

New Truck Transport, Inc. and Thomas O'Hearon and James Johnson and William Shuff and Claudino Rivera. Cases 28-CA-1699 and 28-CA-1761

March 12, 1973

SUPPLEMENTAL
DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

On September 22, 1969, the National Labor Relations Board issued its Decision and Order¹ adopting the Trial Examiner's² Decision in which he directed, *inter alia*, that the Respondent make whole Thomas A. O'Hearon, James C. Johnson, Henry M. Chayrez, William O. Shuff, and Claudino Rivera for loss of pay suffered by them by reason of the Respondent's discrimination against them. On May 11, 1971, the United States Court of Appeals for the Ninth Circuit entered its judgment, enforcing in full the backpay provisions of the Board's Order. A controversy having arisen over the amounts of backpay due under the terms of the Board's Order, as enforced by the court, the Acting Regional Director for Region 28, on October 18, 1972, issued and duly served upon the Respondent a Backpay Specification and Notice of Hearing alleging the amounts of backpay due the discriminatees under the Board's Order and notifying the Respondent that, pursuant to Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, the Respondent shall, within 15 days from the date of the specification, file an answer to the specification. The Respondent failed to file such an answer.

Thereafter, on December 7, 1972, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment on the pleadings and issuance of a Board Order and Decision. Subsequently, on December 19, 1972, the Board issued an Order transferring the 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 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 Regula-

tions, Series 8, as amended, 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 October 18, 1972, specifically states that the Respondent shall, within 15 days from the date of the specification, file with the Regional Director for Region 28 an answer to the specification 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, the Respondent failed to file an answer to the specification which was due 15 days from October 18, 1972, and as of December 5, 1972, the date of the Motion for Summary Judgment, the Respondent had filed no answer with the Regional Director and has not indicated that it would file an answer. 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 the Respondent has failed to file an answer to the specification and has offered no explanation for its failure to do so, in accordance with Section 102.54 of the Board's Rules and Regulations, the allegations of the specification are deemed to be admitted to be true and so found by the Board without taking 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 of the discriminatees, Thomas A. O'Hearon, James C. Johnson, Henry J. Chayrez, William O. Shuff, and Claudino Rivera, is as stated in the computations of the specification and orders the payment thereof by the Respondent to each discriminatee.

Judge" effective August 19, 1972.

¹ 178 NLRB 545

² The title of "Trial Examiner" was changed to "Administrative Law

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, New Truck Transport, Inc., its officers, agents, successors, and assigns, shall make whole each of the discriminatees, Thomas A. O'Hearon, James C. Johnson, Henry M. Chayrez, William O. Shuff, and Claudino Rivera, the employees named below, by payment to them of the amounts set forth adjacent to

their names, plus interest accrued at the rate of 6 percent per annum to be computed in the manner specified in *Isis Plumbing & Heating Co.*, 138 NLRB 716, until payment of all backpay due, less tax withholdings required by Federal and state laws:

Thomas A. O'Hearon	\$836.28
James C. Johnson	\$420.75
Henry M. Chayrez	\$573.90
William O. Shuff	\$483.09
Claudino Rivera	\$374.46