

M. Mogul Enterprises, Inc. d/b/a MSK Cargo/King Express and Teamsters Local Union 657 affiliated with International Brotherhood of Teamsters. Case 16–CA–24374

March 27, 2009

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. On November 8, 2006, the National Labor Relations Board issued a Decision and Order¹ that, inter alia, ordered the Respondent, M. Mogul Enterprises, Inc. d/b/a MSK Cargo/King Express, to make whole nine discriminatees for the loss of earnings and other benefits resulting from the Respondent's unlawful refusal to hire them in violation of Section 8(a)(3) and (1) of the Act.

A controversy having arisen over the amount of backpay due to the discriminatees under the Board's Order, on February 29, 2008, the Regional Director for Region 16 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. On September 5, 2008, the Regional Director approved a settlement agreement, executed by both parties, resolving the allegations contained in the compliance specification.

Pursuant to the terms of the settlement agreement, the Respondent agreed to pay the discriminatees a total sum of \$57,600, which represented \$52,066.20 in backpay and \$5,533.80 in interest due at the time of the settlement agreement. The amounts due were to be paid in monthly installments of \$1200 for a period of 4 years. The settlement agreement also contained the following provisions:

8. Following notice of and failure to cure a default, the Regional Director may, without further notice, institute any and all further proceedings against Respondent for the collection of the full indebtedness remaining due. The General Counsel may file a Motion for Supplemental Order with the Board to seek an order providing that Respondent, its officers, agents, successors, and assigns shall make whole the discriminatees for loss of pay suffered by reason of the discrimination, by payment to them of the balance of the amount determined to be owing, with additional accrued interest. On receipt of said Motion for Supplemental Order, the Board shall issue an Order requiring Respondent to Show

Cause why said Motion of the General Counsel should not be granted. Respondent waives the right to file any response or opposition to the Motion for Supplemental Order, other than a response to the Board's Order to Show Cause on the issue of whether Respondent defaulted under the terms of the Settlement Agreement. The Board may then, without the necessity of a hearing or other proceeding, issue the Supplemental Order as described. Upon application by the Board, the United States Court of Appeals may enter its Judgment enforcing the Supplemental Order of the Board. Respondent waives all defenses to the entry and enforcement of the Judgment including compliance with the Supplemental Order of the Board, and its right to receive notice of the filing of the Board's Application for Enforcement of the Judgment. Respondent shall be required to comply with the affirmative provisions of the Board's Supplemental Order after entry of the Judgment only to the extent that they have not already done so. The Board shall then be entitled to immediately take any action pursuant to the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. Section 3001 et seq., to collect on its enforced Judgment and Respondent shall be deemed to have waived any right to assert any defense to such FDCPA action. The Board agrees that it will not institute any court proceedings to collect this judgment for so long as Respondent complies with all provisions of this Settlement Agreement.

9. By entering into this Settlement Agreement, the Board does not waive any of its statutory rights, following notice of and failure to cure a default as detailed above, to initiate proceedings under the FDCPA for a prejudgment remedy to collect any amounts due and owing under this Settlement Agreement prior to the entry and enforcement of a Supplemental Order of the Board by the United States Court of Appeals liquidating those amounts.

Since September 5, 2008, the Respondent failed to make any of the payments required by the terms of the settlement agreement. By letters dated October 17 and November 24, 2008, the Regional Director notified the Respondent that it was in default of the settlement agreement. On December 8, 2008, the Respondent's counsel notified the Regional Director that it would not comply with the terms of the settlement agreement.

Thereafter, on February 5, 2009, the General Counsel filed with the Board a Motion for Summary Judgment for Supplemental Order, with exhibits attached.² On Febru-

¹ 348 NLRB 1096 (2006).

² The General Counsel inadvertently attached the wrong complaint to the Motion for Summary Judgment, and as a result, in pars. 1–3 of the Motion, he also incorrectly identified the name of the Charging

ary 11, 2009, 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 filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Summary Judgment³

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent has breached the terms of the settlement agreement by failing to make any of the payments required by the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that the backpay amount due under the settlement agreement of \$52,066.20, plus interest, is im-

Party Union, the dates of the charges filed, and the issuance and service dates of the complaint. These errors are immaterial, as this information was only provided for background purposes. The relevant documents for purposes of this case are the underlying Board decision, the compliance specification, the settlement agreement, and the letters between the General Counsel and the Respondent.

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.

mediately due.⁴ Accordingly, we grant the General Counsel's Motion for Summary Judgment and conclude that the outstanding amounts of \$52,066.20 in backpay and \$11,318.98 in interest through January 20, 2009 are immediately due the discriminatees, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment, in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, M. Mogul Enterprises, Inc. d/b/a MSK Cargo/King Express, Harlingen, Texas, its officers, agents, successors, and assigns, shall make whole Ernesto Aguilar, Rolando Galvan, Michael Guzman, Elizondro Martinez, Jose Muniz, Edgar Rangel, Javier Torres, Tomas Vasquez, and Gilbert Villegas, by paying to the Board, on behalf of those individuals, the outstanding amounts of \$52,066.20 in backpay and \$11,318.98 in interest through January 20, 2009, plus additional interest accrued until the date of payment.

TOTAL AMOUNT DUE: \$63,385.18

(plus any interest accrued after January 20, 2009, until date of payment).

⁴ See *Tom Cat Development Corp.*, 340 NLRB 193 (2003).