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BaySys Technologies, LLC and Dontray L. Tull. Case 05-CA-036314

February 29, 2012

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HAYES
AND GRIFFIN

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On August 2, 2011, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent, BaySys Technologies, LLC, to make whole Dontray L. Tull for any loss of earnings and other benefits, that he may have suffered as a result of his unlawful discharge in violation of Section 8(a)(1) of the Act. On December 1, 2011, the United States Court of Appeals for the Fourth Circuit entered judgment enforcing in full the Board's Order. On December 9, 2011, the Fourth Circuit entered a corrected judgment also enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay and 401(k) matching contributions due Dontray L. Tull, on December 9, 2011, the Regional Director 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. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated January 3, 2012, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by January 10, 2012, a motion for default judgment would be filed. To date, the Respondent has not filed an answer.

On January 11, 2012, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On the same date, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be

¹ 357 NLRB No. 28.

² No. 11-2071. The compliance specification mistakenly states that the United States Court of Appeals for the District of Columbia, rather than the Fourth Circuit, enforced the Board's Order. In addition, the compliance specification, dated the same day as the Fourth Circuit's corrected judgment, does not mention the corrected judgment. We correct these errors.

granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

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

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.

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 we grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay and 401(k) matching contributions due Dontray L. Tull are as stated in the compliance specification, and we will order the Respondent to pay those amounts, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment, and plus the Respondent's share of FICA contributions.

ORDER

The National Labor Relations Board orders that the Respondent, BaySys Technologies, LLC, Accomac, Virginia, its officers, agents, successors, and assigns, shall make whole Dontray L. Tull by paying \$49,320 in backpay and \$2466 in 401(k) matching contributions, plus additional backpay that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment, as 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), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), plus the Respondent's share of FICA contributions, and minus tax withholdings required by Federal and State laws.

Total Amount Due: \$51,786

Dated, Washington, D.C. February 29, 2012

Brian E. Hayes, Member

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD