

**Webb Manufacturing, Inc. and Larry A. Cline and William E. Montgomery and United Steelworkers of America, AFL-CIO.** Cases 8-CA-3600, 8-CA-3600-3 and 8-CA-3605<sup>1</sup>

January 8, 1969

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On August 31, 1965, the National Labor Relations Board issued a Decision and Order in the above-entitled case,<sup>2</sup> finding *inter alia*, that Respondent had discriminatorily discharged Larry A. Cline and William E. Montgomery in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, and directing that Respondent make whole the above-mentioned employees for any loss of earnings resulting from the discrimination. On December 13, 1967, the United States Court of Appeals for the Sixth Circuit entered its decree enforcing the Board Order. A Backpay Specification and Notice of Hearing was issued by the Director of Region 8, and pursuant thereto a hearing was held on June 10, 1968, before Trial Examiner John M. Dyer for determination of the amounts of backpay due the discriminatees.

On September 17, 1968, the Trial Examiner issued his Decision in Backpay Proceedings attached hereto, in which he found that the discriminatees were entitled to the amounts of backpay therein set forth. Thereafter, Respondent filed exceptions to the Decision and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the Trial Examiner's Decision in Backpay Proceedings, the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

**ORDER**

On the basis of the Trial Examiner's Decision in Backpay Proceedings and the entire record in this case, the National Labor Relations Board hereby orders that Respondent, Webb Manufacturing, Inc.,

Conneaut, Ohio, its officers, agents, successors, and assigns, shall pay to Larry A. Cline and William E. Montgomery as net backpay the amounts determined to be due by the Trial Examiner in his attached Decision.

**TRIAL EXAMINER'S DECISION IN BACKPAY PROCEEDINGS**

**HISTORY OF PROCEEDINGS**

JOHN M. DYER, Trial Examiner: The National Labor Relations Board on August 31, 1965, in its Decision under the above-styled heading, 154 NLRB 827, adopted the findings, conclusions, and recommendations in Trial Examiner Alba Martin's June 8, 1965, Decision. Among other things Trial Examiner Martin held that Respondent had discriminatorily discharged Larry A. Cline and William E. Montgomery on August 6 and 31, 1964, respectively, and recommended that Respondent reinstate them to their former positions or to substantially equivalent positions within the meaning of that term as set forth in *Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 327. The Board also adopted Trial Examiner Martin's recommendation that Cline and Montgomery be compensated for their loss of earnings caused by Respondent's discrimination against them, by payment to them of the amount of wages which each would have earned from Respondent from the date of his discharge to the time when Respondent properly offers valid reinstatement. The gross backpay less interim earnings is to be computed on a quarterly basis (as per *F. W. Woolworth Company*, 90 NLRB 289) with the addition of 6 percent interest (as per *Isis Plumbing & Heating Co.*, 138 NLRB 716).

On December 13, 1967, the U.S. Court of Appeals for the Sixth Circuit entered its order enforcing in whole the Board's Order in this case.

Thereafter, the Regional Office, Respondent, and the discriminatees were unable to agree on the amounts due and additionally there being disagreement on whether a proper offer of reinstatement was made to Montgomery, a Backpay Specification and Notice of Hearing was issued by the Director of Region 8, under the authority duly conferred on him by the Board. The hearing was held in Conneaut, Ohio, on June 10, 1968, before me.

The backpay specification, as further amended without objection at the hearing, alleges that Larry A. Cline's backpay period runs from August 6, 1964, to February 6, 1968, when he declined Respondent's offer of reinstatement and that his interim earnings exceeded the wages he would have earned from Respondent in all but 4 of the 15 quarters making up his backpay period. Respondent does not question the rates of pay and hours alleged which constitute the gross backpay amounts and therefore agrees that the gross amounts of backpay in the four quarters are correct. Respondent's position is that the backpay period is less than that alleged.

As to William E. Montgomery, the specification alleges that Respondent has not made an offer of full and immediate reinstatement of his former position to him and therefore that the backpay period is still running with the computations of backpay made only through the second quarter of 1968. Respondent agreed that the rates of pay and hours alleged in the computations of gross backpay for Montgomery in the specification are correct, but

<sup>1</sup>The Trial Examiner inadvertently omitted 8-CA-3605 from the case caption

<sup>2</sup>154 NLRB 827

alleges that the backpay period is less than the 16 quarters set forth.

Respondent in its answer to the backpay specification claimed that the Region failed to uncover some interim earnings earned by both of the discriminatees. The answer advances a number of other contentions as to Montgomery's search for and availability for full-time employment, and levels a number of charges at Montgomery. The answer further alleges that the Regional Director is biased against Respondent's representative, Mr. Rector. However, as will be explicated below, apart from cross-examination of the discriminatees, Respondent offered no evidence or testimony in this proceeding.

The parties were given full opportunity to appear, to examine and cross-examine witnesses, and Mr. Rector and counsel for the General Counsel availed themselves of the opportunity to argue orally. Briefs were not filed, but a motion by Respondent was filed with me following the hearing and was opposed by the General Counsel. This motion seeks dismissal of the backpay specification as to Montgomery, claiming that he was not available for adequate employment in the area, and that the testimony (presumably of Montgomery) does not support the backpay specification. Secondly, the motion seeks limitation of Cline's backpay period to the time when he was first employed at Inland Container Corporation in August 1964.

I deny this motion on the basis of the facts in this case, which are detailed hereinafter.

Upon the entire record in this case, including my evaluation of the reliability of the witnesses based both on the evidence received and my observation of their demeanor, and further on the failure of Respondent to support by evidence or testimony its claims as to what it discovered during the investigation of this matter, I make the following findings of fact and conclusions of law:

#### I. THE BACKPAY CLAIM OF LARRY A. CLINE

Larry A. Cline testified that following his discharge on August 6, 1964, he registered with the Ohio Employment Commission in Ashtabula, Ohio (no office in Conneaut), and visited this office three or four times before he secured work at Inland Container Corporation in Ashtabula. In his search for work Cline visited other cities in Ohio including Elyria and Loraine, where he sought employment at Ohio Edison and Freuhauf Trailer Corporation. He worked at Inland Container for approximately a month before being laid off and given the reason that his work was unsatisfactory. He was not told in what manner his work wasn't satisfactory.

Cline sought employment and was hired at General Aniline Corporation in Elyria, Ohio, through a private employment agency. He worked for this company nearly 6 weeks and was laid off with a number of others in an apparent general layoff. In the first quarter of 1965 Cline began working for Union Carbide Company and worked there until the fourth quarter of 1965. There are no claims for backpay during the first three quarters of 1965. At Union Carbide, Cline received \$2.70 per hour but was working a swing shift. In the fourth quarter of 1965 he accepted a chance to go with Bow Socket Corporation in Ashtabula at the rate of \$2.70 per hour on a day-shift operation. Cline testified that one of the determining factors for this switch was getting off the swing shift and being on a day shift so he could attend college at Kent State Extension in Ashtabula, Ohio.

After being at Bow Socket nearly 6 weeks he was laid off in a reduction in force during the fourth quarter of 1965. Cline made personal contacts seeking jobs in Ashtabula and Conneaut, at companies such as Cleveland Electric Illuminating Company, Reliance Electric, and National Distributors. Cline secured a job with True Temper Corporation in Saybrook, Ohio, on March 18, 1966, and is still employed there. It was while so employed that he refused Respondent's offer of reinstatement.

It appears from Cline's testimony that on each of the occasions when he was laid off from work he made a diligent search for work utilizing the services of the State Employment Bureau as well as private employment agencies and his own personal contacts and managed to get employment reasonably soon in most instances. Respondent has not offered any testimony that Cline left the job market or did not diligently seek work.

The figures for the four quarters for which backpay is sought are as follows:

Quarters	Gross Wages	Interim Earnings	Expenses	Net Back Pay
Third, 1964	\$452.40	\$338.36		\$114.04
Fourth, 1964	\$836	\$493.44	\$74	\$416.56
Fourth, 1965	\$915.60	\$565.76		\$349.84
First, 1966	\$896	\$189.60		\$706.40
		Total Net Backpay		\$1,586.84

Respondent has taken two positions as to the backpay due Cline. During the hearing Respondent claimed his backpay should be terminated when he left Union Carbide Corporation to go with Bow Socket Corporation in the fourth quarter of 1965. In its posthearing motion Respondent claimed backpay should be terminated with Cline's first employment at Inland Container Corporation in the third quarter of 1964. Respondent offered no reason for this latter position but apparently relies on Inland Container's termination of Cline for unsatisfactory work to somehow relieve it from any further liability for Cline. There are infinite possibilities as to why Cline wasn't satisfactory to Inland Container but I am not called to speculate on them or whether such assigned reason is true. Cline was not out of the labor market and if he was unsuitable at another job that does not release Respondent from its liability for having put him in the labor market because of its discrimination. Respondent's bare unexplained motion does not provide me with any reason to terminate Cline's backpay at that point.

As to Respondent's other position that Cline's backpay period should stop with his termination of employment at Union Carbide, Cline testified he left a swing-shift job at one company for a day-shift job at a second company at about the same pay rate. Such a move was not designed to injure Respondent nor did Cline take himself out of the labor market but left one job to begin work immediately with another employer. His personal reason for the change, to better himself by attending college, is a laudatory object and contemplating this he certainly would not have made the move to Bow Socket if he could have foreseen that he would be laid off for lack of work at Bow

Socket. Respondent makes no such claim, and does not explain its position. There is no contention that Cline's job at Union Carbide would have been more secure. In any event there is nothing to prevent an individual from changing his job for rational private reasons. Respondent seems to feel that because the change by Cline apparently produced a backpay claim for the fourth quarter of 1965 and the first quarter of 1966, Cline shouldn't have made the change. Clearly Cline's change was not made to produce such a result and with no further showing by Respondent its position must be denied.

The decision of the United States Court of Appeals for the Second Circuit in *N.L.R.B. v. Mastro Plastic Corporation*, 354 F.2d 170, seems peculiarly appropriate in this case. The court stated in regard to discriminatees who became self-employed:

The only issue here is whether the discriminatee willfully incurred a loss of earnings. It would be unjust to require him to mitigate his damages to the greatest extent possible but then to penalize him for substantial but short-lived success. Unless in taking substantially equivalent or self-employment the discriminatee willfully forewent greater earnings, his backpay should not be reduced beyond the interim earnings he in fact received.

Clearly here Cline did not willfully forego greater earnings since he moved from one position to another at substantially the same wages and with the intention of further self-improvement by attending college.

The Board having sustained the burden of proving the unfair labor practices, and there being no dispute as to the gross backpay figures, with Respondent remaining liable until a good-faith offer of reinstatement is made, it is evident that the General Counsel has sustained his burden of proof. In addition the discriminatees were produced, so that they might testify in regard to their interim earnings and they have done so. The duty of proving affirmative defenses or showing lack of a diligent search for jobs is on Respondent, as are the other matters which Respondent alleged in its answer. Respondent did not do so either as to Cline or Montgomery.

In particular as to Cline, I find that Respondent has not offered any evidence or reasons to demonstrate why Cline's backpay should be terminated as it seeks. I therefore conclude and find that Larry A. Cline is entitled to net backpay for the four quarters set out above, in the total amount of \$1,586.84 plus interest.

## II. THE BACKPAY CLAIM OF WILLIAM E. MONTGOMERY

### A. Respondent's Defenses

Respondent's answer in addition to stating that the backpay specification had not shown a 1-2 day job by Montgomery and that it conflicted with other employment, alleged that his employment at the Jiggs Cheney Pure Oil Service Station was not on a full-time basis because Montgomery had enrolled as a full-time student in Kent State University in the fall of 1965. Respondent inferred in its answer that Montgomery's termination from the City of Conneaut (fourth quarter of 1967) was voluntary because the work interfered with his education at Kent State. The answer claims that records at General Electric Company (1-2 day employment in the fourth quarter of 1967) show that Montgomery was terminated following an epileptic seizure, for the assigned reason of falsification of personnel records. (Apparently

Montgomery did not report having epilepsy testifying he did not know he had it.) Respondent claims that Montgomery falsified his personnel records at Respondent without stating in what manner. Respondent also claims that its backpay investigation disclosed that Montgomery received only nominal earnings at the Conneaut Collection Agency in the first part of 1968 and that his earnings went toward purchase of that agency.

In another direction, Respondent's answer claimed that Montgomery sought to hide his earnings by paying utility and other bills under a different name and concluded by wondering how Montgomery supported himself on his interim wages while paying necessary expenses and school tuition. Respondent's answer also asserted that it offered Montgomery reinstatement provided he was available for full-time work on a 9-hour per day schedule, and that Montgomery was and is unable to take such full-time employment as long as he continues his full-time schedule at Kent State.

### B. Third and Fourth Quarters, 1964

The backpay specification for William Montgomery shows that in the month concluding the third quarter of 1964 following his August 31 discharge, he worked at Brown Memorial Hospital and earned a total of \$19.68. Montgomery testified he did not seek unemployment compensation but made personal contacts seeking jobs at a number of places including the local newspaper in Conneaut and at Union Carbide Company, Reliance Electric Company, Inland Container, and Pepsi Cola Company, in Ashtabula. In the fourth quarter he became an employee of Puffer Roofing Company in Conneaut but kept no record of his earnings there. According to Montgomery's testimony, Mr. Puffer, a distant relative, had no records which would show Montgomery's earnings for the 6-1/2 week 1964 period. Montgomery worked there, when in 1968 they sought to determine his interim earnings. Montgomery said he did not seek another job during his employment by Puffer as he considered it a good job receiving \$1.75 per hour and working 5 to 6 days a week as a roofer, dependent of course on the weather. Further he testified that the report of \$140 as earnings for that 6-1/2 week period was based on an estimate he and Puffer made from various unnamed personal records.

This estimate of \$140 for a 6-1/2-week period seems to me extraordinarily low, considering Montgomery's testimony that it was a good job. A gross of \$140 for 6-1/2 weeks at \$1.75 per hour would mean that Montgomery worked an average of only 12 hours per week which is inconsistent with his testimony that he worked as much as 5 or 6 days a week dependent on the weather. On the other hand, Respondent made no effort to show that the weather was such as would have permitted much greater income during that time.

Noting that the figure of \$140 is a guess by Montgomery, which seems at odds with his testimony, and not knowing the weather conditions prevailing during the relevant period, nor how many hours Montgomery could reasonably have worked as a roofer, I will effect a compromise on the interim earnings at Puffer by estimating that Montgomery's assessment of the job as a good job means that he would have worked an average of 32 hours a week during that 6-1/2-week period. I therefore estimate and conclude that reasonable interim earnings during that 6-1/2-week period (which constituted the entire earnings for the fourth quarter of 1964), amount to \$364 instead of the \$140 estimate in the backpay

specification, and I hereby substitute that figure as a compromise estimate of the interim earnings figure.

None of the other matters raised by Respondent are relative to the third and fourth quarters of 1964. I therefore conclude and find that the following amounts make up the backpay figures for these two quarters.

Quarters	Gross Backpay	Interim Earnings Expenses	Net Backpay
Third, 1964	\$272.80	\$19.68	\$253.12
Fourth, 1964	\$842.00	\$364.00	\$478.00

#### C. First Quarter 1965 through Second Quarter 1967

Montgomery testified that he stopped working for Puffer Roofing in December 1964 and not in February 1965, as was inferred by one of Respondent's questions on cross-examination. Montgomery continuously sought employment and in March 1965 began working for Jiggs Cheney's Pure Oil Service Station in Conneaut where he remained through the second quarter of 1967. During the first quarter of 1967, the service station changed hands and was thereafter known as Tisdale's Pure Oil.

As to this 2-1/2-year period, Respondent claims that Montgomery reduced his employment hours making the job a part-time one in order to attend Kent State University as a full-time student.

Montgomery testified that during his employment with Jiggs Cheney and Tisdale he worked a standard 40-hour week from 8 a.m. to 4 p.m., 5 days per week except for one period when he additionally worked Saturday mornings following Mr. Cheney's heart attack. He was paid on an hourly basis and testified that during portions of this time when work was slack, particularly on Wednesday afternoons, Cheney would give him time off. In latter 1965 Montgomery enrolled as a student at the night school extension of Kent State University in Ashtabula, taking 12 credit hours as a full-time night student. His classes were Monday through Thursday, beginning two nights at 6 p.m. and at 7:15 p.m. on the other two nights. He testified that his school schedule never conflicted with his hours of full-time employment at the service station.

When asked how Montgomery's attendance at night school would have conflicted with his job under these circumstances, Respondent's representative answered that a man could hardly work 9 hours per day on a job and still attend night school. When asked if Respondent was prepared to offer testimony to that effect, Respondent said it was not.

Respondent noted that there was a reduction in interim earnings beginning in the fourth quarter of 1965 about the time Montgomery apparently started at Kent State. The interim earnings dropped \$47.85 per quarter from the previous two quarters and dropped \$28 more during the first quarter of 1966. Respondent claimed that the loss of earnings must necessarily be from a reduced work schedule because of Montgomery's school attendance. However Respondent did not produce any evidence in this regard and I accept Montgomery's plausible explanation that he was given time off by Cheney at various times. Respondent during cross-examination of Montgomery claimed that there was a more severe reduction in the first quarter of 1967, however examination of the backpay specification shows that during that quarter Montgomery's earnings increased not diminished.

I therefore conclude and find that the following

amounts constitute the backpay figures for the 2-1/2-year period of the first quarter 1965 through the second quarter 1967:

Quarters	Gross Backpay	Net Interim Earnings	Net Backpay
First, 1965	\$844.80	\$30.00	\$814.80
Second, 1965	875.20	650.00	225.20
Third, 1965	897.60	650.00	247.60
Fourth, 1965	915.60	602.15	313.45
First, 1966	896.00	574.08	321.92
Second, 1966	910.00	574.08	335.92
Third, 1966	950.40 <sup>1</sup>	574.08	376.32
Fourth, 1966	955.20 <sup>1</sup>	574.09	381.11
First, 1967	1,040.00	722.50	317.50 <sup>2</sup>
Second, 1967	1,040.00	614.02	425.98

#### D. Third and Fourth Quarters 1967

Due to slow business Tisdale decided to run the station by himself and Montgomery got a job with the City of Conneaut in the third quarter of 1967. About the same time he was offered and accepted a job with General Electric Company in Conneaut, leaving the city job. At General Electric he worked one full day and on the second day passed out at work. Montgomery testified that when he woke a doctor was bending over him and asked why he hadn't told them he had epilepsy. He answered he didn't know he did and General Electric thereafter terminated him giving as the termination reason that he had falsified his personnel records (presumably in not telling General Electric that he had epilepsy). Montgomery testified he had passed out once before in the summer of 1967 and sought medical assistance then and again after this episode in September 1967. He testified that on both occasions the physician he consulted did not directly diagnose his condition as epilepsy and that a neuro-encephalogram gave no definite conclusion on the matter. Following his termination by General Electric he returned to the City of Conneaut and worked for them until he was released on December 15, 1967, due to the City of Conneaut's financial condition.

Respondent's claims in regard to these quarters was not explicated, Respondent merely noting that Montgomery was discharged for falsification of records and claiming that he had falsified personnel records at Respondent. This objection contains no affirmative defense for Respondent and Montgomery was not sick or out of the job market during this time. If Montgomery has epilepsy it did not interfere with his work nor has Respondent so claimed.

I therefore conclude and find that the following amounts make up the backpay figures for the third and fourth quarters of 1967:

Quarters	Gross Backpay	Interim Earnings	Net Backpay
Third, 1967	\$1,085.60 <sup>3</sup>	\$1,020.00	\$ 65.60
Fourth, 1967	1,092.00	778.70	313.30

<sup>1</sup>Computation of the gross backpay on the specification is mathematically incorrect and the correct amount is inserted here.

<sup>2</sup>The backpay specification for this quarter contains a mathematical error in determining the net backpay.

<sup>3</sup>Computation of the gross backpay on the specification is mathematically incorrect and the correct amount is inserted here.

E. First and Second Quarters, 1968

During the first quarter of 1968 Montgomery sought work in a number of places and utilized the services of the State Unemployment Commission. He started work with the Conneaut Collection Agency in March.

Prior thereto, Montgomery received a letter dated February 5, 1968, from Dale P. Webb, vice president of Respondent, stating:

You are hereby offered unconditional reinstatement to your former job at Webb Mfg. Inc.  
Please contact me at our office.

Montgomery twice went to the Company's office in response to this letter and found Webb there the second time. Montgomery told Webb he could come back to work right then but Webb told Montgomery his hands were tied until the General Counsel, Respondent's Representative Harvey Rector, and Montgomery got the backpay worked out. Until then Webb said, his hands were tied in the matter of hiring Montgomery. Webb told him that Respondent was working a 9-hour day from 7 a.m. until 4:30 p.m. and asked if he could work those hours. Montgomery said yes that he could work out his school schedule to work those 9 hours.

Montgomery wrote Webb on February 9, acknowledging the meeting of that day and stating that: "At this time, you stated that I could not be rehired until I had had a conference with Mr. Rector, Mr. DuRose and myself regarding backpay due me."

On the basis of Montgomery's testimony and his written undenied communication and with no controverting evidence, I find that Respondent has not made an unconditional offer of reinstatement to Montgomery and consequently Montgomery's backpay period was not cut off and continues to run and will continue to do so until a proper and valid offer of reinstatement is made to him.

Montgomery worked for the Conneaut Collection Agency in both the first and second quarters of 1968. Respondent's claim is that Montgomery received only a nominal salary and that his actual earnings were being retained for purchase of this agency. Montgomery denied this allegation on the stand, stating that he only received a commission on what he collected. Respondent made no offer to prove its allegation. To the contrary, a letter signed by the owner of the Conneaut Collection Agency was received in evidence without objection, giving the amounts of interim earnings per month received by Montgomery and containing a statement that there was no written or verbal agreement with Montgomery for the purchase of this collection agency. During the second quarter of 1968 Montgomery left Conneaut Collection Agency and began working with City Loan Company of Ashtabula, Ohio, where he is receiving a wage of \$350 per month plus a car allowance.

I therefore conclude and find that the following amounts constitute the backpay figures for the first and second quarters of 1968:

Quarters	Gross Backpay	Interim Earnings	Net Backpay
First, 1968	\$1,137.60	\$67.00	\$1,070.60
Second, 1968	1,144.00	\$688.00	456 00

F. Other Respondent Contentions

One of Respondent's other contentions that Montgomery was hiding his earnings by paying utility and other bills under another name was not further explained by Respondent. However, while on the stand, Montgomery testified that at one time he shared an apartment with another individual and when that person got married and left he continued the utility services most of which were in the other person's name and paid the bills promptly, changing only the telephone to his own name. Similarly Respondent's claim that Montgomery could not accept reinstatement while continuing his college courses at Kent State Extension is shown false by Montgomery's undenied testimony.

The 16 quarters which have so far passed gives a total net backpay of \$6,620.42 to Montgomery plus 6 percent interest. In accordance with the findings and conclusions stated above I note again that the backpay period for Montgomery is still running and that Respondent has not made an unconditional valid offer of reinstatement to him.

III. SUMMARY AND CONCLUSIONARY FINDINGS

In regard to Larry A. Cline, I conclude and find that Cline has refused reinstatement and that the amount of backpay due and owing Cline is \$1,586.84 plus interest which latter amount has not as yet been determined and which amount will run until Respondent pays the amount of backpay in full.

As to William E. Montgomery, the total amount of backpay for the 16 quarters through June 30, 1968, amounts to \$6,620.42, and to such amount should be added interest at 6 percent in the manner computed in *Isis Plumbing & Heating Co., supra*, and that the backpay period and such interest and amounts shall continue to run until a valid offer of unconditional reinstatement is made to Montgomery and Respondent has paid the total amount of backpay in full.<sup>4</sup>

When Respondent tenders the amounts of backpay, it should withhold such normal deductions as are regularly made for taxes, etc.

Finally as to Respondent's claim of bias by the Regional Director, Respondent offered no evidence or testimony in this regard and I do not see in any event how such could have been considered in this proceeding.

<sup>4</sup>During cross-examination Montgomery admitted that he knew an individual named Loomis and stated that some time during 1965 he worked one day for Loomis and earned \$5. However since throughout most of 1965 Montgomery was employed on a full-time basis at Jiggs Cheney's Pure Oil Service Station, and since Respondent made no effort whatsoever to show when this employment took place and whether or not it was extra or part-time work which would not reduce the amount of backpay, I will not consider this amount and will not reduce the net backpay by this amount