



Maine Human Rights Commission

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Amy M. Sneirson
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INVESTIGATOR'S REPORT

MHRC Case No. E17-0016

September 14, 2018

Kevin Osgood (Rockland)

v.

Advantage Solutions¹ (Anaheim, CA)

I. Summary of Case:

Complainant, who was employed by Respondent to provide sample products at third-party store locations, alleged that Respondent retaliated against him for making a report to a state agency ("Agency") about his pay when it reduced his hours, harassed him, removed him from a store location, and later discharged him.² Respondent, a sales and marketing agency, denied retaliation and asserted that it removed Complainant from the store location because of sanitary violations and discharged Complainant for violating its timekeeping policy. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, requesting additional information, and holding an Issues and Resolution Conference ("IRC"). Based upon this information, the Investigator recommends a finding that there are reasonable grounds to believe that Respondent retaliated against Complainant based on protected activity.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: May 2016 to January 24, 2017.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): January 9, 2017.
- 3) Respondent has 49,200 employees and is subject to the Maine Human Rights Act ("MHRA") and the Maine Whistleblowers' Protection Act ("WPA").
- 4) Complainant is represented by Donald Lawson-Stopps, Esq. Respondent is represented by Bruce Larson, Esq.

¹ Complainant named "Advantage Solutions" as the Respondent in his complaint; Respondent provided that its name is "Advantage Sales and Marketing LLC dba Advantage Solutions". Because Complainant has not amended his complaint, the name he used has been retained.

² Respondent discharged Complainant after he filed this complaint with the Commission but before the Commission provided Respondent with notice of such.

III. Development of Facts:

- 1) Complainant provided the following in support of his claim:

Complainant worked for Respondent without issue until he reported to a state agency (“Agency”) that he was not being timely paid. After that, Respondent reduced his work hours, stopped assigning him work at a local store (“Supermarket”), and began to harass him, ultimately leading to his discharge. The reasons Respondent gave for removing him from Supermarket were contrived.

- 2) Respondent provided the following in support of its position:

Respondent stopped assigning Complainant to Supermarket because Supermarket’s store director (“Director”) informed it of various sanitation concerns it saw with Complainant. Respondent did not reduce Complainant’s hours until this occurred. Even before this, Complainant had issues with timekeeping and other policies. Respondent attempted to coach him, but Complainant rebuffed its attempts, claiming it was harassment. Ultimately, Respondent discharged Complainant for violating various company policies.

- 3) The Investigator made the following findings of fact:

- a) Complainant worked for Respondent from March 3, 2016 until January 24, 2017, providing “free samples” of various products at local stores, including Supermarket.
- b) Complainant requested direct deposit of his pay; while direct deposit was being set up, he should have received paper checks, but he did not. He contacted Respondent but was not satisfied; he then reported to Agency that he had yet to be paid by Respondent, which he believed to be unlawful.³ See 26 M.R.S. § 621-A. Respondent recalls the issue being a mailing address error which was remedied by re mailing the checks. Complainant believed that the delayed pay was purposeful and in line with what he saw as Respondent’s insidious employment practices.⁴
- c) Complainant claimed that after he contacted Agency, Respondent steadily reduced his hours from an average of three days a week to one day per week. Respondent asserted that Complainant’s hours fluctuated from week to week with no real pattern. In an attempt to support this assertion, Respondent provided scheduling records, attached as Exhibit A. While Exhibit A appears to show what days Complainant worked, it does not appear to show what precise hours were worked. Respondent was asked to provide the specific hours Complainant worked per week. It was unwilling to do so. Neither party provided reliable documentation to support its asserted version of hours Complainant worked.
- d) On May 25, 2016, Complainant completed a product demonstration at a store three days earlier than scheduled. Respondent took issue with this because stores may have a promotion for the product scheduled and more inventory of the product on the day the demonstration is supposed to have occurred. Respondent did not provide whether this particular demonstration caused those issues. Respondent

³ Emails provided show that Complainant had contacted his district manager (“Manager”) no later than March 31, 2016, and Agency no later than April 7, 2016. Complainant believes that Agency contacted Manager about the wage issue; Respondent maintains that Agency contacted its workforce compliance team (“Compliance”).

⁴ Complainant had previously reported to Compliance that he was deceptively promised more hours and more pay by Respondent’s recruiter.

alleged that Complainant did the same thing on July 27, July 28, August 4, and August 25. It did not provide details or supporting documentation.

- e) Shortly after the May 25th incident, Respondent attempted to set up a conference call with Complainant, but he was unwilling to join the call. On June 2, 2016, Complainant contacted Agency about the conference call; Agency suggested that if he was concerned about retaliation for his earlier report, he would have to contact the Commission for assistance. It is unclear what the conference call was regarding, but from the totality of information provided, it appears that Respondent attempted to contact Complainant to discuss his use of break time⁴ and administrative time,⁵ and adherence to the schedule.
- f) On July 23, 2016, Complainant contacted Manager to address the discrepancy between the pay rate the recruiter promised and the pay rate he was ultimately offered.⁶ On July 27, 2016, the regional manager (“Regional Manager”) responded to the email and told Complainant that his objection about the pay rate had not substantiated by the human resources department.
- g) On August 18, 2016, Manager attempted to contact Complainant by telephone and later followed up with an email. Manager stated, “I need to speak to you... Please call me today, it’s important” in the email. Complainant believes Manager called him around 10 pm, which he considered harassment.
- h) On August 23, 2016, Complainant emailed Manager to let her know that he was upset that a demonstration he had wanted to reschedule had instead been cancelled, leaving him with less work. On August 26, 2016, Manager replied that it was a mistake and not done intentionally. Regional Manager followed up by reminding Complainant that employees must notify their supervisor fourteen days in advance when they are unavailable to work, and warning that consistent violation of that policy could be “subject to disciplinary action up to and including termination.” Complainant replied that he had given proper notice, and again complained that the recruiter had promised him more hours. Complainant believed the emails were harassing in tone, theorizing that Respondent was trying to force him to quit because of his report to Agency. After Regional Manager responded stating no one was harassing anyone, Complainant replied in part, “your company lied and abused me from day one.” (Exhibit B)
- i) On August 29, 2016, Complainant emailed Agency and asked it to look at the emails, inquiring: “what is retaliation and harassment and what does it look like... Can you see any in these e-mails” and “Would they be trying to get rid of me 3 months after I reported them to [Agency]? Like a forced quit?” It is unclear whether Agency replied.
- j) On September 13, 2016, Complainant emailed Manager asking for more work. It is unclear whether Manager replied. At some point, Manager informed Complainant that there was another similar

⁴ Respondent’s policy states that each employee who works at least five hours “shall be expected to take an off-duty, unpaid 30-minute meal break sometime during their workday.” Respondent provided that in his 113 work-days, Complainant only took 65 meal breaks. Respondent did not provide how many days out of the 113 Complainant worked at least five hours.

⁵ Respondent stated that administrative time was expected to be anywhere from one minute to 15 minutes per shift, but Complainant was reporting entries ranging from 1.5 hours to 4 hours. Neither party provided supporting documentation. Respondent stated that Manager had coached Complainant on this issue on May 25, June 2, and August 22, but again did not provide supporting documentation.

⁶ Complainant was issued an offer letter on March 3, 2016, which provided his rate of pay (which was less than he claimed the recruiter promised); he electronically signed his acceptance of the terms the same day.

company that he could work for to supplement his hours. By all appearances, Complainant followed through on the tip and began working for both companies.

- k) On December 1, 2016, Director contacted Respondent with concerns about Complainant and spoke with Manager. Respondent alleged that Director reported to Manager that Complainant was not complying with the dress code, ate sample food product from his demonstration cart, did not change his gloves after touching his face and hair, and left his cart for non-work-related reasons. Two closed-circuit television screen shots were provided to Respondent. (Exhibit C) Complainant claimed that he was not provided with the proper uniform, ate the food in order to test it for customers, and was not provided with enough gloves. Neither party provided supporting documentation to support its version of whether Complainant was allowed to test the samples by eating them.
- l) At some point prior to December, Complainant recalls Manager telling him that he would have plenty of work from December through January. Shortly thereafter, Manager informed Complainant that Director had contacted her with concerns about his performance. Complainant then contacted various people at Supermarket, who he recalls denied most of the allegations.
- m) As a result of Director's concerns, Respondent stopped assigning Complainant work at Supermarket; it is unclear who made this decision for Respondent. Respondent stated that it removed Complainant from that location pending an investigation into the matter. Respondent did not provide any details or supporting documentation about the investigation, or anything to substantiate that it actually occurred.
- n) On December 5, 2016, Complainant emailed Manager, first restating what he remembers of their phone call over the Supermarket issue and then giving his thoughts on the matter. (Exhibit D) It is unclear whether Manager responded.
- o) On December 9, 2016, Complainant contacted Compliance regarding various issues, including work hours, the report to Agency, and being removed from Supermarket.
- p) On December 15, 2016, an "employee relations specialist" emailed Complainant, allegedly confirming that Complainant had told Compliance and Manager that he did not wish to work in other stores because he had been removed from Supermarket, and stating that Complainant was being removed from the work schedule. Complainant replied, "[t]hat is not what I said." (Exhibit E) Respondent did not provide any documentation to show that Complainant had made such a statement in either the Compliance call or in an email to Manager. Complainant provided the report from the call-taker at Compliance (Exhibit F) and what appears to be the email to Manager (Exhibit D). Neither appear to mention Complainant stating that he wished to be removed from the schedule altogether.⁷
- q) On January 9, 2016, Complainant filed this complaint. Notice was mailed to Respondent on January 25, 2017, and there is nothing in the record to suggest that Respondent was aware of the Commission complaint before then.
- r) Manager asked Complainant to join a conference call regarding his use of administrative time on both January 20 and January 21, 2017. Complainant did not attend the calls, and did not notify Manager that he would not be attending the calls.

⁷ The portion of the Compliance report stating, "The caller would be offered time in other stores. This is not what the caller agreed to" could potentially be construed to suggest that Complainant was unhappy being scheduled in other stores. However, it would be a stretch to suggest that this was Complainant requesting to be removed from the schedule.

- s) On January 21, 2017, Manager emailed Complainant about the conference calls. On January 23, 2017, Complainant replied to the email asking Manager to stop harassing him.
- t) On January 24, 2017, Respondent discharged Complainant. It later cited violation of company policies on timekeeping and work conduct, and not adhering to expectations related to food safety, dress code, and meal breaks as the reasons for discharge. Respondent stated that it was ultimately Compliance that made the decision to discharge Complainant. Respondent stated that it typically discharges hundreds of employees a year for timekeeping issues. It was unwilling to provide supporting documentation.
- u) Respondent asserted that it had previously coached Complainant on various issues including adhering to his schedule, following directives from management, and complying with other company policies. Respondent did not supply the dates of the alleged coachings or any supporting documentation.
- v) The Commission requested Respondent provide the contents of any emails sent to it by Supermarket, its food safety policy, the number of employees in the past five years it had discharged for timekeeping issues, and the hours Complainant worked per week. Respondent was unwilling to do so.⁸ Counsel for Complainant also requested Respondent provide, among other things, any emails in its possession referring to Complainant, an answer to clarify whether it was Supermarket or Compliance that made the decision to remove Complainant from that location, and a list of dates when any coaching occurred. Respondent was unwilling to do so.

IV. Analysis:

- 1) The MHRA requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 46 12(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA prohibits retaliation against employees who, pursuant to the WPA, make good faith reports of what they reasonably believe to be a violation of law. *See* 5 M.R.S. § 4572(1)(A); 26 M.R.S. § 833(1)(B).
- 3) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that he engaged in activity protected by the WPA, he was the subject of adverse employment action, and there was a causal link between the protected activity and the adverse action, which may be proven by a “close proximity” between them. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991).
- 4) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then “produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action.” *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. *See also Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondent makes that showing, the Complainant must carry the overall burden of proving that “there was, in fact, a causal connection between the protected activity and the adverse action.” *Id.* Complainant must show that he would not have suffered the adverse action but for the protected activity, although the

⁸ During the IRC, counsel for Respondent expressed apprehension about providing anything including clients’ names unless it could be *in camera*. The Commission requested the *contents* of any emails, which left room to remove the sender’s name. Furthermore, the final request at the close of evidence specifically let Respondent know that identifying information could be redacted.

protected activity need not be the only reason for the decision. See *University of Texas Southwestern Medical Center v. Nassar*, 133 S.Ct. 2517, 2534 (2013) (Title VII).

- 5) Complainant established a prima-facie case by showing that he reported in good faith what he had reasonable cause to believe was a violation of law, he performed his job (arguably) satisfactorily, he was subject to adverse employment actions (removal from a location, removal from the schedule, and discharge),⁹ and Respondent had a continuing need for the work to be performed. Respondent in turn provided a legitimate, nondiscriminatory reason for Complainant's discharge by explaining that he violated company policies.
- 6) Given the information provided by the parties to this case, Complainant has shown that he has at least an even chance to prevail in a civil action, with reasoning as follows:
 - a. Whether or not Complainant's work hours were reduced by any pattern up until December 2016 is unclear to say the least, largely because of the dearth of information provided by Respondent. However, it appears that Manager (who by all accounts did the scheduling during that time) did not have retaliatory animus towards Complainant. In fact, Manager gave Complainant information on how to get more hours from a different company. Also, Complainant's ultimate *official* discharge cannot be severed from the initial action of removing him from the schedule, which was effectively a discharge. Therefore, the only remaining question is whether Respondent removed Complainant from the schedule¹⁰ because of his report to Agency.
 - b. The analysis of this claim was made unnecessarily complicated by the parties' submissions. There is no clear timeline connecting Complainant's protected activity to his eventual removal. There is also no easily recognizable timeline connecting Respondent's alleged concerns about Complainant's performance with Complainant's removal. The alleged policy violations and the report to Agency both significantly predate any concrete adverse action. Furthermore, the emails provided (including Exhibit B) show that the relationship between the parties was strained (at least in Complainant's view) almost immediately. The record reflects that Complainant was under the impression that Respondent may be retaliating against him as early as June 2016. This cuts both ways. It shows that Complainant's current theory of retaliation was not an after-the-fact theory to explain his discharge, but it also shows that Complainant was predisposed to believe anything adverse that happened with Respondent was retaliation.
 - c. Complainant believes that Respondent orchestrated, if not outright contrived, Supermarket's concerns about his performance. This hypothesis, while possible, is not plausible. Complainant pointed to the fact that Director did not mention these issues until Complainant had worked in Supermarket for over nine months. However, there is nothing else in the record absent that timing to further support Complainant's

⁹ Complainant also alleged that he was subjected to a hostile work environment, which can amount to an adverse employment action. Here, however, Complainant's claim of workplace harassment is without merit. Manager's and Regional Manager's phone calls and the contents of their emails are not objectively severe or pervasive (whether or not they were motivated by protected activity), even if one of the phone calls occurred late in the evening. Complainant's responses were disproportionate to the gravity of the supervisors' emails. "The relationship between a supervisor and an employee by its very nature involves a certain amount of tension, and at times, may even generate some hostility. A supervisor must be able to exert authority when interacting with a subordinate." *Blake v. State*, 2005 ME 32, ¶ 10.

¹⁰ As noted above, while Respondent argued that it was Complainant that requested from Compliance and Manager to be removed from the schedule, it did not provide anything to support the assertion. Complainant provided the report from the Compliance call to contradict that view.

view, which is extravagant on its face. Nevertheless, while there is not evidence of the conspiracy Complainant seems to allege, Respondent's approach to this investigation raised significant suspicion that its stated rationale was pretext. On this record, it cannot be ruled out that Respondent used Director's criticism as a starting point (or excuse) to get rid of Complainant, who continued to complain about pay issues and to contact Agency about Respondent (although not to make an official complaint) well after his initial protected activity.

- d. Respondent's correspondence to Complainant insisting that he requested removal from the schedule is suspect. Respondent's refusal to provide basic supporting documentation for its assertions, after repeated requests, compounds that notion. It may be inferred that if Respondent had any exculpatory information to provide, it would have done so. It *could* also be inferred that any response may have been inculpatory and that is why Respondent did not provide it.
- e. In the end, based on the information provided, Complainant has an even chance of showing a causal connection between his protected activity and the adverse employment actions he experienced.

7) Retaliation because of protected activity is found.


V. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following finding:

There are **Reasonable Grounds** to believe that Advantage Solutions retaliated against Kevin Osgood because of WPA-protected activity, and the claim should be conciliated in accordance with 5 M.R.S. § 4612(3).



Amy M. Sheirson, Executive Director



Joseph H. Hensley, Investigator

https://jet.asmnet.com/#/TimeAttendance/MyCalendar

Welcome Lizbeth P. Woodward | Activity | Tools | Inbox | Help | Log Out

Employee: Osgood, Kevin

Scheduled: (0) | Assigned: (0) | Opportunities: (0) | AD: (0)

Sort By: Date | Job: All

Saturday, Mar 25

https://jet.asmnet.com/#/TimeAttendance/MyCalendar

Welcome Lizbeth P. Woodward | Activity | Tools | Inbox | Help | Log Out

Employee: Osgood, Kevin

Scheduled: (0) | Assigned: (0) | Opportunities: (0) | AD: (0)

Sort By: Date | Job: All

Tuesday, Apr 26

EXHIBIT

tabbles

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Browser: <https://jet.asmnet.com/#/TimeAttendance/MyCalendar> | AD Assignment Data... | My Calendar | asmconnects.com

Suggested Sites | Web Slice Gallery

Month Overview | Month Detail | Week | Day | May 2016

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24 Apr - 8 AM			(1)	(1)	(1)	(1)
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Sort By: Date | Job: All

Thursday, May 26

Admin: 5/26/2016 | 11:00 am to 1:00 pm | 2:00 | Hourly Pay Administration
 Shows Supermarket 000623 - Westbrook | More Info
 17 Main St, Westbrook, ME 04092 67.4 miles
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 5/26/2016 | 1:00 pm to 7:00 pm | 5:30 | Hourly Pay Regular | Sale Documents | Audit | Add Travel

5:41 PM 4/26/2017

Browser: <https://jet.asmnet.com/#/TimeAttendance/MyCalendar> | AD Assignment Data... | My Calendar | asmconnects.com

Suggested Sites | Web Slice Gallery

Month Overview | Month Detail | Week | Day | June 2016

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27 Jul - 8 AM	(1)	(1)	(1)	(1)	(1)	(1)
28 Jul - 8 AM	(1)	(1)	(1)	(1)	(1)	(1)
29 Jul - 8 AM	(1)	(1)	(1)	(1)	(1)	(1)
30 Jul - 8 AM	(1)	(1)	(1)	(1)	(1)	(1)
31 Jul - 8 AM	(1)	(1)	(1)	(1)	(1)	(1)

Employees: Degrad, Kevin | Inactive Users | Switch Employee | Inactive Raps | Employee Profile

Scheduled: (0) | Assigned: (0) | Opportunities: (2)

Sort By: Date | Job: All

Summary: Jun 26

Admin: 6/26/2016 | 9:00 am to 11:00 am | 2:00 | Hourly Pay Administration
 Shows Supermarket 003548 - Rockland | More Info
 235 Camden St, Rockland, ME 04841 2563 1.8 miles
 19299-JOB-120575 ALBCO - 2016 Wk 17 - GRC - Food Cottage Che
 6/26/2016 | 11:00 am to 5:00 pm | 5:30 | Hourly Pay Regular | Nat Documents | Audit | Add Travel

5:42 PM 4/26/2017

Browser: https://et.asmet.com/TimeAttendance/MyCalendar

Page Title: My Calendar

Employee: Osgood, Kevin

Calendar View: Weekly

Month: July 2016

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
27 (1)	28 (1)	29 (1)	30 (1)	31 (1)		
1 (1)	2 (1)	3 (1)	4 (1)	5 (1)	6 (1)	7 (1)
8 (1)	9 (1)	10 (1)	11 (1)	12 (1)	13 (1)	14 (1)
15 (1)	16 (1)	17 (1)	18 (1)	19 (1)	20 (1)	21 (1)
22 (1)	23 (1)	24 (1)	25 (1)	26 (1)	27 (1)	28 (1)

System Information: 8/26/2017 5:42 PM

Browser: https://et.asmet.com/TimeAttendance/MyCalendar

Page Title: My Calendar

Employee: Osgood, Kevin

Calendar View: Weekly

Month: August 2016

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 (1)	2 (1)	3 (1)	4 (1)	5 (1)	6 (1)	7 (1)
8 (1)	9 (1)	10 (1)	11 (1)	12 (1)	13 (1)	14 (1)
15 (1)	16 (1)	17 (1)	18 (1)	19 (1)	20 (1)	21 (1)
22 (1)	23 (1)	24 (1)	25 (1)	26 (1)	27 (1)	28 (1)
29 (1)	30 (1)	31 (1)				

Employee Details:

- Admin: 87962316 | 11:00 am to 1:00 pm | 2:00 | Hourly Pay Administration
- Steven, Szymanski: 003546 | Regular | Hourly Pay
- 235 | OS associated: 846, 00441, 2543, 1, 8 make
- 19309-506-121846 ALBICO - 2016 MW 27 - ORC - Honey Maid & Phil
- 87962316 | 11:00 pm to 7:00 am | 5:30 | Hourly Pay Regular | Scale
- Documents | Audit | Add Travel

System Information: 8/26/2017 5:42 PM

Browser: <https://get.asmet.com/#/TimeAttendance/MyCalendar> | My Calendar | asmetconnects.com

Month Overview: **September 2016**

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
29	30	31	September 1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	October 1	2

Employee: **Osipov, Kevin** | Inactive Users | Inactive Reqs | Search Employee | Employee Profile

Scheduled: 9/26/2016 | 11:30 am to 1:00 pm | 1:30 | Hourly Pay Administration

Shaws Supermarket 003546 - Rockland | More Info
235 Camden St, Rockland, ME 04841-2563 1.8 miles
19357-106-122413 AL80B - 2016 Wk 30 - GRC - 08 O Organics Sal
9/26/2016 | 1:00 pm to 7:00 pm | 6:00 | Hourly Pay Regular | Seb Documents | Audit | Add Travel

Admin
9/26/2016 | 7:00 pm to 8:30 pm | 1:30 | Hourly Pay Administration

5:43 PM 4/26/2017

Browser: <https://get.asmet.com/#/TimeAttendance/MyCalendar> | My Calendar | asmetconnects.com

Month Overview: **October 2016**

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
26	27	28	29	30	October 1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	November 1	2	3	4	5	6

Employee: **Osipov, Kevin** | Inactive Users | Inactive Reqs | Search Employee | Employee Profile

Scheduled: **Wednesday, Oct 26**

5:44 PM 4/26/2017

Browser: <https://jet.asmnet.com/#/TimeAttendance/MyCalendar> | AD Assignment Data | My Calendar | asmconnects.com

Suggested Sites | Web Slice Gallery

Month Overview: **November 2016**

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
28	November 1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	December 1	2	3	4

Employee: Ongood, Kevin | Inactive Users | Switch Employees | Inactive Raps | Employee Profile

Scheduled: (0) | Assigned: (0) | Opportunities: (0) | All: (2)

Sort By: Date | Job: All

Saturday, Nov 26

Shaws Supermarket 003548 - Rockland | More Info
 235 Camden St, Rockland, ME 04841-2563 1.8 miles
 19321 JOB: 124200 ALBCO 2016 WY 39 GRC Commonwealth Di
 11/26/2016 | 11:00 am to 5:00 pm | 6:00 Hourly Pay Regular | Se
 Documents | Audit | Add Travel

Admin:
 11/26/2016 | 5:00 pm to 7:00 pm | 7:00 Hourly Pay Administrat

5:44 PM 4/26/2017

Browser: <https://jet.asmnet.com/#/TimeAttendance/MyCalendar> | AD Assignment Data | My Calendar | asmconnects.com

Suggested Sites | Web Slice Gallery

Month Overview: **December 2016**

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
28	29	30	December 1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	January 1

Employee: Ongood, Kevin | Inactive Users | Switch Employees | Inactive Raps | Employee Profile

Scheduled: (0) | Assigned: (0) | Opportunities: (0) | All: (0)

Sort By: Date | Job: All

Monday, Dec 26

5:44 PM 4/26/2017

From: Battistina Russo <Battistina.Russo@inmarketingservices.com>;
To: Kevin Osgood <osgoodk@yahoo.com>;
Subject: RE: Reply Kevin Schedule
Sent: Fri, Aug 26, 2016 5:50:52 PM

2

Kevin,
My apologies on this matter. Evidently, the events was inadvertently removed by Jet Automated Scheduler. It was a mistake and not done intentionally.
Thank you for your understanding.
Bart

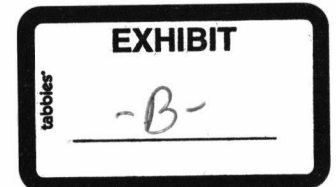
Computer glitch?
late night calls
threats of termination

Battistina ("Bart") Russo
District Manager, Field Operations
Advantage Marketing Partners
C: 401.489.5626 O: 401.946.7766
Battistina.Russo@advantagesolutions.net / <http://www.advantage/marketingpartners.com>

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From: Kevin Osgood [mailto:osgoodk@yahoo.com]
Sent: Wednesday, August 24, 2016 7:24 PM
To: Battistina Russo <Battistina.Russo@inmarketingservices.com>
Subject: Reply Kevin Schedule

Hi Bart. I am trying to download it on my phone to look at it but not much luck will you please change it on the jet job tracker as well. The promotion fir this weekend was for Mondelez bacon dip and creamy ranch dips. I printed it out at library and then it disappear from my jet calendar ?? Strange. Thanks Kevin. I hope there is a decent amount of work coming up



Advantage Marketing Partners

C: 401.489.5626 O: 401.946.7766

Battistina.Russo@advantagesolutions.net / www.advantagemarketingpartners.com

23

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Sent from my iPhone

On Aug 23, 2016, at 6:46 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

Bart I had asked you to move Sundays Mondelez bacon dip to this Friday from the sunday the 28 th to Friday the 26th and you just took it off the schedule completely . I want more work not less What are you and this company trying to do to me ?? To be honest I got your e-mail about availability in December already and if I am supposed to be that loyal I expect loyalty back , Meaning the 18 hours promised to me back in February and to be honest ive had no work hardly in July and August at all . Starvation . My loyalty will be to the company who is honest with me and providing me with roof over my head , food on my table , and heating oil in my tank . Advantage solutions is Sooooooooooooooooo one sided expecting everything from workers but not delivering the same in return . I had asked you to restructure or move around dates so I am able to work for both companies ??? I am upset Kevin

Attachments

- Kevin's Schedule.xls (8.96KB)

always changing my hours or reducing my hours I requested my late paycheck

On Monday, August 29, 2016 1:39 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

On Monday, August 29, 2016 1:13 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

On Friday, August 26, 2016 7:56 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

Lisa all I can say is the truth is on my side in every situation 1 I have an e mail saved from original recruiter Tim Thatcher in black and white offering me 18 hours per week Friday Saturday Sunday times everything. It was forwarded to Bart long time ago Scott Cotnoir chief investigator of Maine state Bureau of Labor and investigation who I had to contact for 3 missed pay

periods and over 2 months late pay and 2 and half months to set up direct deposit (which my bank laughed upon) 2. Elaine Viste from on boarding shared with me from her west coast California office that recruiters often lie romance misrepresent potential workers or employees to gain points or commission or make themselves look good and lie just to " fill holes ". 3 . My pay was extremely late the labor board has records of everything and warned me of payback future harassment retaliation that often happens and even sent me paperwork from EEOC to file 4 The company you represent is very untrustworthy so if the labor board recommends to me not to do a 3 way call then it is not going to happen. I feel safe with their advice 4 . The only reason there is ' conflict ' as you call it is because a) your company lied and abused me from day one b because of that I picked up extra work with another company but communicated VERY clearly with Bart to move around and reconstruct my schedule if she did not or forgot oh well not my problem.. 5. Nobody has bent over backwards to give me work. I have 3 letters of recommendation and a very strong resume that your company saw on line and approached me not the other way around . I have worked in promotions for 20 years and no one gave me anything I earned it Kevin is a great worker salesperson and promoter. I find your comments of your company bending over backwards fir me rude insulting offensive and misinformed 6 Lisa if you continue to send me harassing misinformed false accusatory threatening messages to my e mail or my family receives late night phone calls harassing at ten pm at night I will be forced to take higher measures. . This company has taken advantage of me multiple times and shame on you for threats and assumed situations . Just Deporing. I'm really offended Kevin Again everything is saved. Who do you think a judge investigator would believe ??

No one is harassing anyone. There is also no retaliation going on here. Again, I expect you to follow company policy just like I expect of everyone else. I hold each employee to the same policy and standard.

We are running a business which I'm sure you can appreciate. Our people do come first but there are rules and policies that everyone needs to follow in order to properly run that business and serve our clients.

Lisa

From: Kevin Osgood [mailto:osgoodk@yahoo.com]
Sent: Friday, August 26, 2016 5:22 PM
To: Lisa Dimitri <Lisa.Dimitri@inmarketingservices.com>
Subject: Re: Advantage and Company Po.icy

NO

Not my fault! Bart's repeated mistakes

I did in 3 different e mails and she never changed it or restroncted my schedule. Furthermore if advantage solutions wants to follow company policies they should have kept my original offer of employment by Timothy Thatcher back in February by breaking this oral agreement I have not been able to get enough work forcing me to find another company and additional work which has caused the double bookings on both days. I have the emails saved and asked her not to book me on labor day weekend and she never changed things. The tones of these e mails are starting to take a harrassong tone towards me as if trying to force me to quit or a forced quit which the Maine state labor board predicted would occur in retaliation for my requesting my late pay back in march and April. The only reason there is a need fir rescheduling is for Advantage has not kept the original offer of employment and not given me enough work I am running a business for myself my.loyalty is to.paying my rent and myself and financial obligations I hope that clears things up for you. Kevin

From: Lisa Dimitri <Lisa.Dimitri@inmarketingservices.com>;
To: Kevin Osgood (osgoodk@yahoo.com) <osgoodk@yahoo.com>;
Cc: Battistina Russo <Battistina.Russo@inmarketingservices.com>;
Subject: Advantage and Company Po.icy
Sent: Fri, Aug 26, 2016 8:24:17 PM

Threats of termination

Hi Kevin-

Bart has shared your email with me and I want to inform you of our company policy – if you consistently violate this company policy you can be subject to disciplinary action up to and including termination.

You are not at the liberty to make the decision without Bart's approval to work a different date. You knew of this conflict a month ahead of time so before Bart even wrote the schedule. Why did you not notify her?

- o Consistent with the Company's Availability, Inactivity and Scheduling policy; you are required to notify your supervisor fourteen (14) days in advance to request a black out day (a day you will be unavailable to work).



Above pic-1503



above pic-1445

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EXHIBIT
- C -

207-626-8849 or 1-800-436-2131
<http://www.maine.gov/ag/>

JANET T. MILLS

MAINE ATTORNEY GENERAL

From: Kevin Osgood [mailto:osgoodk@yahoo.com]
Sent: Wednesday, December 7, 2016 1:08 PM
To: Mediation, Consumer
Subject: Fw: KEVIN. REMOVAL CHANGED JET CALENDAR

On Wednesday, December 7, 2016 12:40 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

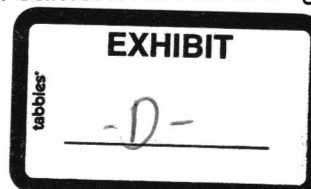
On Wednesday, December 7, 2016 12:39 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

On Wednesday, December 7, 2016 12:39 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

On Sunday, December 4, 2016 7:48 PM, Kevin Osgood <osgoodk@yahoo.com> wrote:

From: Kevin Osgood <osgoodk@yahoo.com>;
To: [battistina.russo <battistina.russo@inmarketingservices.com>](mailto:battistina.russo@inmarketingservices.com);
Subject: KEVIN. REMOVAL CHANGED JET CALENDAR
Sent: Mon, Dec 5, 2016 12:05:12 AM

Hello Bart. I spoke with you by phone and asked why my hours on my jet calendar had been wiped out completely ?? Your reasons were as follows. You claim Shaws Rockland were upset I was not in a uniform. A) I was never ever issued a uniform or sent one since March of 2016. B) even if I had a T Shirt or apron with company logo the demo area with extension cord outlet is so cold and freezing in back of store (I got the flu in October because of it) thus is why most managers in sea food and deli constantly wear jackets sweatshirts that would cover up any shirt apron anyways . my recruiter told me to wear black and black shirt pants or black pants white shirt or black pants black shoes C). If this issue was really so pertinent urgent shameful or important enough to effect my job outcome then why have I not been notified informed complained about or even made aware in what is now 9 months of employment ?? Bart you also mentioned that Rockland Shaws loss prevention does not want me back in their store because they recorded me on camera for not changing



gloves ?? I have always changed gloves mostly after washing my hands in men's restroom but ironically there are no camera's in the men's room to watch or record However as a professional I always change gloves regularly even though store has limited amounts in L large size I also wipe my cart down completely with handi sanitized wipes before and after execution of event I even ask seafood and deli for extra gloves which were provided by Angela in seafood and Kyle and Mary and Marc in Deli Bart you also mentioned that loss prevention accused me watched me and videotaped me of constantly eating food samples or products For the record I always pre test smell and if absolutely necessary taste before serving to make sure especially in dairy w cottage cheese iced cofee onion dip yogurt chocolate milk pudding desserts and frozen items and any fruit or salad humus basically everything and thank god I have for I'm the past I have found sour odor ridden unsealed products. Imagine if I serve a customer that gets sick creating lawsuits against Advantage Solutions Shaws Corporate Albertsons in Idaho corporate and possibly evene the server or demo event specialist ?? After 9 months of my hard work sales efforts adding thousands and thousands of dollars in revenue to Shaws Rockland Maine in Nabisco Pepsi Hood New England ice cream cottage cheese Oreos Shaws organic brands and signature shaws brands cream cheese iced coffee salads pasta sauce I seriously doubt these are the things loss prevention would and are focusing on Bart what is really going on here ?? I have trusted you after recruitment lies late paychecks missing paychecks 2 months to set up direct deposit at my bank (painful) please be honest why did yoi remove all my jobs from my calendar ?? Loss prevention has seen me do same job same wardrobe same performance for almost one year now the fact that you say suddenly store managers want me out of Shaws Rockland 3 weeks before Christmas when I am adding thousands to their numbers is as believable as when hell freezes over. Kevin.

no
 answer
 from
 her
 just in
 hiding or
 dodging the
 truth.

KO

Subject: Re: Work Status Follow up
From: Kevin Osgood (osgoodk@yahoo.com)
To: patty.jackson@advantagesolutions.net;
Date: Wednesday, December 14, 2016 7:49 PM

That is not what I said my original job offer was for shaws rockland. The reasons given to me by my district manager that I was removed from this store has been disproved by e mails and conversations from loss prevention who have provided me with proof that my district managee lied to me and there was no valid reason to remove me from Rockland It has been almost over 2 weeks since Bart Russo informed me of these lies and it does not take that long to find a lier There was never a valid reason to remove me from Rockland and until I am sent apology and put back In rockland Shaws I will be pursuing all legal remedies including several government investigations from MHRC Maine human rights commission investigations into corporate shaws and Albertsons US dept of labor and lawsuits of a forced quit retaliation lawsuit . I have witnesses saved e mails phone numbers There was never a video tape investigation done on me direct from.loss prevention in west coast and Massachusetts. Forcing me out of Rockland shaws is in breach of my orivinal employment agreement with recruitment and on boarding I have gone above and beyond for this company including false lies from recruitment ridiculous late overdue pay forcing me to contact 2 state labor boards over 2 months setting up direct deposit wreaking havoc on my personal life financial obligations and landlord relations. Please do not e mail me any further You need to speak with an attorney from Advantage. This is not going away . I worked hard and put up with more violation on me than any other person would or should have to tolerate. . Govern yourself accordingly. Kevin

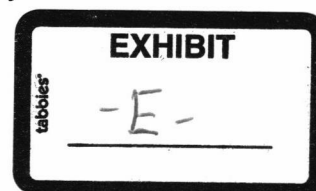
From: Patty Jackson <patty.jackson@advantagesolutions.net>;
To: osgoodk@yahoo.com <osgoodk@yahoo.com>;
Subject: Work Status Follow up
Sent: Thu, Dec 15, 2016 12:08:25 AM

Kevin,

KO

This email is in follow up to your present work status with the Company. In follow up to your call with a member of the Compliance team and within an email communication to your District Manager, you confirmed that you do not wish to be placed on the work schedule and work your other scheduled events due to being removed from the Rockland store. As such, you are being removed from the work schedule consistent with your request.

Specific to recent concerns regarding your behavior/conduct, the Company has a responsibility to perform investigations of all workplace matters. As such, once additional relevant detail is compiled related to this matter; your manager will follow up with you in order to gain further detail and ask you questions related to this matter and then a determination will be made consistent with policy.



Thank you.

Patty Jackson

Sr. Employee Relations Specialist

Advantage Solutions

O: 512-437-4851 | F: 858-964-9761

patty.jackson@advantagesolutions.net|www.advantagesolutions.net

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Report Details

Report Submission Date

12/9/2016

Reported Company/Branch Information

Please identify the person(s) engaged in this behavior:

Battistino Russo - district manager for NE

Lisa Dimitry - (job title unknown)

Timothy Thatcher - recruiter

Do you suspect or know that a supervisor or management is involved?

Yes

If yes, then who?

Battistino Russo, district manager for NE

Lisa Dimitry, (job title unknown)

Is management aware of this problem?

Yes

Where did this incident or violation occur?

The caller only wanted to provide the state which is Maine.

How long do you think this problem has been going on?

3 months to a year

How did you become aware of this violation?

It happened to me

Details Thatcher

Timothy hired the caller in February 2016 with 30 days onboarding. Timothy promised the caller 18 to 20 hours a week providing detailed scheduled shifts. The company didn't keep the original agreement. The caller would be offered time in other stores. This is not what the caller agreed to. There were weeks that the caller only had 5 to 6 hours a week. If the caller had known the hours were going to be changed, the caller wouldn't have taken the job. The caller was told by Battistino that recruiters lie to new people to get people on board because they get commission. It's common knowledge that people are hired and lied to.

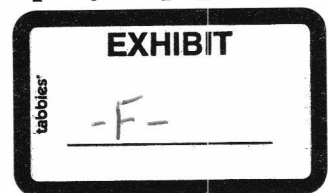
The caller started working at the beginning of March 2016. Direct deposit wasn't set up until 2 1/2 months later. The company missed 4 pay periods, and the caller didn't receive a pay check until May 2016. The caller got the US Department of Labor involved to get paid. This pushed the company to pay

KO

"Bart" Russo
401-489-5626
401-489-5626

YU

KO



the caller. The company claims they had the wrong address. However, all the onboarding paperwork arrived just fine. US Department of Labor mentioned there were other complaints about the company throughout the country.

The US Department of Labor called Battistino. The US Department of Labor advised the caller not to get on a call with Battistino and Lisa because of risk of being recorded and retaliation.

The caller did speak to Roberta (last name unknown), head of human resources, about not being paid, and she was very nasty and combative. The caller called many people with the company to try to get paid without success, including many people that were not kind, including Lisa.

This lack of pay caused havoc with people who had relations with the caller, like his/her landlord.

The caller got into a situation of retaliation in reference to the US Department of Labor getting involved. The caller's hours were almost down to nothing. Battistino called the caller at an inappropriate hour while on vacation; waking up the entire house. Battistino was questioning and challenging the caller about break times, etc. The caller felt Battistino and Lisa were trying to wear the caller down. The caller felt truly harassed by Battistino and Lisa. The caller said he/she didn't have enough hours, and Battistino said wait until Christmas.

On December 1, the caller spoke with Battistino, who added on hours. This would have been about \$2000 worth of work. The conversation appeared good. The caller worked Friday and Saturday. The caller checked the calendar on Sunday because Battistino would change hours around without notice. When checked, all the scheduled dates had been removed. The caller immediately called Battistino. Battistino said, "A video tape was received from Loss Prevention and you weren't changing your gloves, eating food and not wearing uniform." The caller never received a uniform in the 10 months employed with the company. If Battistino was really that concerned, they wouldn't have waited 10 months. The caller changes gloves in the bathroom by washing hands and putting new ones on. The caller stated he/she

understands policies about gloves. Loss prevention could never prove that the caller wasn't wearing any gloves because the gloves were changed in the restroom with no cameras. The caller was always asking Kyle (last name unknown), meat cutter, and Mary (last name unknown), meat cutter, for new gloves. The caller went through at least 6 gloves a day. In reference to eating the food, the caller had to occasionally taste the food to make sure it's safe for consumer consumption. The caller did his/her job to make sure the food was cooked properly. The caller never sat at a table and ate plates of food. The caller's co-workers do constantly eat food and don't get written up.

Kevin Banning, chief lead investigator for loss prevention, called the caller and stated there was no investigation done and, "Your boss is lying to you." Robert (last name unknown), chief of loss prevention for Massachusetts, also called and stated basically said the same thing that Kevin said. The caller stated someone is clearly lying and it's not loss prevention.

The caller has done thousands of dollars of revenue. Robert said, "We lose when you're not there."

When Kevin and Robert were on the phone with the caller, they said, loss prevention wouldn't be involved with the things the caller was accused of. The caller said Battistino said, "The company has been watching [the caller] for months and volunteered this information to loss prevention." Additionally, two managers from the caller's store said the same, that loss prevention would not get involved with the things the caller was accused of and had great respect for the caller.

The caller has no hours, which leads him/her to believe that his/her job was terminated.

At the end of the call, the caller's connection was poor and the caller could not be understood. The caller was instructed to call back to finish the details of this report.

Follow-Up Notes

There are no additional notes for this report.

Follow-Up Questions/Comments

There are no questions asked or comments from the organization.