

IN the Matter of THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, SAN JUAN, PUERTO RICO, BRANCH and UNION DE EMPLEADOS DE BANCOS DE PUERTO RICO (C. G. T.)

Case No. 24-C-64

SUPPLEMENTAL FINDINGS OF FACT

AND

DECISION

February 6, 1946

On August 30, 1945, the Board issued its Decision and Order in the above-entitled proceeding¹ finding, *inter alia*, that the respondent, The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch, by discharging Luis Manuel Vazquez from the position of teller had discriminated in regard to his hire and tenure of employment, within the meaning of Section 8 (3) of the Act. Accordingly, to remedy this unfair labor practice, paragraph 2 (a) of the Board's Order provides that the respondent "Offer to Luis Manuel Vazquez immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority and other rights and privileges."² By a written Stipulation dated November 8, 1945, the respondent and the Board, through its Assistant General Counsel, A. Norman Somers, agreed to submit to the Board for its formal determination the question of whether the respondent, by virtue of certain action taken by it on December 12, 1944, has complied with paragraph 2 (a) of the Board's Order. The Stipulation provided that such determination might be made solely upon the basis of the facts revealed by certain written documents attached to the Stipulation and marked Respondent's Supplemental Exhibits 1, 2, and 3. These documents constitute the respondent's full statement of the facts on which it relies in support of the claim that it complied with the reinstatement provision by virtue of the action taken by it on December 12, 1944. They consist, respectively, of the memorandum of George S. Schaeffer, vice president of the respondent, reciting his version of a conference held on December 12, 1944, in which, acting on behalf of the respondent, he offered Vazquez a position with the

¹ 63 N. L. R. B. 656.

² This remedial provision of the Board's Order is identical with paragraph 2 (b) of the Recommendations set forth in the Trial Examiner's Intermediate Report dated November 29, 1944.

respondent; a questionnaire submitted to the respondent by Board counsel calling for additional information; and the respondent's answer to the questionnaire. The Stipulation, including the documents attached thereto, is hereby made a part of the record herein.

Upon the basis of the afore-mentioned Stipulation and the entire record in the case, the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

At the time of Vazquez's unlawful discharge, August 15, 1944, he was employed as a teller in the respondent's San Juan bank at a salary of \$100 a month. The respondent then also employed three other persons as tellers at the same salary. The teller position vacated by Vazquez was immediately given to one Wilfredo Siaca, who had not theretofore been employed as a teller. Siaca and the three other above-mentioned employees were still acting as tellers on December 12, 1944. On that date, the respondent, purportedly in compliance with paragraph 2 (b) of the Recommendations in the Trial Examiner's Intermediate Report of November 29, 1944,³ offered Vazquez employment as assistant to the supervisor of the Collection Department, at a salary of at least \$100 a month, but refused to restore him to his former position of teller. Vazquez declined this offer. At no time thereafter has the respondent offered to reinstate Vazquez to his former position of teller. On October 15, 1945, the respondent employed five persons, including Wilfredo Siaca, as tellers. Four of these persons were appointed tellers after Vazquez had been discharged. The remaining teller was appointed to that position approximately 7 months after Vazquez had received his appointment as teller.

The position offered Vazquez was newly created and involved special work which had theretofore been delegated to an "Assistant Manager" and an "Accountant." Such work included supervising the work of junior employees in the collection department, handling negotiable documents covering importation of various products into Puerto Rico, and promoting new business for the collection department by contacting local business concerns. Because of the nature of this work and Vazquez's lack of experience in it, he would have had to "learn the new job." On the other hand, the work of a teller, for which Vazquez was already qualified, consisted mainly of receiving deposits, cashing checks, making change, and preparing pay rolls.

Conclusion

The respondent contends that the position offered to Vazquez on December 12, 1944, constituted an offer of reinstatement to a "substan-

³ See footnote 2, *supra*.

tially equivalent position," within the meaning of paragraph 2 (a) of the Board's Order of August 30, 1945, and that it has therefore fully complied with that paragraph of the Order. This contention is predicated on the view that our Order, as well as the Trial Examiner's recommendation, gave the respondent an "option" to reinstate Vazquez *either* to his former position or to a substantially equivalent one. However, such an interpretation misconceives the intent and purpose of our reinstatement orders.

The Act is remedial in nature and our affirmative orders, made pursuant to Section 10 (c) thereof, are designed to effectuate the policies of the Act. To that end, our reinstatement order in the instant case, as in all cases, envisages "a restoration of the situation, as nearly as possible, to that which would have obtained but for the employer's illegal discrimination."⁴ Thus, where a discriminatee's former position is in existence as of the date of our Order, the restoration of the status quo requires that the employer reinstate him to *that* position, and paragraph 2 (a) of the Order herein so provides. However, in order to meet a contingency where reinstatement to the former position may not be possible, paragraph 2 (a) makes the alternative provision for reinstatement to a substantially equivalent position. This contingent method of complying with our reinstatement order was not designed to give the employer a choice as to positions to be offered; on the contrary it was specifically intended thereby to impose a continuing obligation on the employer to restore the status quo as nearly as possible when it is not possible to restore the absolute status quo. Thus, consistent with the remedial purposes of the Act, reinstatement orders, like paragraph 2 (a) of the Order herein, are, and always have been, interpreted by us to require restoration of the discriminatee to his former position wherever possible, but if such position is no longer in existence then to a substantially equivalent position.

On the basis of the record in this case, we find that Vazquez's former position of teller was in existence on December 12, 1944, and at all times thereafter, and that by not reinstating him to his former position, without prejudice to his seniority and other rights and privileges,⁵ the respondent has failed to comply with paragraph 2 (a) of the instant Order.⁶

⁴ *Phelps Dodge Corp v N L R. B.*, 313 U S 177, 194, *N. L. R. B. v Remington Rand, Inc.*, 94 F. (2d) 862, 872, cert denied 304 U. S 576.

⁵ It is noted that as of October 15, 1945, the monthly salaries of the two most senior tellers then employed by the respondent, both of whom were junior to Vazquez in point of service as tellers, were \$135 and \$140, respectively.

⁶ Nothing herein stated is to be construed as concurrence in the respondent's contention that the position offered Vazquez was even "substantially equivalent" to Vazquez's former position. However, in view of our ruling, we do not reach that question.