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**Mohawk Flooring and Janitorial Service, Inc. and Maurice Barnwell and Juan Carlos Hernandez Navarrete.** Case 11–CA–022379

November 14, 2012

**SUPPLEMENTAL DECISION AND ORDER**

**BY CHAIRMAN PEARCE AND MEMBERS HAYES  
AND GRIFFIN**

The Acting General Counsel seeks default judgment in this case pursuant to the terms of a Stipulation and Waiver.

On April 28, 2010, the Board issued an unpublished Order in this proceeding adopting, in the absence of exceptions, an administrative law judge's decision. Among other things, the Order required the Respondent, Mohawk Flooring and Janitorial Service, Inc., to make whole discriminatee Juan Carlos Hernandez Navarrete for any loss of earnings and other benefits suffered as a result of the Respondent's suspending and discharging him in violation of Section 8(a)(1) of the Act. On April 22, 2011, the United States Court of Appeals for the Fourth Circuit enforced in full the Board's Order.<sup>1</sup>

Subsequently, the Respondents entered into a Stipulation and Waiver approved by the Acting Regional Director for Region 11 on December 7, 2011, setting forth the amount of backpay due and an installment payment plan. Although not named as a party in the original unfair labor practice litigation, Respondent Maurice Barnwell, the president and owner of Respondent Mohawk Flooring and Janitorial Service, Inc., also agreed under the terms of the Stipulation and Waiver to be held individually liable for the amounts due. The Stipulation and Waiver required the Respondents to make employee Juan Carlos Hernandez Navarrete whole by paying specified amounts monthly from December 2011 through October 2012 for a total sum of \$6000.

The Stipulation and Waiver contained the following clause concerning noncompliance by the Respondents with the agreed-upon terms:

In the event of Respondents' noncompliance with the terms of this Stipulation and Waiver, including but not limited to failure to make timely payment of the money in the form set forth above, and after 14 days notice from the Regional Director of the National Labor Relations Board of such noncompliance without remedy by Respondent, the Regional Director may issue a Com-

pliance Specification reflecting that Respondent Barnwell is individually liable and reflecting the full remedy due, including but not limited to backpay and interest owing pursuant to the terms of this Stipulation and Waiver, plus additional interest. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of said Compliance Specification. In such an event, the allegations of the Compliance Specification may be deemed to be true by the Board, Respondents 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 the Compliance Specification. On receipt of said motion for summary judgment, the Board shall issue an Order requiring Respondents to show cause why said 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 Respondents defaulted upon the terms of this Compliance Stipulation. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Compliance Specification to be true and make findings of fact and conclusions of law consistent with those allegations adverse to Respondents, on all issues raised by the pleadings. The Board may then issue an Order providing a backpay remedy in accordance with the allegations of the Compliance Specification. The Board's Order may be entered thereon ex parte and, 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 Respondents.

The Respondents made the payments due through May 2012 but failed to timely remit the June payment. By letter dated July 18, 2012, the Region notified the Respondents that they had not complied with the terms of the Stipulation and Waiver with respect to the timely payment of backpay and warned that their failure to comply would result in the issuance of a compliance specification and the filing of a motion for summary judgment. By email dated July 27, 2012, the Respondents, by Maurice Barnwell, admitted their noncompliance, and by email dated August 9, stated that they had sent to the Region \$50 towards a \$1500 balance and would try to "catch up . . . , I will send something each month." By emails dated July 31 and August 9, 2012, the Region's compliance officer asked the Respondents about their ability and intent to pay the remaining scheduled installment payments. The Region extended the deadline for payment but again warned the Respondents that if they did not comply with the installment payment

<sup>1</sup> Case No. 11-1245.

schedule by paying \$600 to the Region by August 23, 2012, the Region would issue a compliance specification and the Acting General Counsel would file a motion for summary judgment.

The Respondents failed to meet and satisfy their obligations under the installment payment schedule as modified by the Region's extension of time. On September 12, 2012, the Acting Regional Director issued a compliance specification pursuant to the terms of the noncompliance provisions of the Stipulation and Waiver.

On September 28, 2012, the Region received from the Respondents another \$50 payment. By email dated October 1, 2012, the Region inquired whether the Respondents would be able to make additional payments on the remaining \$1400 owed. The Region received no response.

On October 2, 2012, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On October 3, 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 Respondents 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

According to the uncontroverted allegations in the motion for default judgment, the Respondents have failed to comply with the terms of the Stipulation and Waiver with respect to the timely payment of backpay in scheduled installments. Consequently, pursuant to the noncompliance provisions of the Stipulation and Waiver set forth above, we find that all of the allegations in the compliance specification are true.<sup>2</sup> Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board concludes that the net backpay due discriminatee Juan Carlos Hernandez

Navarrete is as stated in the compliance specification as modified by the Motion for Default Judgment and we will order the Respondents to pay him that amount, plus interest accrued to the date of payment.<sup>3</sup>

#### ORDER

The National Labor Relations Board orders that the Respondents, Mohawk Flooring and Janitorial Service, Inc. and Maurice Barnwell, Davie County, North Carolina, their officers, agents, successors, and assigns, shall make whole Juan Carlos Hernandez Navarrete, by paying him the amount of \$1400, 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), minus tax withholdings required by Federal and State laws.

Dated, Washington, D.C. November 14, 2012

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Mark Gaston Pearce, Chairman

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Brian E. Hayes, Member

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Richard F. Griffin, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>3</sup> Although the compliance specification alleges that the amount of backpay due is \$1450, the Acting General Counsel's uncontroverted motion states that the Respondents remitted \$50 following the compliance specification's issuance, and therefore the total amount of backpay due is \$1400.

<sup>2</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).