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**Tom Arand, P.C. d/b/a Animal Care Clinic and Equal Justice Center.** Case 16–CA–26387

June 14, 2010

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS SCHAUMBER, BECKER, AND PEARCE

The General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On March 31, 2009, the Board issued a Decision and Order,<sup>1</sup> that, among other things, ordered the Respondent to offer reinstatement to discriminatees Wendy Castellanos and James Turpin and make them whole for any loss of earnings and other benefits resulting from their unlawful discharges in violation of Section 8(a)(1) of the Act. On July 22, 2009, the United States Court of Appeals for the Fifth Circuit entered its judgment enforcing the Board's Order.<sup>2</sup>

A controversy having arisen over the amount of backpay due the discriminatees, on February 26, 2010, the Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order, and alleging that the Respondent has failed to take any of the action required to comply with the court-enforced Board Order. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated March 30, 2010, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by April 2, 2010, a motion for default judgment would be filed.<sup>3</sup> To date, the Respondent has failed to file an answer.

On April 16, 2010, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On April 16, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to

Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an 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 further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due Castellanos and Turpin is as stated in the compliance specification, and we will order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment. Further, we find that backpay, expenses, and interest continue to accrue until the Respondent makes a valid offer of reinstatement to the discriminatees.<sup>4</sup>

ORDER

The National Labor Relations Board orders that the Respondent, Tom Arand, P.C. d/b/a Animal Care Clinic, Round Rock, Texas, its officers, agents, successors, and assigns, shall make whole Wendy Castellanos and James Turpin, by paying them the amounts following their names, plus additional backpay and interest that may

<sup>1</sup> 353 NLRB No. 128 (2009).

<sup>2</sup> No. 09-60335.

<sup>3</sup> According to the uncontroverted allegations of the motion for default judgment, the Respondent acknowledged receipt of the Region's March 30, 2010 letter via telephone message left with the Region on April 1, 2010, and advised that it would not be able to file an answer by April 2, 2010 and could not commit to a date certain as to when it would be able to file an answer.

<sup>4</sup> As indicated above, the compliance specification alleges that the Respondent has failed to reinstate Castellanos and Turpin, to remove the references of their unlawful discharges from its files, to notify them in writing that the references have been removed from the Respondent's files, to post or duplicate and mail the required notices to employees, and to file a sworn certification with the Region setting forth the steps taken to comply. By failing to file an answer, the Respondent has effectively admitted that it has failed to do so. Nevertheless, we find it unnecessary in this proceeding to order the Respondent to take the actions described above, as those actions are included in our previous Order that has been enforced by the court of appeals. See *Bryan Adair Construction Co.*, 341 NLRB 247, 247 fn. 4 (2004).

accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

Wendy Castellanos	\$ 7,571.28
James Turpin	<u>20,727.30</u>
TOTAL BACKPAY DUE:	\$28,298.58

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Peter C. Schaumber,	Member
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Craig Becker,	Member
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Mark Gaston Pearce,	Member

Dated, Washington, D.C. June 14, 2010

(SEAL) NATIONAL LABOR RELATIONS BOARD