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Presidential Maintenance, LLC and David Dowdell,¹
Case 05–CA–036428

August 31, 2012

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

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

On August 9, 2011, the National Labor Relations Board issued a Decision and Order² that, among other things, ordered the Respondent to offer reinstatement to David Dowdell and Denise Booker and make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's discrimination against them in violation of Section 8(a)(1) of the National Labor Relations Act. On October 21, 2011, the United States Court of Appeals for the Fourth Circuit entered its Judgment enforcing the Order of the Board, and ordering the Respondent to take the remedial actions directed by the Board's Order.

A controversy having arisen over the amount of backpay due to David Dowdell, the Regional Director issued a compliance specification and notice of hearing on February 9, 2012, alleging the amounts due under the Board's Order. The compliance specification notified the Respondent that it was required to file a timely answer by March 1, 2012, complying with the Board's Rules and Regulations. Information on the United States Postal Service "Track and Confirm" system shows that the letter was unclaimed as of March 2, 2012.

By letter dated March 5, 2012, the Region's compliance officer advised the Respondent that no answer to the compliance specification had been filed and that unless an answer was filed by March 12, 2012, a motion for default judgment would be filed. Information on the United States Postal Service "Track and Confirm" system shows that this letter was unclaimed as of March 23, 2012.

On March 23, 2012, the Regional Director issued a Compliance Specification and Notice of Rescheduled Hearing (Rescheduled Compliance Specification). The rescheduled compliance specification stated, in pertinent part, that the Respondent was required to file an answer, which had to be received "on or before April 13, 2012 or postmarked on or before April 12, 2012."

¹ Inasmuch as the compliance specification relates exclusively to David Dowdell, we have deleted reference in the caption to the previously consolidated Case 5–CA–36429, involving Denise Booker.

² 357 NLRB No. 42.

On April 2, 2012, the Regional Office received a letter from the Respondent requesting that the Region not issue a motion for default judgment. The letter was signed by Luther Palmer, "Owner/Operator Presidential Maintenance." Palmer essentially complained of the default judgment entered against the Respondent in the underlying case, and indicated that he would be present for the hearing that had been scheduled on the February 9 specification. By letter dated April 3, 2012, the field attorney for Region 5 advised the Respondent of the requirements of an adequate answer and that the Respondent's letter of April 2, 2012, did not constitute an adequate answer.

On April 12, 2012, the Respondent, by telephone, notified the field attorney that it would be unable to postmark its answer on April 12, 2012, but that it would be able to send its answer by facsimile on April 13, 2012.

By electronic mail transmitted on April 12, 2012, the field attorney notified the Respondent that the Region would accept the faxed answer if the following conditions were met: (1) the answer was received by the Region by close of business on April 13, 2012; (2) the original signed answer was sent to the Region by regular mail; and (3) the Respondent served a copy of the answer on the other involved parties.

About April 12, 2012, the Regional Office received a letter from the Respondent referring to the compliance specification and notice of hearing. In the letter, signed by Palmer, the Respondent asserted that Dowdell had taken an inappropriate amount of time in responding to its offer of reinstatement, and that the delay should be considered in determining the amount of backpay due. Palmer agreed that he owed Dowdell "some pay," and stated that he believed that an "amicable solution" could be reached.

By letter dated April 27, 2012, the Region's compliance officer advised the Respondent that it had not filed an adequate answer to the compliance specification, and that absent the filing of an answer to the compliance specification by May 4, 2012, a motion for default judgment would be filed.³ A United Parcel Service proof of

³ The April 27 letter acknowledged the assertion in the Respondent's April 12 letter that the delay in Dowdell's response to the offer of reinstatement should be considered in calculating backpay, and stated that if the Respondent believed the backpay amount should be decreased, supporting documentation was required. The letter stated that the Respondent had made similar claims during the compliance investigation but had failed to provide dated documents establishing that Dowdell failed to respond to the offer in a timely manner. The compliance officer also stated that the evidence in the Region's files established that the delay was the result of circumstances beyond Dowdell's control, specifically that the DMV required him to submit to a background check. (Apparently the Respondent's jobsite was at the Department of Motor Vehicles). Finally, the letter acknowledged Palmer's statement concerning an amicable resolution of the case, and stated that a settlement had previously been discussed and that information was enclosed regarding how the Respondent could obtain approval to pay its obligation on an installment plan.

delivery shows that the letter was delivered on April 30, 2012, and left at the front door.

On May 16, 2012, the Acting General Counsel filed with the Board a Motion to Transfer Proceedings to the Board and for Default Judgment, with exhibits attached. On May 18, 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 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 repeatedly advised of the filing requirements and granted extensions of time, has failed to file an adequate answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an adequate 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. Ac-

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

ORDER

The National Labor Relations Board orders that the Respondent, Presidential Maintenance, LLC, Richmond, Virginia, its officers, agents, successors, and assigns, shall make whole David Dowdell⁴ by paying him \$5075.00 in net backpay and \$55.00 in expenses, plus interest accrued to the date of payment, at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), plus the Respondent's share of FICA contributions, and minus all tax withholdings required by Federal and State laws.

Dated, Washington, D.C. August 31, 2012

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ As set forth in the compliance specification, no backpay remedy is being sought for Denise Booker.