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Bay Sys Technologies, LLC and Dontray L. Tull. Case 5–CA–36314

August 2, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
AND PEARCE

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge filed by Dontray L. Tull, the Acting General Counsel issued a complaint on February 28, 2011, against BaySys Technologies, LLC, the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent filed an answer to the complaint. However, on May 27, 2011, the Respondent withdrew its answer.

On May 27, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. On May 31, 2011, 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 are therefore undisputed.

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

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a 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 by March 14, 2011, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Although the Respondent filed an answer on March 18, 2011, it subsequently withdrew its answer by letter dated on May 27, 2011. Such a withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.¹ Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Virginia limited liability company, with its principal office and place of business in Accomac, Virginia, has been engaged in designing and installing custom aircraft interiors for commercial customers.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its Accomac, Virginia facility goods valued in excess of \$50,000 directly from points located outside the Commonwealth of Virginia.

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

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have 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:

Heather Anson	-	Human Resources Director
Paresh Buch	-	Vice-President, Engineering
Randy Knoblock	-	Vice-President, Operations
David Lumgair	-	Manager, BaySys Flight Operations
Steven Walton	-	Chief Executive Officer

On about August 6, 2010, Dontray Tull engaged in concerted activities with other employees for the purposes of mutual aid and protection, by posting comments to employees' Facebook status on the website www.Facebook.com, so they could concertedly complain about the Respondent not having issued their paychecks on time.

On about August 13, 2010, the newspaper, *Eastern Shore Post*, published the Facebook conversation described above.

On about August 13, 2010, the Respondent, by Steve Walton, in an email message to employees:

(a) expressed disappointment that employees took their protected concerted complaints to a newspaper rather than himself or other internal avenues;

(b) told employees their protected concerted complaints breached their nondisclosure agreements;

(c) threatened employees with legal action for having engaged in protected concerted activities;

(d) implied that employees would be discharged unless they issued written explanations about their protected concerted activities to other employees and to the *Eastern Shore Post* newspaper, and explained, in writing, their intentions for their future with the Respondent; and

(e) threatened employees that their supervisors would be conducting performance evaluations in which, it was implied, their protected concerted activities would be a consideration.

On about August 17, 2010, the Respondent, by Steve Walton and Paresch Buch, in Walton's office, at the Respondent's Wallops Island facility:

(a) interrogated employees about their protected concerted activities;

(b) told employees they should find another job, if they had complaints; and

(c) told employees they should have brought their protected concerted complaints to Steve Walton instead of posting them on Facebook.

On about August 18, 2010, the Respondent discharged its employee Dontray Tull.

The Respondent discharged Tull because Tull engaged in concerted activities for the purposes of mutual aid and protection and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act, and has thereby engaged in unfair labor practices affecting 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. Specifically, having found that the Respondent violated Section 8(a) (1) of the Act by discharging Dontray Tull because he engaged in protected concerted activities, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings or other benefits suffered as a result of the Respondent's unlawful actions against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289

(1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

The Respondent shall also be required to remove from its files any and all references to the unlawful discharge of Dontray Tull and to notify him in writing that this has been done and that the unlawful references will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, BaySys Technologies, LLC, Accomac, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Expressing disappointment to employees that they took their protected concerted complaints to a newspaper rather than to the Respondent's chief executive officer or other internal avenues;

(b) Telling employees their protected concerted complaints breached their nondisclosure agreements;

(c) Threatening employees with legal action for having engaged in protected concerted activities;

(d) Implying that employees would be discharged unless they issued written explanations about their protected concerted activities to other employees and to the *Eastern Shore Post* newspaper and explained in writing their intentions for their future with the Respondent;

(e) Threatening employees that their supervisors would be conducting performance evaluations in which their protected concerted activities would be a consideration;

(f) Interrogating employees about their protected concerted activities;

(g) Telling employees they should find another job, if they had complaints;

(h) Telling employees they should have brought their protected concerted complaints to the Respondent's chief executive officer instead of posting them on Facebook;

(i) Discharging or otherwise discriminating against employees because they engaged in concerted activities for the purposes of mutual aid and protection or to discourage employees from engaging in concerted activities.

(j) 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) Within 14 days from the date of this Order, offer Dontray Tull full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Dontray Tull whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the unlawful discharge of Dontray Tull, and, within 3 days thereafter, notify him in writing that this has been done and that its unlawful conduct will not be used against him in any way.

(d) 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.

(e) Within 14 days after service by the Region, post at its facility in Accomac, Virginia, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. 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 August 13, 2010.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 5 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.

Dated, Washington, D.C. August 2, 2011

² 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."

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, 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 express disappointment to our employees that they took their protected concerted complaints to a newspaper rather than to our chief executive officer or other internal avenues.

WE WILL NOT tell our employees that their protected concerted complaints breached their nondisclosure agreements.

WE WILL NOT threaten our employees with legal action for having engaged in protected concerted activities.

WE WILL NOT imply that our employees will be discharged unless they issue written explanations about their protected concerted activities to other employees and to the *Eastern Shore Post* newspaper and explain in writing their intentions for their future with us.

WE WILL NOT threaten our employees that their supervisors would be conducting performance evaluations in which their protected concerted activities will be a consideration.

WE WILL NOT interrogate our employees about their protected concerted activities.

WE WILL NOT tell our employees that they should find another job if they have complaints.

WE WILL NOT tell our employees they should have brought their protected concerted complaints to us instead of posting them on Facebook.

WE WILL NOT discharge or otherwise discriminate against employees because they engaged in concerted activities for the purposes of mutual aid and protection or to discourage employees from engaging in concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer Dontray Tull full reinstatement to his former

job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Dontray Tull whole for any loss of earnings and other benefits suffered as a result of our discrimination against him, less any interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any references to the unlawful discharge of Dontray Tull, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that our unlawful conduct will not be used against him in any way.

BAYSYS TECHNOLOGIES, LLC