Transportation Solutions, Inc. *and* General Teamsters, Chauffeurs and Helpers Local 249 a/w International Brotherhood of Teamsters. Case 6–CA–36628

March 26, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an adequate and timely answer to the complaint. Upon a charge filed by General Teamsters, Chauffeurs and Helpers Local 249 a/w International Brotherhood of Teamsters (the Union) on August 28, 2009,[1] the General Counsel issued a complaint on November 24, against Transportation Solutions, Inc. (the Respondent), alleging that it violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) by suspending an employee for 3 days because of his union and concerted activities. Copies of the charge and the complaint were properly served on the Respondent. By letter dated December 10, the Region advised the Respondent that it had not received an answer by the complaint's December 8 deadline, and that unless the Respondent filed an answer by the close of business on the third business day following receipt of the letter,[2] or unless the Region granted an extension of time to file an answer, a Motion for Default Judgment would be filed.

On December 28, the General Counsel submitted a Motion for Default Judgment to the Board. On December 29, the Respondent contacted the Regional Office, advising that it had sent an answer to the Regional Office at an incorrect address. The Respondent then faxed a letter dated December 23 to the Region.

On December 29, the Region advised the Respondent that its December 23 letter did not constitute an adequate answer within the meaning of Section 102.20 of the Board's Rules and Regulations. The Respondent failed to respond.

On January 7, 2010, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the motion for default judgment should not be granted.

On January 13, 2010, the General Counsel filed a Supplement to Motion for Default Judgment with the Board, stating that the Respondent's December 23 letter did not constitute an adequate answer because it was not responsive to the allegations of the complaint, and that the Respondent has not shown good cause for its failure to file a timely answer. The Respondent filed no response to the Motion for Default Judgment, Supplement to Motion for Default Judgment, or to the Board's Notice to Show Cause. The allegations in the motion and supplement to motion are therefore undisputed.

Ruling on Motion for Default Judgment[3]

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received on or before December 8, or postmarked on or before December 7, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. No answer or request for an extension of time was filed by December 8. Further, the undisputed allegations in the motion for default judgment and supplement to motion for default judgment disclose that the Region, by certified letter dated December 10, informed the Respondent that unless an answer was received by the close of business on the third business day following receipt of the letter, a Motion for Default Judgment would be filed. No answer or request for an extension of time was filed by December 16.

As set forth above, on December 29, in apparent response to the General Counsel's December 28 Motion for Default Judgment, the Respondent advised the Region that an answer had been sent to the wrong address.

[1] All dates are in 2009 unless otherwise indicated.

[2] The General Counsel states, without opposition, that the deadline for this answer was December 16.

[3] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, 590 F.3d 849 (10th Cir. 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB,* 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

The Respondent then faxed to the Region a December 23 letter, addressed to the Regional Attorney, stating that it was "in response to the most recent correspondence regarding" the unfair labor practice case, and adding that the Respondent was "declining acceptance of the settlement offer which is to rescind the 3-day suspension and/or restoration of [employee Gerald Brown's] wages for the three (3) day suspension." The letter was signed by the Respondent's administrative assistant.

We find that the Respondent's December 23 letter does not constitute a proper answer under Section 102.20 of the Board's Rules and Regulations. In determining whether to grant a motion for default judgment on the basis of a respondent's failure to file a sufficient or timely answer, the Board typically shows some leniency toward respondents who proceed without benefit of counsel. See, e.g., *LBE, Inc.*, 354 NLRB No. 115, slip op. at 1 (2009). The Board is reluctant to preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer that can reasonably be construed as denying the substance of the complaint allegations. *LBE*, supra, slip op. at 1–2; *Clearwater Sprinkler System*, 340 NLRB 435 (2003). Nevertheless, even in pro se cases, the Board has found answers legally insufficient if they fail to address any of the factual or legal allegations of the complaint. *Eckert Fire Protection Co*., 329 NLRB 920 (1999); accord: *Kloepfers Floor Covering, Inc*., 330 NLRB 811 (2000).

Here, the Respondent's letter does not respond to any of the complaint's factual or legal allegations, which concern the alleged suspension of employee Brown because he joined, supported, and assisted the Union and engaged in concerted activities, and to discourage other employees from engaging in those activities. Instead, the letter asserts that the Respondent was "declining acceptance of the settlement offer." This response cannot reasonably be construed as denying the substance of the complaint's allegations. Cf. *Information Processing SVC*, 330 NLRB No. 95 (2000) (not reported in bound volumes.) Therefore, even considering the Respondent's pro se status, the letter is legally insufficient to constitute a proper answer.

Further, even assuming the answer was otherwise adequate, the Respondent has proffered no explanation for its failure to meet any of the deadlines set by the Region for filing a timely answer. On December 29, it informed the Region only that its December 23 letter, prepared 1 week after the final deadline set by the Region, was mailed to an incorrect address.[4] The Respondent failed to offer any reason why it did not file a timely response. Nor did it do so in response to the Notice to Show Cause. Even in pro se cases, a respondent must explain why its answer was not timely filed. *TNT Logistics North America, Inc.*, 344 NLRB 489 (2005). The Respondent has not done so here.

In sum, the Respondent failed to file any document, timely or untimely, that reasonably could be construed as an answer to the complaint. Accordingly, in the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.[5]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation with an office and place of business located in Pittsburgh, Pennsylvania, has been engaged in the operation of a shuttle bus and van service. During the 12-month period ending July 31, 2009, the Respondent, in conducting the business operations described above, derived gross revenues in excess of $250,000 and purchased and received at its Pittsburgh, Pennsylvania facility goods valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Dwight Mayo	- President
Elnora Briston	- Senior Operations Manager
Ahmad Shareef	- Shop Manager
Mike Anderson	- Safety Manager

[4] We note, however, that the December 23 letter did set forth the correct address of the Regional Office.

[5] The General Counsel also asserts that the Respondent's December 23 letter is "procedurally defective" because it was filed by facsimile transmission and was not signed by the Respondent, its counsel, or its nonattorney representative. The General Counsel also states that the letter does not "purport to have been served on the Charging Party." Even though the pro se Respondent's letter does not appear to have complied with the signature and service requirements of Sec. 102.21 of the Board's Rules and Regulations, these defects would not necessarily be fatal had the letter otherwise constituted an adequate and timely answer. See *A.P.S Production/A. Pimental Steel*, 326 NLRB 1296, 1297 (1998).

Joan E. Howard - Dispatcher
Dwight Mayo, Jr. – Vice President

On about March 3, 2009, the Respondent issued a 3-day suspension to its employee Gerald Brown.

The Respondent engaged in the above conduct because Gerald Brown joined, supported, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By issuing a 3-day suspension to employee Gerald Brown, the Respondent has discriminated in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully suspended employee Gerald Brown, we shall order the Respondent to make Brown whole for any loss of earnings or other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[6] In addition, the Respondent shall also be required to remove from its files any references to the unlawful suspension, and to notify Brown in writing that this has been done and that the suspension will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Transportation Solutions, Inc., Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending any employee for joining, supporting, and assisting the Union and engaging in concerted activities, and to discourage employees from engaging in these activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Gerald Brown whole for any loss of earnings and other benefits suffered as a result of his unlawful suspension, with interest, in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to Gerald Brown's unlawful suspension, and within 3 days thereafter notify him in writing that this has been done and that the suspension will not be used against him in any way.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 3, 2009.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[6] In the complaint, the General Counsel seeks compound interest computed on a quarterly basis for any backpay awarded. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Glen Rock Ham*, 352 NLRB 516, 516 fn. 1 (2008), citing *Rogers Corp*., 344 NLRB 504 (2005).

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. March 26, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT suspend any of you for joining, supporting, and assisting the Union and engaging in concerted activities, and to discourage other employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Gerald Brown whole for any loss of earnings and other benefits suffered as a result of his unlawful suspension, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful suspension of Gerald Brown, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the suspension will not be used against him in any way.

TRANSPORTATION SOLUTIONS, INC.