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Vocell Bus Company, Inc. and International Brotherhood of Teamsters, Local Union No. 25. Cases 1–CA–45915, 1–CA–45978, 1–CA–46121, and 1–CA–46203

December 21, 2011

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY CHAIRMAN PEARCE AND MEMBERS BECKER AND HAYES

Upon charges filed by the Union in Cases 1–CA–45915, 1–CA–45978, 1–CA–46121, 1–CA–46203,¹ the Acting General Counsel issued a consolidated complaint on August 11, 2010, against Vocell Bus Company (the Respondent), alleging that it violated Section 8(a)(3) and (1) of the Act. The Respondent filed an answer.

Subsequently, on November 23 and 24, 2010, the Respondent and the Union entered into an informal settlement agreement, which was approved by the Regional Director for Region 1 on December 7, 2010. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to make whole the employees named in the settlement by making payments as specified in the agreement. In addition, the Respondent agreed to comply with all provisions of the notice, including offering Louis Sainvil 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. The settlement agreement also contained the following default provision:

[T]he Charged Party/Respondent agrees that in case of non-compliance with any of the terms of this Agreement by the Charged Party, including but not limited to failure to make timely installment payments of moneys as set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director may issue a complaint based upon the allegations of the charge(s) in the instant case(s) that were found to have merit, and/or re-issue the complaint previously filed in the instant case(s). Thereafter, the General Counsel may file a

¹ On December 3, 2010, the Acting Regional Director for Region 1 issued an order approving withdrawal in Case 1–CA–46049 and the withdrawal of paragraphs 7 and 13 of the original consolidated complaint.

motion for summary judgment with the Board on the allegations of the just issued complaint concerning the alleged violations of the Act. The Charged Party understands and agrees that it will not file an answer to that complaint, and that the allegations of that complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and the Board may enter findings of fact, conclusions of law, and an order on the allegations of that complaint. On receipt of that motion for summary judgment, the Board shall issue an Order requiring the Charged Party to show cause why that Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order to Show Cause is whether the Charged Party defaulted on the terms of this Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found, including but not limited to the remedial provisions of this Agreement. The parties further agree that the Board's order may be entered thereon *ex parte* and that, upon application by the Board to the appropriate United States Court of Appeals for enforcement of the Board's order, judgment may be entered thereon *ex parte* and without opposition from the Charged Party. Notwithstanding the provisions of this paragraph, no default shall be asserted based on this paragraph following compliance with this Settlement Agreement and notice to the parties that the Regional Office has administratively closed this case.

By letter dated August 17, 2011, Region 1 notified the former counsel for the Respondent that the Region found that the Respondent had not complied with the terms of the settlement agreement and made a demand for cure. Specifically, the Region found that the Respondent failed to meet its obligation to reinstate employee Louis Sainvil to his former job by offering Sainvil work at times and in quantities substantially lower than was assigned him prior to the alleged unfair labor practices in the above cases. The letter stated that the Respondent shall cure its default by: (1) completing the current schedule of payments to Sainvil; (2) immediately paying Sainvil an additional amount of \$6153, representing the average earnings from December 15, 2010 through August 27, 2011 that Sainvil would have been paid had he been reinstated

to his prior position;² and (3) offering Sainvil, in writing, a volume of work at times and in quantity consistent with his assignments prior to his discharge for the remainder of the summer and thereafter. The letter further stated that if the default was not cured within 14 days of receipt of the letter, the Region would reissue the complaint and seek a Board order and court judgment, as provided for in the settlement agreement. Contending that no cure was made within the specific period, the Regional Director issued an Order finding Respondent in default of settlement agreement and notice of intent to issue an amended consolidated complaint on September 12, 2011, which was subsequently corrected on September 13, 2011. Pursuant to the terms of the settlement agreement's default provision, the Regional Director issued an amended consolidated complaint in Cases 1-CA-45915, 1-CA-45978, 1-CA-46121, and 1-CA-46203 on September 23, 2011. The Respondent, in accordance with the terms of the settlement agreement, did not file an answer to the amended complaint.

On September 28, 2011, the Acting General Counsel filed a Motion for Summary Judgment with the Board. Thereafter, on September 29, 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, now acting pro se, filed a response to the Notice to Show Cause on October 11, 2011, wherein it denied that it defaulted on the terms of the settlement agreement. Specifically, it asserted that it reinstated Sainvil to his former position, that Sainvil refused multiple offers of work assignments, and that it was given no explanation for the Regional Director's calculation of the additional backpay due.

On the entire record in this case, the National Labor Relations Board makes the following

Ruling on Motion for Summary Judgment

In his Motion for Summary Judgment, the Acting General Counsel contends that the Respondent offered Sainvil work at times less advantageous and in quantities substantially lower than Sainvil's work conditions prior to the occurrence of the alleged unfair labor practices. In its response to the Notice to Show Cause, the pro se Respondent contends that it reinstated Sainvil to his previ-

ous position, and that it offered Sainvil work on many different occasions but that Sainvil refused the assignments. The Respondent further disputes that it owes Sainvil additional backpay, asserting that the Acting General Counsel has not explained how he calculated the additional backpay of \$6153 that he claims the Respondent owes Sainvil.

We find that summary judgment is not proper in the circumstances of this case. Specifically, the pro se Respondent sufficiently stated the basis for its disagreement with the Acting General Counsel's contention that it has not complied with the terms of the settlement agreement. Thus, a factual dispute exists as to whether the Respondent offered Sainvil work in his previous position that is equivalent in quantity to that which he performed prior to when the unfair labor practices purportedly occurred. If the Respondent's assertion—that it complied with the terms of the settlement agreement—is true, dismissal of the complaint is warranted.

We therefore find that the denials contained in the Respondent's response to the Notice to Show Cause, filed in accordance with the settlement agreement, are sufficient to require a hearing on the question of whether the Respondent fully complied with the terms of the settlement agreement. Accordingly, we deny the Acting General Counsel's Motion for Summary Judgment.

ORDER

It is ordered that the Acting General Counsel's Motion for Summary Judgment is denied.

It is further ordered that this proceeding is remanded to the Regional Director for Region 1 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge, limiting such proceeding to the determination of whether the complaint should be dismissed on the ground that the Respondent fully complied with the terms of the settlement agreement.

Dated, Washington, D.C. December 21, 2011

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² The letter stated that the additional backpay figure assumes that Sainvil would have been assigned work according to the same assumptions accepted by the parties in the original settlement agreement, except that in months where it appears that no driver similarly situated to Sainvil was assigned the number of hours assumed in the settlement, the actual hours of a similarly situated driver were substituted. The backpay figure quoted is net, with interim earnings deducted on a quarterly basis, and daily compound interest through August 27, 2011 included.