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Lintrac Services, Inc. and International Brotherhood of Teamsters Local 710. Case 13–CA–091818

July 3, 2013

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN
AND BLOCK

The Acting General Counsel seeks default judgment in this case on the ground that the Respondent, Lintrac Services, Inc., failed to file an answer to the compliance specification.

On April 17, 2013, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole discriminatees Nathanael Hernandez and Demetrious Shaw for any loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.²

A controversy having arisen over the amount of backpay due Hernandez and Shaw, on April 4, 2013, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due, and notifying the Respondent that an answer should be filed by April 25, 2013, 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.³

By certified letter dated April 29, 2013, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by May 6, 2013, a motion for default judgment would be filed.

On May 28, 2013, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On May 29, 2013, the Board issued an

¹ 359 NLRB No. 94.

² In accordance with *Latino Express*, 359 NLRB No. 44 (2012), the Board further ordered the Respondent to compensate Shaw and Hernandez for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters for both discriminatees.

³ The Acting General Counsel's Motion for Default Judgment and attached exhibits indicate that the compliance specification was served on an officer of the Respondent, Thomas Blackwell, by certified mail and was returned to sender marked "refused." It is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003), and cases cited there.

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 the compliance specification are therefore undisputed.

Ruling on 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 due discriminatees Nathanael Hernandez and Demetrious Shaw is as stated in the compliance specification and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Lintrac Services, Inc., Northlake, Illinois, its officers, agents, successors, and assigns, shall make whole Nathanael Hernandez and Demetrious Shaw by paying Hernandez the amount of \$18,281 and Shaw the amount of \$12,491 as set forth in the compliance specification, with 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.⁴

Total amount due: \$30,772.

Dated, Washington, D.C. July 3, 2013

⁴ As stated in the compliance specification, the Respondent's liability will continue to accrue until the backpay period is tolled or the Respondent makes final restitution sufficient to discharge its backpay obligations.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

