

**George Frank t/a Allied Rendering Company and Teamsters Local 107 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 4-CA-7649**

May 26, 1978

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On November 1, 1976, the National Labor Relations Board issued an Order in the above-captioned proceeding in which, in the absence of exceptions thereto, it adopted the Administrative Law Judge's Decision and ordered, *inter alia*, that Respondent make whole Henry F. Ausberry, Jr., and Norman C. Shoemake for any loss of earnings resulting from Respondent's unfair labor practices against them in violation of Section 8(a)(1) and (3) of the Act. On July 13, 1977, the Court of Appeals for the Third Circuit entered its judgment, enforcing in full the Board's Order, including its backpay provisions. A controversy having arisen over the amount of backpay due under the terms of the Board's Order as enforced by the court, the Regional Director for Region 4, on November 30, 1977, issued and duly served on Respondent by registered mail a backpay specification and notice of hearing, setting forth certain allegations with respect to the amounts of backpay due the discriminatees under the Board's Order, and notifying Respondent that it must file a timely answer pursuant to the Board's Rules and Regulations, Series 8, as amended. Respondent failed to file an answer to the specification.

On February 24, 1978, counsel for the General Counsel filed a Motion for Summary Judgment directly with the Board. The Board, on March 9, 1978, issued an order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

Section 102.54 of the Board's Rules and Regulations provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .

\* \* \* \* \*

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued on November 30, 1977, and served on Respondent by registered mail, states that Respondent shall, within 15 days from the date of the specification, file an answer to the specification with the Regional Director for Region 4. The specification further states that, to the extent the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.

Respondent has failed to respond to the Notice To Show Cause and, therefore, the allegations of the General Counsel's motion stand uncontroverted. As Respondent has not filed an answer to the specification nor offered any explanation for its failure to do so, the allegations of the specification, in accordance with the rules set forth above, are deemed to be admitted as true and are so found by the Board.

Accordingly, on the basis of the allegations of the backpay specification, the Board finds the facts as set forth therein to be true, concludes that the net backpay due the discriminatees, Henry F. Ausberry, Jr., and Norman C. Shoemake, is as stated in the computations of the specification, and hereinafter orders that payment be made by Respondent to each discriminatee named below.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, George Frank t/a Allied Rendering Company, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall make whole each of the discrimina-

tees named below by payment to each of them the amount set forth adjacent to his name, plus interest as set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), until all backpay is paid, less the

tax withholdings required by Federal and state laws:

Henry F. Ausberry, Jr.	\$5,647.65
Norman C. Shoemake	\$8,238.50