Covington Furniture Mfg. Corp. *and* Local 282, United Furniture Workers of America, AFL–CIO. Case 26–CA–4829

September 30, 1977

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On June 28, 1974, the National Labor Relations Board issued its Decision and Order in this proceeding, adopting the findings and conclusions of the Administrative Law Judge as contained in his Decision of March 27, 1974, directing Respondent Covington Furniture Manufacturing Corp., herein called Covington, its officers, agents, successors, and assigns, to, *inter alia,* make whole certain of its employees for loss of pay they may have suffered as a result of Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.[1] On May 22, 1975, the United States Court of Appeals for the Sixth Circuit entered its decree,[2] enforcing in full the backpay provisions of the Board's Order herein. On December 23, 1975, the National Labor Relations Board authorized the institution of civil contempt against Respondent for noncompliance with the remedial provisions of the Board's Order, as enforced. On January 31, 1977, the Sixth Circuit issued its order,[3] approving a stipulation of settlement agreement of civil contempt proceedings entered into by the parties on January 17, 1977.

A controversy having arisen as to the amount of backpay due the 11 discriminatees under the terms of the Board's Order, the Regional Director for Region 26, on May 19, 1977, issued and duly served on the Respondent a backpay specification and notice of hearing, alleging the amounts of backpay due.

Thereafter, on June 9, 1977, the General Counsel, by counsel, filed with the Board in Washington, D.C., a Motion for Summary Judgment, with exhibits attached, alleging that Respondent has failed to file an answer to the backpay specification as required by Section 102.54(a) of the National Labor Relations Board Rules and Regulations, Series 8, as amended.

On June 17, 1977, Respondent filed an answer to the General Counsel's Motion for Summary Judgment, alleging that Respondent's answer to the backpay specification was timely filed by depositing it in the United States mail on June 3, 1977. On June 29, 1977, the General Counsel filed a response to Respondent's answer to the Motion for Summary Judgment, alleging that by Respondent's own admission its answer to the backpay specification was untimely since it was not mailed until the date on which it was due in the Regional Office, and further that such answer, allegedly mailed in the same city as the Regional Office on June 3, 1977, was not received by that office until June 10, 1977. The General Counsel also alleged that Respondent's answer to the backpay specification was insufficient, since it generally denied the allegations of each paragraph of the backpay specification, and did not, as required by Section 102.54(b) of the Board's Rules and Regulations, answer the backpay specification allegations with the specificity required. Also on June 29, 1977, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted.

On July 11, 1977, Respondent filed with the Board an answer to the Board's Notice To Show Cause, alleging that Respondent's answer to the backpay specification was timely and sufficiently specific to meet the requirements of Section 102.54(b) of the Board's Rules and Regulations, as amended. Respondent also amended its answer to the backpay specification on July 11, 1977. The General Counsel filed a response to the Board's Notice To Show Cause on July 11, 1977. On July 19, 1977, the General Counsel moved to strike Respondent's amended answer to the backpay specification for failure to comply with the requirement of Section 102.54(b) of the Board's Rules and Regulations.

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.

Upon the entire record in this proceeding, the Board makes the following findings:

Section 102.54 of the Board's Rules and Regulations provides, in pertinent part, as follows:

> (a) . . . The respondent shall within 15 days from the service of specification, if any, file an answer thereto . . . .
>
> (c) . . . If the respondent fails to file any 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 notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

[1] 212 NLRB 214.

[2] 514 F.2d 995.

[3] Not published.

The specification issued on May 19, 1977, and duly served on Respondent, specifically states that the Respondent shall, within 15 days from the date of the specification (June 3, 1977), file an answer to the specification in the manner required by the Board's Rules and Regulations, and, if the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them. In his motion, counsel for the General Counsel alleges (1) that no timely answer was received; (2) that Respondent's original answer, received on June 10, did not comport with Section 102.54(b) of the Board's Rules and Regulations in that it generally denied the individual allegations and therefore lacked the specificity required.

In Respondent's answer to the Motion for Summary Judgment and also in its answer to the Board's Notice To Show Cause it admits that it did not timely file the answer to the backpay specification, by its averrment that its answer was not mailed until 5:30 p.m., June 3, 1977, the last day of the 15-day time period allowed under Section 102.54(a). The Board's Rules and Regulations, Section 102.114(b), specifically provide that:

> When the act or any of these rules require the filing of a motion, brief, exception, or other paper in any proceeding, such document *must be received* by the Board or the officer or agent designated to receive such matter *before the close of business of the last day of the time limit,* if any, for such filing or extension of time that may have been granted. [Emphasis supplied.]

Thus, Respondent's answer was untimely by its own admission, since it was mailed, not received, on the last day of the 15-day time period allowed.

Accordingly, we are persuaded, as alleged by the General Counsel's Motion for Summary Judgment, that Respondent's answer to the backpay specifications was untimely and therefore need not determine whether it was insufficient under Section 102.54 of the Board's Rules and Regulations, as amended,[4] and so find. We therefore find that the allegations of the specification are deemed to be admitted as true and that the net amount of backpay due the discriminatees listed therein is as stated in the computation of the specification. We hereby order payment thereof.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Covington Furniture Mfg. Corp., Covington, Tennessee, its officers, agents, successors, and assigns, shall make whole the persons listed below by paying them the amounts set forth adjacent to their names, plus interest accrued at the rate to be computed in the manner set forth in *Isis Plumbing & Heating Co.,* 138 NLRB 716 (1962), until payment of all backpay due, less tax withholdings required by Federal and state law:

Evelyn Byrd	$1,883
Mattie Taylor	2,226
Veola Taylor	7,158
Estelle Middlebrook	1,243
Carolyn Chaney	8,165
Dorothy Dowell	1,266
Iola Echols	693
Helen Harwell	2,510
Gwen Hoffman	7,910
Jerelene Gooden	2,143
Lizzie Williams	2,362

[4] As we find the Respondent's answer untimely, so, too, is its amendment to that answer. Accordingly, we grant the General Counsel's motion to strike Respondent's amended answer.