

**Atlantic Foundry and Pattern Corp. and Local 84,
International Molders and Allied Workers
Union, AFL-CIO. Cases 29-CA-2169 and
29-CA-2169-2**

February 28, 1973

DECISION AND ORDER

**BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS**

On August 18, 1971, the National Labor Relations Board issued its Decision and Order¹ adopting the Decision of the Trial Examiner directing the Respondent, its officers, agents, successors, and assigns to, *inter alia*, offer reinstatement to, and make whole, Jesse Jones and Stanley Kirkland for loss of pay suffered by reason of Respondent's discrimination against them. On September 7, 1972, the United States Court of Appeals for the Second Circuit entered its Judgment enforcing the Board's Order. A controversy having arisen over the amounts of backpay due the two discriminatees named above, the Regional Director for Region 29, on September 25, 1972, issued a backpay specification and notice of hearing setting forth allegations with respect to the amounts of backpay due said discriminatees. The Respondent failed to file an answer to the specification.

On October 31, 1972, the General Counsel filed directly with the Board in Washington, D.C., a motion for judgment on the pleadings and for issuance of a Board order. On November 20, 1972, the Board issued an order transferring proceeding to the Board and a notice to show cause why the General Counsel's motion 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 and served on the Respondent on September 25, 1972, specifically states that the Respondent shall, within 15 days from the date of the specification, file an answer to the specification with the Regional Director for Region 29 and that, if 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 the Respondent shall be precluded from introducing any evidence controverting them. According to the Motion for Summary Judgment, Respondent's counsel, on October 25, 1972, verbally informed counsel for the General Counsel that Respondent did not intend to answer the backpay specification, appear at the hearing, or oppose the specification. The time to answer the specification expired October 13, 1972, and as of October 31, 1972, the date of the General Counsel's motion herein, Respondent had not applied for an extension of time to answer nor had it indicated that it would file an answer, nor has said time been extended. The Respondent also failed to file a response to the notice to show cause and, therefore, the allegations of the Motion for Summary Judgment stand uncontroverted. Since Respondent has not filed an answer to the specification and has not offered any explanation for its failure to do so, in accordance with the rules set forth above, the allegations of the specification are deemed to be admitted as true and so found by the Board without the taking of evidence in support of the said allegations.

Accordingly, on the basis of the allegations of the specification which are accepted as true, the Board finds the facts as set forth therein, concludes that the net backpay due each discriminatee, Jesse Jones and Stanley Kirkland, is as stated in the computations of the specification, and hereinafter orders the payment thereof by the Respondent to each discriminatee.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Atlantic Foundry and Pattern Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall make whole each of the discriminatees named below, by payment to them of the amounts set forth adjacent to their names, plus interest accrued at the

¹ 192 NLRB No 108

rate of 6 percent per annum to be computed in the manner set forth in *Isis Plumbing & Heating Co.*, 138 NLRB 716, until payment of all backpay due, less

the tax withholdings required by Federal and state laws:

Jesse Jones	\$652.79
Stanley Kirkland	\$1810.40