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Wallingford's Favorite Chicken, LLC d/b/a Popeye's Chicken and Biscuits and Krystal Jones. Case 34-CA-084087

November 8, 2012

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 complaint. Upon a charge and an amended charge filed by Krystal Jones, the Charging Party, on June 27 and August 30, 2012, respectively, the Acting General Counsel issued a complaint and notice of hearing on August 31, 2012, against Wallingford's Favorite Chicken, LLC d/b/a Popeye's Chicken and Biscuits, the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On October 3, 2012, the Acting General Counsel filed a Motion for Default Judgment and memorandum in support with the Board. Thereafter, on October 5, 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 are therefore undisputed.

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

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by September 14, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclose that the Region, by fax and email dated September 18, 2012, notified the Respondent that unless an answer were received by September 25, 2012, a motion for default judgment would be filed. In addition, on October 1, 2012, at the Respondent's request, the Acting General Counsel faxed the Respondent an additional copy of the complaint and no-

tice of hearing. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been engaged in the preparation and retail sale of food, and has a facility located in Wallingford, Connecticut (the Wallingford facility). During the 12-month period ending July 31, 2012, the Respondent, in conducting its operations described above, purchased and received at the Wallingford facility goods valued in excess of \$50,000 directly from points located outside the State of Connecticut.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act, and agents of the Respondent with the meaning of Section 2(13) of the Act:

Miguel Rios	Owner/Manager
Elizabeth Rosario ¹	General Manager, Wallingford Facility

At all material times, Krystal Jones and Sheena Woodall have been employees of the Respondent at the Wallingford facility.

About June 15, 2012, Jones was informed by Rosario that she was discharged for work related reasons, and shortly thereafter she was told by Rosario that she was not discharged and thereafter, continued working for the Respondent at the Wallingford facility.

About June 15, 2012, Woodall learned through a co-worker that she had been discharged from the Wallingford facility for work-related reasons.

About June 16, 2012, Woodall contacted the Respondent by telephone to complain about her discharge as well as other matters involving the terms and conditions of the Respondent's employees at the Wallingford facility, including Rosario's conduct towards employees at the Wallingford facility.

¹ Rosario's name is misspelled in the complaint. We correct the error.

About June 16, 2012, the Respondent, through Rosario, by telephone, informed Jones that Woodall and Jones were discharged because of Woodall's complaint described above.

About June 16, 2012, the Respondent discharged Jones.

About June 16, 2012, the Respondent refused to re-employ Woodall.

The Respondent discharged Jones and refused to re-employ Woodall because the Respondent mistakenly believed that Jones and Woodall had engaged in protected concerted activities, and to prevent Jones and Woodall from engaging in similar conduct in the future, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been interfering with, restraining, and coercing employees in exercise of the rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging Krystal Jones and refusing to re-employ Sheena Woodall, because the Respondent mistakenly believed that they had engaged in protected concerted activities and to prevent them from engaging in such activities in the future, and to discourage employees from engaging in these activities, we shall order the Respondent to offer Jones and Woodall full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed and to make Jones and Woodall whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful actions against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest 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). The Respondent shall also be required to remove from its files any reference to the unlawful discharge of Jones and the unlawful refusal to re-employ Woodall, and to notify them in writing that this has been done and that the discharge and

refusal to rehire will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Wallingford's Favorite Chicken, LLC d/b/a Popeye's Chicken and Biscuits, Wallingford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that they are discharged because employees complained to the Respondent about terms and conditions of employment.

(b) Discharging or refusing to re-employ employees because the Respondent believes they have engaged in protected concerted activities and to prevent them from engaging in similar conduct in the future, and to discourage employees from engaging in these activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Krystal Jones and Sheena Woodall full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Krystal Jones and Sheena Woodall whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Krystal Jones and the unlawful refusal to re-employ Sheena Woodall, and within 3 days thereafter, notify them in writing that this has been done and that the unlawful discrimination will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Wallingford, Connecticut, copies of the

attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.³ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 16, 2012.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 8, 2012

Mark Gaston Pearce, Chairman

Brian E. Hayes, Member

Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT inform you that you are discharged because employees complained to us about terms and conditions of employment.

WE WILL NOT discharge or refuse to re-employ you because we believe you have engaged in protected concerted activities, or to prevent you from engaging in similar conduct in the future, or to discourage other employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of this Order, offer Krystal Jones and Sheena Woodall full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Krystal Jones and Sheena Woodall whole for any loss of earnings and other benefits suffered as a result of our discrimination against them, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Krystal Jones and the unlawful refusal to re-employ Sheena Woodall, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful discrimination will not be used against them in any way.

WALLINGFORD'S FAVORITE CHICKEN, LLC
D/B/A POPEYE'S CHICKEN AND BISCUITS

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

³ For the reasons stated in his dissenting opinion decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.