Federated Publications, Inc. d/b/a The State Journal *and* Teamsters Local Union No. 580, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-11073

September 26, 1978

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On June 2, 1975, the National Labor Relations Board issued its Decision and Order in the above-entitled proceeding,[1] finding, *inter alia*, that Respondent had violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by discharging employee Ralph Martin. Accordingly, the Board ordered Respondent to make Ralph Martin whole for any loss of earnings suffered by reason of the discrimination against him.[2]

Thereafter, on March 16, 1978, the General Counsel, the Charging Party, and Respondent entered into a stipulation in which they agreed to certain facts relevant to the issues in this proceeding. They also agreed to waive a hearing before an Administrative Law Judge and the presentation of any evidence other than that contained in the stipulation and the report and notice of hearing. By order dated July 7, 1978, the Board approved the stipulation and transferred the proceeding to the Board. Thereafter, the General Counsel and Respondent filed briefs with the Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this proceeding, including the parties' briefs, and hereby makes the following findings and conclusions.

The relevant facts stipulated to by the parties are as follows. Pursuant to the Board's Order, *supra,* Ralph Martin was entitled to receive $1,147.10 as backpay for the period April 11, 1974, to June 28, 1974. Respondent paid the above-described backpay to Carol Martin on August 18, 1977. Carol Martin has not turned over the money received from Respondent to Ralph Martin.

The parties also stipulated that on March 10, 1974, Ralph Martin made an oral assignment of his earnings from Respondent to Carol Martin. On July 28, 1974, Ralph Martin canceled the above-described assignment. Both the oral assignment and the cancellation are reflected in memorandums, dated March 13, 1974, and July 30, 1974, respectively, form Respondent's assistant circulation manager to Respondent's business office. Ralph and Carol Martin were divorced on or about February 26, 1975.

The sole issue now before the Board is whether Respondent's payment to Carol Martin constitutes compliance with the Board's Order to make Ralph Martin whole for any loss of pay suffered by reason of the discrimination against him.

The General Counsel contends that the backpay must be paid directly to Ralph Martin to satisfy the Board's Order. Thus, the General Counsel contends that it was not Respondent's prerogative to decide who, if anyone, other than Ralph Martin was entitled to the money. In support of this contention, the General Counsel relied on cases that hold that a backpay award is not subject to third-party claims prior to disbursement.[3] Furthermore, the General Counsel noted that the wage assignment (in effect during the period covered by the backpay award) had been canceled by Ralph Martin long before Respondent made the payment to Carol Martin. Finally, the General Counsel contends that Respondent has the burden of its mispayment and requests that the Board order Respondent to pay to Ralph Martin the sum of the backpay owed to him.

Respondent contends that the payment to Carol Martin pursuant to the assignment of earnings by Ralph Martin satisfied its obligation under the Board's Order. Thus, Respondent contends that Ralph Martin would never have received the money because of the wage assignment. In such circumstances, Respondent contends that it acted in good faith in making the payment to Carol Martin and that such payment was consistent with the objectives of the Board's Order. Finally, Respondent contends that to now require payment to Ralph Martin would be to penalize Respondent and would be in direct conflict with the remedial purposes of the Act.

It is well settled that the Act neither confers nor purports to confer private rights but exists to enforce the public interest in preventing and deterring unfair labor practices. Thus, a backpay remedy is not a private right but is a public right granted to vindicate the policies of the Act.[4] In this connection, the Board has refused to permit an employer to reduce the amount of backpay by the amount of its private claims.[5] In addition, the Board has found that employees may not waive or settle backpay claims with-

[1] 218 NLRB 151.

[2] On November 10, 1976, the United States Court of Appeals for the Sixth Circuit issued its Order enforcing the Board's Decision and Order. 544 F.2d 908 (1976), cert. denied 430 U.S. 967 (1977).

[3] *N.L.R.B.* v. *Stackpole Carbon Company*, 128 F.2d 188 (C.A. 3, 1942); *N.L.R.B.* v. *Sunshine Mining Company*, 125 F.2d 757 (C.A. 9, 1942).

[4] *Truck Drivers, Oil Drivers, Filling Station and Platform Workers' Union Local 705 (Randolph Paper Company)*, 227 NLRB 694 (1977), and the cases cited therein.

[5] *Ibid.*

out approval of the Board, nor are such awards subject to attachment or garnishment.[6] The teaching of these decisions is that a discriminatee has no property right in an award pending his actual receipt of it.[7]

In the instant case, it would foster neither the public interest in deterring unfair labor practices nor the public interest in fashioning a remedy designed to make whole an employee for loss of pay suffered by reason of discrimination to consider payment to Carol Martin as having satisfied the backpay remedy to Ralph Martin. Indeed, Respondent's claim based on the wage assignment bears no relationship to the unfair labor practices which the Board's Order is designed to remedy. Hence, as the General Counsel contends, it was not within Respondent's prerogative to decide who, if anyone, other than Ralph Martin was entitled to receive the award. It follows, therefore, that Respondent must bear the burden which was caused by its failure to comply with the Board's Order. Clearly, an order requiring Respondent to pay Ralph Martin the backpay due is not a penalty but consistent with the remedial purposes of the Act.

Accordingly, we conclude that Respondent's payment to Carol Martin does not constitute compliance with the Board's Order to make Ralph Martin whole for any loss of earnings that he may have suffered as a result of the discrimination. Therefore, we shall require Respondent to pay to Ralph Martin the full amount of backpay as stipulated by the parties.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Federated Publications, Inc., d/b/a The State Journal, Lansing, Michigan, its officers, agents, successors, and assigns, shall pay to Ralph Martin the backpay sum of $1,147.10, together with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[8]

[6] *Id.* at fn. 6.

[7] See *N.L.R.B.* v. *Stackpole Carbon, supra* at 192, where the Court of Appeals for the Third Circuit held that "The Board's order cannot be deemed to be complied with by the employer until the employee to whom the award is due has received his money." See also *N.L.R.B.* v. *Sunshine Mining Company, supra* at 761, where the Court of Appeals for the Ninth Circuit held that until the time that the discriminatee actually receives the backpay award "the subject matter remains exclusively under the administrative authority of the Board and in control of the court. . . ."

[8] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).