonstrate it would have acted the same had protected conduct not occurred. The employer cannot carry this burden merely by showing that it also had a legitimate reason for the action, but must persuade, by a preponderance of the evidence, that the action would have taken place absent the protected activity. *Dentech Corp.*, 294 NLRB 924, 956 (1989).

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b. Discipline arising from protected conduct

The Supreme Court in *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964), held, “§ 8(a)(1) is violated if an employee is discharged for misconduct arising out of a protected activity, despite the employer’s good faith, when it is shown that the misconduct never occurred.” Under the *Burnup & Sims* analysis, the General Counsel has the initial burden to prove the employee was subjected to an adverse employment action for conduct occurring during the course of protected activity. The Respondent must then show it had an honest belief that the employee engaged in serious misconduct. The burden then shifts to the General Counsel to prove by a preponderance of the evidence that the employee did not, in fact, engage in that misconduct.⁵² *Aqua-Aston Hospitality, LLC*, 365 NLRB 592, 596 (2017); *Akal Security, Inc.*, 354 NLRB 122, 124–125 (2009), reaffid. 355 NLRB 584 (2010); *Taylor Motors*, 365 NLRB No. 21 (2017). “Thus, an employer who disciplines an employee for misconduct within the course of otherwise protected activity will be found to have violated the Act where the evidence discloses that: (a) it did not honestly believe the serious [mis]conduct occurred; or (b) even if it did so believe, it was mistaken.” *Aqua-Aston Hospitality*, above. The Board will apply site-specific criteria to determine whether the protected concerted activity for which the employee was disciplined loses the Act’s protection. See *Lion Elastomers*, 372 NLRB No. 83 (2023).

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2. Lacey’s alleged protected activity

The complaint, at paragraph 4(a), alleges:

During the period from about January 2021 through June 21, 2021, Respondent’s employee Lacey engaged in concerted activities with other employees for the purposes of mutual aid and protection by concertedly complaining to Respondent regarding the wages, hours and working conditions of Respondent’s employees by raising concerns with others and Respondent about favoritism, supervisors’ treatment of employees, and other terms and conditions of employment.

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⁵² This approach protects against indulging the notion that there could be true mixed motives for punishing protected concerted activity that does not, by any reasonable construction, rise to the level of genuine misconduct.

In its closing brief, the General Counsel also asserts that Lacey engaged in protected concerted activity when she and employee Reed questioned Ponce about the grace period for clocking out.⁵³

5 I find the complaints Lacey raised with HR, SOM Desautels, and GM Smotrich, arose out
of an individual personality conflict between Lacey and her coworker Robertson, and they were
not concerted. Lacey’s complaints centered around Lacey’s treatment vis a vis Robertson. The
10 conflict between them and the perception that Robertson received better treatment than Lacey
was the genesis of the problems that caused Lacey to raise her concerns with management, and
was the primary topic of her numerous subsequent complaints. Lacey and Robertson were the
only two PGs working in the area where Loeza eventually took over as PA. Lacey’s complaints
15 about staffing board duties were likewise not concerted, as it was only Lacey and Robertson
vying to perform these duties. There is no evidence that other employees cared at all who did the
staffing board, much less supported Lacey in her complaints about it. Though there is evidence
that PA Loeza was friendly with Lacey and discussed some of Lacey’s issues with her, there is
no evidence that Loeza shared Lacey’s concerns or desired Lacey to act on Loeza’s behalf or
20 anyone else’s behalf.⁵⁴ Similarly, Lacey testified that employee Pitchios advised her to take her
concerns to Desautels. Again, however, the evidence merely involves other employees
suggesting where Lacey should take her concerns.

Lacey raised vague concerns about a toxic work culture and complained essentially that
management made poor decisions. These allegations, however, were never voiced with any
specificity, despite prompting from management. SOM Desautels testified, “I asked for examples
or anyone else we could reach out to, and she did not have that information.”⁵⁵ Wiggins testified
25 that Lacey said something was “off” a number of times, but he could not nail down what it was.⁵⁶
When asked what issues she discussed with other individuals, Lacey stated, “Everybody’s issues
were different, you know. Just about, again, the culture was a part of the dialogue.”⁵⁷
Importantly, there is no evidence that other employees shared Lacey’s view of a toxic work
culture, or that her concerns to management were on behalf of other employees. In her testimony,
30 Lacey personalized the toxic work environment, stating:

And I also had spoke -- you know, I think it was just another meeting where I had spoken
to my concerns and brought up everything about feeling like duties and tasks had been
taken from me, or -- and that, that the, the, the, the behavior of Kyle and, and, and the
35 toxicity, the hostile environment that I felt like was created around me was, was still, was
still happening.⁵⁸

...

⁵³ See GC Br. 34.

⁵⁴ The complaint alleges that Loeza is a supervisor under Section 2(11) of the Act. I do not find it necessary to resolve whether Loeza was a supervisor to resolve the substantive complaint allegations. I note, however, that any determination that Loeza was a supervisor would be fatal to any claim that Lacey engaged in protected concerted activity with her.

⁵⁵ Tr. 184.

⁵⁶ Tr. 578.

⁵⁷ Tr. 927.

⁵⁸ Tr. 668–669.

The, the, the, the same occurrences, and just the toxicity and the hostility, you know, around me again, it's just making it becoming more difficult to speak with - - to engage with other managers, you know, just – and I said, and I stated at one point that it, it just became difficult for me to do my job, you know.⁵⁹

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In sum, I do not find the concerns Lacey raised about the toxic culture were concerted.

Turning to the time clock, Ponce recalled approaching multiple associates who were leaving, telling them the shift was not over, and they needed to go back to work because the grace period did not permit associates to leave early. Lacey approached Ponce and asked for clarification, and said if she was going to be held to the grace policy, everyone should be, and Ponce agreed.⁶⁰ Because Lacey questioned Ponce about the grace policy on the heels of Ponce approaching a group of employees and telling them they could not leave early, I find this constitutes protected concerted activity.

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3. Alleged removal of duties

The record is devoid of evidence regarding how often Lacey drove the forklift before her protected concerted activity, and how often she drove it after. Ponce's testimony that she did not tell anyone Lacey should not be assigned to the forklift is unrefuted.⁶¹ Moreover, it is undisputed that Lacey chose to serve a PG in January 2021. While assigned as a PG, by her choice, she was could not have been assigned also to the forklift.

20

With regard to whiteboard duties, the evidence shows that once Loeza was hired as a PA, she took over whiteboard duties, as the PGs only performed such duties in the absence of a PA. The record does not contain evidence to show that the other PG in Lacey's work area, Robertson, performed whiteboard duties when PA Loeza was on duty and available to perform them. I recommend dismissal of complaint paragraph 4(d).⁶²

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4. Lacey's documented coaching

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Having established that Lacey engaged in protected concerted activity, I must determine whether the documented coaching she received was because of this activity. As discussed above, the evidence shows that Lacey's interaction with Yanos on June 2 leading to the documented

⁵⁹ Tr. 696–697.

⁶⁰ Tr. 367–368.

⁶¹ Tr. 1095, 1100. I note that the General Counsel's brief does not offer argument regarding taking away forklift or whiteboard duties from Lacey.

⁶² The Respondent contends that allegations that Amazon removed job duties from Lacey in retaliation for protected activities should be dismissed because no underlying charge allegation advances those allegations. The Regional Office is not required to limit the investigation of a charge to the specific unfair labor practices alleged therein. *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307–309 (1959) (“Once its jurisdiction is invoked the Board must be left free to make full inquiry under its broad investigatory power in order properly to discharge the duty of protecting public rights which Congress has imposed upon it. There can be no justification for confining such an inquiry to the precise particularizations of a charge.”). While the better practice would have been for the Charging Party to amend the charge to include the removal of duties allegation, see *Leukemia and Lymphoma Society*, 363 NLRB 1082 (2016), I will not belabor this as I have dismissed the complaint allegation.

coaching was an individual request for her own assignment location to change, not protected concerted activity. No evidence was presented that other employees raised complaints with Yanos or anyone else about workstation assignments that day, and Lacey did not mention anyone else’s assignments. She was seeking a change in her own assignment pursuant to an accommodation she had been given to not work in the area where her friend had taken his life. Accordingly, *Burnup & Sims* is not implicated, and the discipline is analyzed under *Wright Line*, supra.

I find there is insufficient evidence of animus toward Lacey’s protected activity, or protected activity in general, for the General Counsel to meet her *prima facie* burden. As discussed above, the only activity I have found to be concerted is the October 2020 comment about the grace period when clocking out. Lacey, however, testified that Ponce’s attitude toward her changed when Ponce became operations manager in February 2021, because Robertson told her Lacey was not doing the PG job well. (Tr. 831.) The record is devoid of evidence that Ponce otherwise held animus toward protected activity. Even assuming Lacey’s complaints to HR and Desautels were concerted, the evidence shows Ponce was very patient about these complaints, and held no grudge against Lacey for them.⁶³ The May 12 text exchange between HRBP Bendix and OM Ponce, set forth in full in the statement of facts, shows that Ponce was genuinely confounded about how to solve Lacey’s issues, but still hoping to find a solution. When Bendix asked Ponce to help her understand Lacey’s concerns, Ponce responded, “I honestly wish I knew. Do you remember last year when she had a similar issue with a AA named Adam.” When faced with skepticism from Bendix, Ponce responded in a measured way:

Bendix, Lauren <labendix@amazon.com>
like i cant

Ponce, Amber <ponamber@amazon.com>
I completely understand. I don’t know what we all can do that will make her feel satisfied.

...
Bendix, Lauren <labendix@amazon.com>
wooftaaaa

Bendix, Lauren <labendix@amazon.com>
sorry that shes yours

Ponce, Amber <ponamber@amazon.com>
its ok I been through this last time hopefully we can figure something out

⁶³ Lacey testified that Loeza told her that Ponce told Loeza that Ponce was tired of being pulled into meetings and was going to put a stop to it. (Tr. 704.) This is uncorroborated double hearsay, and not entitled to weight. See *Auto Workers Local 651 (General Motors)*, 331 NLRB 479, 481 (2000). Because of this, Ponce’s testimony that she did not tell Loeza that she was sick and tired of being pulled into investigative meetings about Lacey is undisputed. (Tr. 1095.)

While Bendix certainly expressed frustration, Ponce’s responses consistently show an attitude of wanting to help.⁶⁴ Likewise, a wealth of evidence shows that many other individuals with whom Lacey met, especially Desautels, showed an honest desire to try to make things right for her.

5 Assuming the General Counsel established a *prima facie* case, I find the Respondent has shown it would have issued Lacey the documented coaching had protected conduct not occurred. As detailed in the statement of facts, the witnesses who observed Lacey and Yanos⁶⁵ on June 2 believed they both had a role in letting the situation escalate. Faced with these witness accounts, and after speaking to other human resources employees involved in the investigation, Senior
10 HRA Edwards decided to give both Lacey and Yanos documented coachings, treating them the same. Yanos’ resignation was effective June 21, so his discipline was not issued.

Based on the foregoing, I recommend dismissal of complaint paragraph 4(f).

15 5. Lacey’s suspension and discharge

Complaint paragraphs 4(h) and (i) allege that on or about June 22, 2021, Lacey was suspended, and on or about June 25, 2021, Lacey was discharged in violation of Section 8(a)(1). These allegations stem from the same course of conduct and are analyzed together.

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My findings above regarding Lacey’s protected activity and the lack of evidence of animus apply to Lacey’s discharge and are hereby incorporated. Assuming, however, the General Counsel met the initial *Wright Line* burden, I find the Respondent has shown it would have suspended and discharged Lacey had the protected conduct not occurred. It is undisputed that on
25 June 22, Lacey made a motion with her hands in the air that Ponce reasonably perceived as a “choking” motion, and then placed her hands on Ponce’s shoulders and lightly squeezed them. Lacey contends that this was done in a joking and friendly manner, and that very well may have been her intent. However, I cannot find that Ponce’s reaction was unreasonable, and the evidence shows it was not fabricated. In the immediate wake of the incident, PA McCright and AM Davis
30 observed that Ponce looked distressed, panicked, and distraught. Desautels observed Ponce shaking, crying, and struggling to get words out.⁶⁶ Faced with the evidence of Lacey’s actions and Ponce’s reaction, HRBPs Edwards, Jackson, and Ribero reasonably concluded that Lacey violated the Standards of Conduct by placing her hands on somebody else in a threatening
35 manner.

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Neither party submitted evidence of comparative employee discipline for unwanted touching prior to June 22, 2021. The Respondent submitted evidence associates Anthony and Jerry were terminated on August 22 and 23, 2021, respectively, for an altercation where they
40 bumped into each other on August 18.

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⁶⁴ Bendix has left LAS-7 by the time of the documented coaching, and there is no evidence showing she had any role in its issuance.

⁶⁵ Yanos is also alleged as a supervisor in the complaint, but the record is thin regarding his specific duties. In any event, and I find resolution of his status does not impact the substantive complaint allegations.

⁶⁶ Tr. 249.

I am sympathetic to Lacey and this decision does not mean her concerns were not real and legitimate. They were, however, driven by individual conflicts and not concerted complaints about wages, hours, or any identifiable, tangible, or common working conditions that were a demonstrated concern to other employees.

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I recommend dismissal of complaint paragraphs 4(h) and (i).

CONCLUSIONS OF LAW

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1. By maintaining overly broad rules about removal of company documents and maintaining confidentiality of workplace investigations that would chill employees in the exercise of their rights under Section 7 of the Act, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

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2. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

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Having found the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

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Having found the Respondent has maintained overly broad rules regarding removal of company documents and maintaining confidentiality of workplace investigations, the Respondent will be ordered to cease and desist therefrom. The Respondent will be ordered to rescind the overly broad language in the rules, and to notify the employees subject to the rules in writing that these provisions will not be enforced. The Respondent shall also be required to post a notice, as detailed in the order below.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶⁷

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ORDER

The Respondent, Amazon.com Services, LLC, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

(a) Maintaining an overly broad rule prohibiting unauthorized removal of company documents.

⁶⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Maintaining an overly broad rule requiring employees to keep workplace investigations confidential.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) Within 14 days of the Board’s order, rescind the rule prohibiting unauthorized removal of company documents and the rule requiring employees to keep workplace investigations confidential, and provide employees with a lawfully revised version of these rules at all locations, and with respect to all current and former employees, within the United States of America and its territories where it has been maintained.

(b) Within 14 days after service by the Region, post at its facility in Las Vegas, Nevada copies of the attached notice marked “Appendix.”⁶⁸ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 10, 2021.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

⁶⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

Dated, Washington, D.C. January 22, 2025

A handwritten signature in cursive script, appearing to read "Eleanor Laws".

Eleanor Laws
Administrative Law Judge

5

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT maintain an overly broad rule prohibiting the unauthorized removal of company documents.

WE WILL NOT maintain an overly broad rule requiring employees to keep workplace investigations confidential.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the overly broad rules prohibiting the unauthorized removal of company documents and requiring employees to keep workplace investigations confidential.

AMAZOM.COM SERVICES, LLC

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge’s decision can be found at www.nlr.gov/case/28-CA-281240 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE’S COMPLIANCE OFFICER, (602) 640-2146.