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Tom Arand, P.C. d/b/a Animal Care Clinic and Equal Justice Center. Case 16–CA–026387

April 6, 2012

SECOND SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND FLYNN

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

On March 31, 2009, the Board issued a Decision and Order,¹ that, among other things, ordered the Respondent to offer reinstatement to discriminatees Wendy Castellanos and James Turpin and make them whole for any loss of earnings and other benefits resulting from their unlawful discharges in violation of Section 8(a)(1) of the Act. On July 22, 2009, the United States Court of Appeals for the Fifth Circuit entered its judgment enforcing the Board's Order.² On June 14, 2010, the Board issued a Supplemental Decision and Order³ that, among other things, ordered the Respondent to make Castellanos and Turpin whole by paying them the total amount of \$28,298.58, plus additional backpay and interest that may accrue in the absence of a valid offer of reinstatement, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws. On March 18, 2011, the United States Court of Appeals for the Fifth Circuit entered its judgment enforcing the Board's Supplemental Decision and Order.⁴ The Respondent made valid offers of reinstatement to Castellanos and Turpin on March 30 and April 1, 2011, respectively.

A further controversy having arisen over the amount of backpay due the discriminatees, on January 18, 2012, the Regional Director issued an amended supplemental compliance specification and notice of hearing alleging the amount of backpay due under the Board's Supplemental 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 amended supplemental compliance specification, the Respondent failed to file an answer.

By letter dated February 10, 2012, the Region advised the Respondent that no answer to the amended supple-

mental compliance specification had been received and that unless an answer was filed by February 17, 2012, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On February 28, 2012, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On February 28, 2012, 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 amended supplemental 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 amended supplemental compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the amended supplemental 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 due the discriminatees is as stated in the amended supplemental compliance specification, and we will order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Tom Arand, P.C. d/b/a Animal Care Clinic, Round Rock, Texas, its officers, agents, successors, and assigns, shall make whole Wendy Castellanos and James Turpin, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB

¹ 353 NLRB No. 128.

² No. 09-60335.

³ 355 NLRB No. 46.

⁴ No. 10-60932.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

1173 (1987), minus tax withholdings required by Federal and State laws:⁵

Wendy Castellanos	\$8,687.28
James Turpin	<u>33,274.49</u>
TOTAL BACKPAY DUE:	\$41,961.77

⁵ 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).

Dated, Washington, D.C. April 6, 2012

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

Terence F. Flynn, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD