

Barry Industries, Incorporated and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. Case 6-CA-4606

March 22, 1973

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

On April 8, 1970, the National Labor Relations Board issued its Decision and Order¹ in the above-entitled proceeding in which it ordered, *inter alia*, that the Respondent make whole Charles J. Taylor, Fannie E. Miller, and John E. Homer for any loss of pay they may have suffered as a result of the Respondent's discrimination against them. Thereafter, on May 4, 1972, the United States Court of Appeals for the Third Circuit entered its judgment enforcing the Board's Order. A controversy having arisen as to the amounts of backpay due under the terms of the Board's Order, as enforced by the court, the Regional Director for Region 6, on December 14, 1972, issued and duly served the Respondent by registered mail 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 it shall file a timely answer which must comply with the Board's Rules and Regulations. The Respondent received the Backpay Specification on December 27, 1972. Thereafter, on January 15, 1973, Respondent filed its answer to the specification in the form of a letter dated January 11, 1973, generally denying the allegations in the Specification.

On January 19, 1973, counsel for the General Counsel filed directly with the Board a Motion to Strike Respondent's Answer to Backpay Specification and Motion for Judgment on the Pleadings in Accordance with the Specification, herein called Motion for Summary Judgment.² Subsequently, on January 31, 1973, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause on or before February 13, 1973, why the General Counsel's Motion for Summary Judgment should not be granted. By letter dated February 9, 1973, the Respondent requested an extension of time to February 23, 1973, within which to respond. This request was granted. Nevertheless 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 Regulations, 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

(b) . . . The respondent shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification denied As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice

(c) . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by subsection (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting said allegation.

The Backpay Specification duly issued, served, and received by the Respondent states that an answer shall be filed within 15 days after service of the specification and that, to the extent that the answer denies, without adequate explanations, the allegations of the specification in the manner required by the Board's Rules and Regulations, such allegations shall be deemed to be admitted to be true and the Respondent precluded from introducing any evidence controverting them. According to the Motion for Summary Judgment, on January 11, 1973, when no answer had been filed, counsel for the General Counsel, having been previously advised that Respondent's counsel had withdrawn from the case, telephoned the Respondent's president and called his attention to the Respondent's obligation to file an answer in conformity with Section 102.54(b) of the Board's Rules and Regulations and to the effect of a

to the Respondent at its new address indicated on the letterhead of its January 11, 1973, letter, it was returned by the Postal Service marked "unclaimed"

¹ 181 NLRB 1003

² Although a copy of the General Counsel's Motion for Summary Judgment was sent by the Regional Director for Region 6 by certified mail

failure to file an answer or to plead specifically and in detail to the specification as provided in Section 102.54(c) of the Board's Rules and Regulations. Thereafter, by letter dated January 11, 1973, received in Region 6 on January 15, 1973, the Respondent filed an answer stating that it "herewith denies any and all of your Backpay Specifications dated 14th December 1971 (sic)." Although the Board granted the Respondent's request for an extension of time to February 23, 1973, within which to file a response to the Notice To Show Cause, it failed to file such a response and therefore, the allegations of the Motion for Summary Judgment stand uncontroverted.

The Respondent's answer merely contains a general denial of the allegations of the Backpay Specification and does not specifically deny the allegations as required by Section 102.54(b) of the Board's Rules and Regulations. The failure so to deny is not adequately explained. Accordingly, as the answer fails to comply with the provisions of Section 102.54(b) and (c) of the Board's Rules and Regulations, pursuant to such provisions, the allegations of the specification are deemed to be admitted to be true and are so found by the Board without taking evidence in support of 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 the net backpay due each of the discriminatees, Charles J. Taylor, Sr., Fannie E. Miller, and John E. Homer, is as stated in the computations of the specification, and orders that payment thereof be made 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, Barry Industries, Incorporated, Chambersburg, Pennsylvania, its officers, agents, successors, and assigns, shall make whole each of the discriminatees, Charles J. Taylor, Sr., Fannie E. Miller, and John E. Homer, 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:

Charles J. Taylor, Sr.	\$6,444.75
Fannie E. Miller	\$633.19
John E. Homer	\$2,683.55