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Kane Steel Company *and* United Auto Works of America, Amalgamated Local Union No. 2327 Teamsters Local Union No. 429. Case 4–CA–37179 and Case 4–CA–37274

October 25, 2011

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS BECKER AND HAYES

The Acting 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 July 13, 2010, the Board issued a Decision and Order,[1] finding that the Respondent, Kane Steel Company, Inc., violated Section 8(a)(5) and (1) of the Act by, among other things, failing and refusing to bargain collectively with United Auto Workers of America, Amalgamated Local Union No. 2327 about the effects of its decision to close its Millville, New Jersey facility, and failing and refusing to bargain collectively with Teamsters Local Union No. 429 about the effects of its decision to close its Pottsville, Pennsylvania facility. The Board also found that the Respondent violated Section 8(a)(5) and (1) by ceasing to pay the Millville unit and Pottsville unit their accrued vacation pay and ceasing to pay the Millville unit their accrued holiday pay and severance pay, as required by their collective-bargaining agreements. The Board ordered the Respondent, among other things, to pay its Millville unit employees and Pottsville unit employees no less than 2-weeks' wages, less any interim earnings, for the period commencing 5 days after the date of the Board's Order.[2] The Board also ordered the Respondent to pay the Millville unit employees their accrued vacation pay, accrued holiday pay and severance pay, with interest, and to pay the Pottsville unit employees their accrued vacation pay, with interest.

A controversy having arisen over the amount of backpay due the Millville unit and Pottsville unit employees, on November 30, 2010, the Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay 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. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated December 23, 2010, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by December 30, 2010, default judgment would be sought. The Respondent filed no answer.

On January 3, 2011, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On January 5, 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 again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

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.[3]

[1] 355 NLRB No. 49.

[2] The Board required the Respondent to pay backpay to employees in the two bargaining units in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998), for any loss of pay result form the Respondent's unfair labor practices.

Member Hayes did not participate in the underlying case. Consistent with his dissenting view in *Kadouri International Foods, Inc*. 356 NLRB No. 148, slip op. at 1 fn. 1 (2011), Member Hayes disagrees with the portion of the *Transmarine* remedy that imposes a 2 weeks' minimum backpay remedy on the Respondent, without regard to actual losses incurred. Nonetheless, in the context of this default judgment proceeding, and in light of the fact that the Respondent permanently closed its Millville plant and its Pottsville plant, Member Hayes agrees to apply extant remedial precedent.

[3] By letter dated September 2, 2010, the Respondent's counsel informed the Region, among other things, that the Respondent was unable to provide any financial payments at that time. In addition, the Acting General Counsel acknowledged in his motion that the facilities involved herein are closed. However, the Respondent's financial situation does not constitute good cause for failure to file an answer, nor is it otherwise a basis for denying the Acting General Counsel's motion for default judgment. See, e.g., *Harvey Reed's Lawn & Garden Care Services Co*., 321 NLRB 1002 fn. 1 (1996), and *Beaumont Glass Co*., 316 NLRB 35 fn. 1 (1995). Similarly, the Board has held that cessation of operations or bankruptcy does not relieve respondents of the obligation to file an answer. *OK Toilet & Towel Supply*, 339 NLRB 1100, 1101 (2003); *Miami Rivet of Puerto Rico*, 307 NLRB 1390, 1391 fn. 2 (1992); see also *Holt Plastering, Inc.*, 317 NLRB 451, 451 (1995) (respondent was not excused from filing an answer to compliance specification, even though the respondent notified the Board it had "ceased operations and liquidated the plant facilities").

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 grant the Acting General Counsel's Motion for Default Judgment.

Accordingly, we conclude that the net backpay due the employees is as stated in the compliance specification and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Kane Steel Company, Inc., Millville, New Jersey and Pottsville, Pennsylvania, its officers, agents, successors, and assigns, shall make whole the Millville unit employees named in the attached Appendices A through D, and the Pottsville unit employees named in the attached Appendices E and F, by paying them the amounts following their names, plus interest accrued to the date of payment in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:[4] Summarizing these amounts, the Respondent is obligated to pay the employees backpay totaling $220,417.04.

Dated, Washington, D.C. October 25, 2011

Mark Gaston Pearce,	Chairman
Craig Becker,	Member
Brian E. Hayes,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] The Board has declined to apply its policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).

APPENDIX A

(*Transmarine* Backpay Owed to Millville Unit Employees)

Name	Hourly Wage Rate	Hours/ Week	Weeks	*Transmarine* Backpay
Milton Beachaump	$18.73	40	2	$1,498.40
Ricky Brown	$17.54	40	2	$1,403.20
Thomas Conaway	$18.84	40	2	$1,507.20
Allen Cassaboon, Jr.	$17.82	40	2	$1,425.60
Robert Delgado	$18.31	40	2	$1,464.80
Pasquale Dibenedetto	$18.41	40	2	$1,472.80
Robert DiPilla	$17.82	40	2	$1,425.60
James Fichera	$16.61	40	2	$1,328.80
Gary Hickman	$18.04	40	2	$1,443.20
Mike Kates	$17.71	40	2	$1,416.80
Keith Messier	$18.66	40	2	$1,492.80
Carl Metcalf	$17.54	40	2	$1,403.20
Harry Montero	$18.66	40	2	$1,492.80
Dwayne Owens	$18.66	40	2	$1,492.80
Albert Souders	$18.66	40	2	$1,492.80
Clinton Tomer	$17.54	40	2	$1,403.20
Sheldon White	$17.54	40	2	$1,403.20
Total				**$24,567.20**

APPENDIX B

(Vacation Pay Owed to Millville Unit Employees)

Name	Hourly Wage Rate	Vacation Hours	Vacation Pay
Milton Beachaump	$18.73	48	$899.04
Ricky Brown	$17.54	32	$561.28
Jamin Chain	$18.66	40	$746.40
Garry Cheesman	$18.04	48	$865.92
Thomas Conaway	$18.84	80	$1,507.20
Allen Cossaboon, Jr.	$17.82	72	$1,283.04
Robert Delgado	$18.31	80	$1,464.80
Pasquale Dibenedetto	$18.41	104	$1,914.64
Robert DiPilla	$17.82	40	$712.80
Edward Fisher	$18.66	80	$1,492.80
Gary Hickman	$18.04	80	$1,443.20
Shawn Jones	$17.51	72	$1,260.72
John Kelley	$18.72	80	$1,497.60
Thomas Lawrence	$17.84	40	$713.60
Keith Messier	$18.66	40	$746.40
Carl Metcalf	$17.54	104	$1,824.16
Wayne Motter	$18.04	8	$144.32
Domingo Negron	$18.66	40	$746.40
Dwayne Owens	$18.66	160	$2,985.60
Lawrence Quinn	$16.60	80	$1,328.00
William Skinner	$16.90	112	$1,892.80
Albert Souders	$18.66	80	$1,492.80
Richard Spinosi	$18.04	104	$1,876.16
Clinton Tomer	$17.54	96	$1,683.84
Sheldon White	$17.54	80	$1,403.20
Chet Zeak	$17.70	80	$1,416.00
Total			**$33,902.72**

APPENDIX C

(Personal Day Pay Owed to Millville Unit Employees)

Name	Hourly Wage Rate	Personal Day Hours	Personal Day Pay
Milton Beachaump	$18.73	8	$149.84
Ricky Brown	$17.54	8	$140.32
Thomas Conaway	$18.84	8	$150.72
Allen Cossaboon, Jr.	$17.82	8	$142.56
Robert Delgado	$18.31	8	$146.48
Pasquale Dibenedetto	$18.41	8	$147.28
Robert DiPilla	$17.82	8	$142.56
James Fichera	$16.61	8	$132.88
Edward Fisher	$18.66	8	$149.28
Gary Hickman	$18.04	8	$144.32
Mike Kates	$17.71	8	$141.68
Thomas Lawrence	$17.84	8	$142.72
Keith Messier	$18.66	8	$149.28
Carl Metcalf	$17.54	8	$140.32
Harry Montero	$18.66	8	$149.28
Wayne Motter	$18.04	8	$144.32
Domingo Negron	$18.66	8	$149.28
Dwayne Owens	$18.66	8	$149.28
William Skinner	$16.90	8	$135.20
Albert Souders	$18.66	8	$149.28
Clinton Tomer	$17.54	8	$140.32
Sheldon White	$17.54	8	$140.32
Total			**$3,177.52**

APPENDIX D

(Severance Pay Owed to Millville Unit Employees)

Name	Hourly Wage Rate	Hours/ Week	Number of Weeks of Severance Pay	Severance Pay
Milton Beachaump	$18.73	40	3	$2,247.60
Ricky Brown	$17.54	40	3	$2,104.80
Jamin Chain	$18.66	40	1	$746.40
Garry Cheesman	$18.04	40	1	$721.60
Thomas Conaway	$18.84	40	3	$2,260.80
Allen Cossaboon, Jr.	$17.82	40	3	$2,138.40
Robert Delgado	$18.31	40	3	$2,197.20
Pasquale Dibenedetto	$18.41	40	3	$2,209.20
Robert DiPilla	$17.82	40	3	$2,138.40
James Fichera	$16.61	40	3	$1,993.20
Edward Fisher	$18.66	40	3	$2,239.20
Gary Hickman	$18.04	40	2	$1,443.20
Shawn Jones	$17.51	40	2	$1,400.80
Mike Kates	$17.71	40	3	$2,125.20
John Kelley	$18.72	40	2	$1,497.60
Thomas Lawrence	$17.84	40	2	$1,427.20
Keith Messier	$18.66	40	2	$1,492.80
Carl Metcalf	$17.54	40	3	$2,104.80
Harry Montero	$18.66	40	1	$746.40
Wayne Motter	$18.04	40	2	$1,443.20
Domingo Negron	$18.66	40	1	$746.40
John Ottinger	$17.54	40	2	$1,403.20
Dwayne Owens	$18.66	40	3	$2,239.20
Lawrence Quinn	$16.60	40	2	$1,328.00
Alfred Ripa	$17.40	40	2	$1,392.00
Wiiliam Skinner	$16.90	40	3	$2,028.00
Albert Souders	$18.66	40	2	$1,492.80
Richard Spinosi	$18.04	40	2	$1,443.20
Clinton Tomer	$17.54	40	3	$2,104.80
Sheldon White	$17.54	40	3	$2,104.80
Chet Zeak	$17.70	40	1	$708.00
Total				**$51,668.40**

APPENDIX E

(*Transmarine* Backpay Owed to Pottsville Unit Employees)

Name	Quarter/ Year	Hourly Wage Rate	Hours/ Week	Weeks	*Transmarine* Backpay
Kim Frances Holley	3rd/2010	$16.55	40	10.8	$7,149.60
	4th/2010	$16.55	40	8.4	$5,560.80
Total					**$12,710.40**
Walter McSurdy	3rd/2010	$16.15	40	10.8	$6,976.80
	4th/2010	$16.15	40	8.4	$5,426.40
Total					**$12,403.20**
Ronald Smith	3rd/2010	$16.55	40	2	**$1,324.00**
Norman Tropp	3rd/2010	$16.15	40	10.8	$6,976.80
	4th/2010	$16.15	40	8.4	$5,426.40
Total					**$12,403.20**
Paul Wagner	3rd/2010	$17.30	40	10.8	$7,473.60
	4th/2010	$17.30	40	8.4	$5,812.80
Total					**$13,286.40**
Total for All					**$52,127.20**

APPENDIX F

Vacation Pay Owed to Pottsville Unit Employees)

Name	Hourly Wage Rate	Hours	Unused Vacation Days	Unused Vacation Hours	Vacation Pay
Robert Achenbach	$16.15	8	105	840	$13,566.00
James Anderson IV	$15.55	8	3	24	$373.20
Robert Caputo	$16.15	8	21	168	$2,713.20
Stan Daniels	$15.55	8	1	8	$124.40
Martin Davis	$16.15	8	9	72	$1,162.80
Edward Drum	$16.55	8	21	168	$2,780.40
Robert Drum	$16.55	8	10	80	$1,324.00
Charles Fees III	$16.55	8	13.5	108	$1,787.40
Keith Frankenstein	$15.55	8	15	120	$1,866.00
James Hawk Sr.	$16.15	8	30	240	$3,876.00
Kim Frances Holley	$16.55	8	13	104	$1,721.20
James Vincent Long Sr.	$15.55	8	10	80	$1,244.00
Walters McSurdy	$16.15	8	8	64	$1,033.60
Richard Millet	$15.75	8	11	88	$1,386.00
Karl Reager	$15.80	8	14	112	$1,769.60
Stanley Roskosky	$16.15	8	8	64	$1,033.60
Joseph Sborz	$16.15	8	24	192	$3,100.80
Patrick Setlock	$15.80	8	15	120	$1,896.00
Michael Smith	$16.55	8	4.5	36	$595.80
Ronald Smith	$16.55	8	16	128	$2,118.40
William Robert Sullivan	$16.55	8	10	80	$1,324.00
Kevin Trate	$16.85	8	8	64	$1,078.40
Norman Tropp	$16.15	8	18	144	$2,325.60
Gavin Umberger	$15.55	8	10	80	$1,244.00
Paul Wagner	$17.30	8	11.5	92	$1,591.60
Anthony Wychunas	$16.15	8	15	120	$1,938.00
Total					**$54,974.00**