

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

ATLANTIC VEAL & LAMB, INC.

and

KNITGOODS WORKERS' UNION, LOCAL 155
UNION OF NEEDLETRADES, INDUSTRIAL &
TEXTILE EMPLOYEES, AFL-CIO

Case Nos. 29-CA-24484
 29-CA-24629
 29-CA-24669

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
SECOND SUPPLEMENTAL DECISION**

Kathy Drew King
Counsel for the Acting General Counsel
National Labor Relations Board
Region 29
Two Metro Tech Center - 5th Floor
Brooklyn, New York 11201

Counsel for the Acting General Counsel takes exceptions to the findings of fact and conclusions of law set forth in the Second Supplemental Decision of Administrative Law Judge Raymond Green dated July 16, 2010.

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board - Series 8, as amended, Counsel for the Acting General Counsel's specific exceptions to the Second Supplemental Decision are to the Administrative Law Judge's findings that:

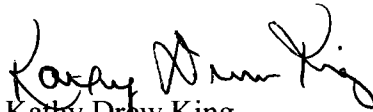
1. Thus, for Quarter four of 2001, his gross backpay would be \$430 times 8 or \$3440. As his testimony that he had no interim earnings in 2001 was not challenged by any contrary evidence, his net backpay for that quarter would be \$3,400. See Second Supplemental Decision at p.2; lines 31 – 33.
2. A second and related issue would be whether the documentary evidence submitted by the Respondent, whether or not establishing “willful concealment,” nevertheless shows that Ogando had substantial interim earnings for the period in question so that his claim of net backpay for that period would be zero or at least far less than what is asserted by the General Counsel. See Second Supplemental Decision at p.1; lines 8 -12.
3. I can only assume that the W-2 and pay statement documents that were submitted in support of the loan were submitted with the assent of Ogando. Second Supplemental Decision at p. 3: lines 6 – 7.

4. Given the documentary evidence showing that Ogando had higher substantial interim earnings in 2002 and 2003, the Respondent therefore has met its burden of showing that the discriminatee had higher interim earnings than what was claimed by the General Counsel in the Specification or what Ogando had originally told the General Counsel. Second Supplemental Decision at p. 3; lines 12.
5. The burden therefore shifts back to the General Counsel to rebut Respondent's showing of interim earnings. Second Supplemental Decision at p. 3; lines 12 – 14.
6. Given these documents that had to have been submitted by him or submitted with his consent, I do not credit, on this record, Ogando's assertion that he had little or no interim earnings in 2002 and 2003. Nor do I credit the testimony of his friend Angel Diaz. Second Supplemental Decision at p. 3; lines 19 – 21.
7. Moreover, I conclude that Ogando would have continued to work for Royal Quality General Construction, at a comparable rate of pay, during the first five months of 2004 until he was employed by Whole Foods. Second Supplemental Decision at p. 3; lines 22 – 24.
8. In light of the above, I conclude (a) that Ogando's interim earnings for each quarter of 2002, 2003 and the first and second quarters of 2004 exceeded the gross backpay calculations made on his behalf for those years and/or (b) that for this period of time, Ogando willfully concealed interim earnings. Second Supplemental Decision at p. 3; lines 26 – 29.

9. I therefore conclude that Ogando's net backpay for 2002, 2003 and the first and second quarters of 2004 is zero. Second Supplemental Decision at p. 3; lines 31 –32.
10. I also conclude that for 2001, his net backpay is \$3,400.00. I therefore amend my calculations and conclude that is net backpay, plus interest is $\$18,514 + \$3,400 = \$21,914$. See Second Supplemental Decision at p. 3; lines 32 – 34.

The specific grounds and authorities for these exceptions are set forth in the attached brief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathy Drew King". The signature is fluid and cursive, with the first name "Kathy" being the most prominent.

Kathy Drew King
Counsel for the Acting General Counsel
National Labor Relations Board
Region 29

Dated at Brooklyn, NY this 13th day of September 2010.