

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BAY SYS TECHNOLOGIES, LLC

and

Case 05-CA-036314

DONTRAY L. TULL, AN INDIVIDUAL

MOTION TO TRANSFER PROCEEDINGS TO THE
BOARD AND MOTION FOR DEFAULT JUDGMENT

Pursuant to Sections 102.24 and 102.50 of the National Labor Relations Board Rules and Regulations and Statement of Standard Procedures, Series 8, as amended, herein called the Rules, Counsel for the Acting General Counsel respectfully moves that the National Labor Relations Board, herein referred to as the Board: (1) transfer this case and continue proceedings before the Board; (2) deem the allegations set forth in the Compliance Specification and Notice of Hearing in Case 05-CA-036314, issued on December 9, 2011, as admitted to be true without taking evidence supporting the allegations in the Compliance Specification; and (3) grant Default Judgment and issue a Decision and Order herein on the basis of the following:

1. On December 9, 2011, the Regional Director for Region 5 issued a Compliance Specification and Notice of Hearing, herein called the Compliance Specification, in the above-captioned matter. A copy of the Compliance Specification, affidavit of service, and proof of receipt are attached as Exhibits 1, 2, and 3.

2. The Compliance Specification states, in pertinent part, that Respondent shall file an answer to the Compliance Specification by December 30, 2011, and absent such action, all the allegations in the Compliance Specification may be deemed to be true and may be so

found by the Board. Respondent did not file an answer to the Compliance Specification by December 30, 2011.

3. By letter dated January 3, 2012, Respondent was advised by the Region 5 Compliance Officer that Respondent had not filed an answer to the Compliance Specification, and that absent the filing of an answer to the Compliance Specification by January 10, 2012, a Motion for Default Judgment would be filed. As of today, January 11, 2012, no answer has been filed and Respondent has given no satisfactory reason for its failure to do so. A copy of the January 3, 2012 letter to Respondent and proof of receipt are attached as Exhibits 4 and 5¹.

WHEREFORE, Counsel for the Acting General Counsel respectfully requests, in accordance with Section 102.24 and 102.50 of the Rules that the Board deem all matters alleged in the Compliance Specification to be true, and that they be so found, and that a Decision and Order be issued containing findings of fact, conclusions of law, and an appropriate remedy for the violations herein.

Dated at Baltimore, Maryland, this 11th day of January 2012.

Respectfully submitted,

/s/ Patrick J. Cullen

Patrick J. Cullen
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, MD 21202-4061
patrick.cullen@nlrb.gov

¹ On Exhibit 4, the certified mail tracking number was inadvertently transposed as “0710” instead of “7010.”

STATEMENT OF SERVICE

I hereby certify that on January 11, 2012, copies of the Counsel for the Acting General Counsel's Motion to Transfer Proceedings to the Board and Motion for Default Judgment were served by e-mail on the following parties:

Markus D. Ebert, Esq.
Bay SYS International
markus.e@baysys.aero

Dontray L. Tull
dthealthy@verizon.net

/s/ Patrick J. Cullen

Patrick J. Cullen
Counsel for the Acting General Counsel
National Labor Relations Board, Region 5

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

BAYSYS TECHNOLOGIES, LLC

and

Cases 5-CA-36314

DONTRAY L. TULL

COMPLIANCE SPECIFICATION AND
NOTICE OF HEARING

On August 2, 2011, the National Labor Relations Board, herein called the Board, issued its Order, 357 NLRB No. 28, finding that BaySys Technologies, LLC., herein referred to as Respondent, had engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act. The Board ordered Respondent, inter alia:

- A. To offer Dontray L. Tull, herein called the discriminatee, full reinstatement to his former position.
- B. To make Dontray L. Tull whole, with interest, for any monetary losses suffered as the result of the discrimination against him.
- C. To remove from its files any reference to the unlawful discharge of Dontray L. Tull and notify him in writing that this has been done and that the discharge will not be used against him in any way.
- D. To post the Notice to Employees.

The United States Court of Appeals for the District of Columbia, on December 1, 2011, entered its Judgment enforcing in full the Order of the Board, and ordering Respondent to take the remedial actions directed by the Board's Order.

Respondent has taken limited steps to comply with the Order by posting the Notice to Employees, and by removing from its files any reference to the unlawful discharge of Dontray L. Tull and notifying him in writing that this has been done and that the discharge will not be used against him in any way. Respondent has neither made a valid offer of reinstatement to the discriminatee nor made him whole for monetary losses suffered as a result of the discrimination against him.

Controversy having arisen over the amounts of backpay due under the terms of the Board's Order, and controversy having arisen over Respondent's obligation to reinstate the discriminatee, and in order to liquidate the current amount of backpay due Dontray L. Tull, the undersigned Regional Director of the National Labor Relations Board for the Fifth Region, pursuant to the authority duly conferred upon him by the Board, hereby issues this Compliance Specification and alleges the following:

1. The backpay period for Dontray L. Tull begins on August 19, 2010 and continues until Respondent makes a valid offer of reinstatement. As no such offer has been tendered, the backpay period continues.
2. An appropriate measure of gross backpay for the discriminatee to date is the amount he would have earned if continually employed by Respondent during the backpay period to date.

3. (a) The calendar quarter gross backpay the discriminatee would have earned is defined as the sum of calendar quarter regular earnings and overtime earnings and is set forth in Exhibit A.

(b) Regular earnings are computed by multiplying the number of regular hours the discriminatee would have worked in the calendar quarter by the appropriate wage rate, as set forth in paragraph 3(f).

(c) The discriminatee would not have worked any overtime hours during the backpay period to date.

(d) Regular hours are based on the average regular hours worked per quarter by the discriminatee prior to his discharge.

(e) The average regular hours worked per quarter by the discriminatee is 520.

(f) The appropriate hourly wage rate for the discriminatee is \$22.50 per hour for the period August 19, 2010 to September 30, 2010. The appropriate hourly wage rate for the discriminatee is \$18.00 per hour for the period from October 1, 2010 to present.

4. Calendar quarter interim earnings are the wages the discriminatee received from interim employers during the backpay period, computed on a quarterly basis. The discriminatee had no interim earnings during the backpay period.

5. The calendar quarter net backpay is the difference between the calendar quarter gross backpay and calendar quarter net interim earnings. The calendar quarter net backpay due is set forth in Exhibit A.

6. (a) An appropriate measure of employer matching 401(k) plan contributions due on behalf of the discriminatee to date is the amount Respondent would have contributed to

the discriminatee's account if he had been continually employed by Respondent during the backpay period to date.

(b) The amount of matching contributions the Respondent would have made during the backpay period to date is 6 percent of regular time wages earned.

(c) The calendar quarter 401(k) contributions the Respondent would have made is set forth in Exhibit A.

SUMMARY

Summarizing the facts and calculations specified above and on Exhibit A, the obligation of Respondent to make whole the discriminatee under the Board's Order for the period August 19, 2010 to the date of issuance of this Compliance Specification and Notice of Hearing will be discharged by the payment to Dontray L. Tull of \$49,320 in backpay and \$2,466 in 401(k) matching contributions as described in Exhibit A, plus interest to date of payment and the Employer's share of FICA contributions. Respondent's obligation to offer reinstatement to Dontray L. Tull will be discharged by its tender to him of a valid offer of reinstatement.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be received by this office on or before December 30, 2011, or postmarked on or before December 29, 2011. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov> , click on E-Gov, then click on the E-Filing link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of

gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE that commencing at 10:00 a.m., E.D.T., on the 8th day of February 2012, and on consecutive days thereafter, a hearing will be conducted in Old Courtroom 1, 2nd Floor, State Circuit Court, 101 North Division Street, Salisbury, Maryland, before the same duly designated Administrative Law Judge of the National Labor Relations Board who is hearing the unfair labor practice allegations on this case on the allegations set forth in the above Compliance Specification and Notice of Hearing, at which time and place you will have the right to appear in person, or otherwise, give testimony. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 9th day of December 2011.



Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, MD 21202

EXHIBIT A
TOTAL BACKPAY OWED TO
DONTRAY L. TULL
August 19, 2010 to December 9, 2011

	Regular Hours	Gross Backpay	Calender Quarter Interim Earnings	Calender Quarter Net Backpay	401(k) Matching Contribution
3Q 2010	208	\$ 4,680.00		\$ 4,680.00	\$ 234.00
4Q 2010	480	\$ 8,640.00		\$ 8,640.00	\$ 432.00
1Q 2011	520	\$ 9,360.00		\$ 9,360.00	\$ 468.00
2Q 2011	520	\$ 9,360.00		\$ 9,360.00	\$ 468.00
3Q 2011	520	\$ 9,360.00		\$ 9,360.00	\$ 468.00
4Q 2011	440	\$ 7,920.00		\$ 7,920.00	\$ 396.00
		<u>\$49,320.00</u>		<u>\$ 49,320.00</u>	<u>\$ 2,466.00</u>

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

MOTION FOR DEFAULT JUDGMENT EXHIBIT 1

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case: 05-CA-36314

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the General Counsel, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the General Counsel and with the Chief Administrative Law Judge in Washington, D.C.
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; *and*
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

COUNSEL FOR RESPONDENT:

MARKUS D. EBERT, ESQ.
BAYSYS INTERNATIONAL
CORPORATE FINANCE
18321 PARKWAY
MELFA, VA 23410

RESPONDENT:

MR. STEVEN WALTON
BAYSYS TECHNOLOGIES, LLC
24233 LANKFORD HIGHWAY
ACCOMAC, VA 23301

COUNSEL FOR CHARGING PARTY:

CHARGING PARTY:

MR. DONTRAY L. TULL
20774 BAYSIDE ROAD
ONANCOCK, VA 23417

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BAYSYS TECHNOLOGIES, LLC

and

DONTRAY L. TULL, AN INDIVIDUAL

Case 05-CA-36314

DATE OF MAILING 12/09/2011

AFFIDAVIT OF SERVICE OF Compliance Specification and Notice of Hearing

I, the undersigned employee of the National Labor Relations Board, certify that on the date indicated above I served the above-entitled document(s) by post-paid *Cert.* mail upon the following persons, addressed to them at the following addresses:

7010 0780 0000 3626 2859

MARKUS D. EBERT, ESQ.
BAYSYS INTERNATIONAL
CORPORATE FINANCE
18321 PARKWAY
MELFA, VA 23410

MR. STEVEN WALTON
BAYSYS TECHNOLOGIES, LLC
24233 LANKFORD HIGHWAY
ACCOMAC, VA 23301

MR. DONTRAY L. TULL
20774 BAYSIDE ROAD
ONANCOCK, VA 23417

12/9/2011

Date

William Seabo

Print Name

Title

William Seabo

Signature



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United States Government

NATIONAL LABOR RELATIONS BOARD

Region 5

103 South Gay Street - 8th Floor

Baltimore, MD 21202 - 4061

Telephone: (410) 962-2880

Facsimile: (410) 962-2198

January 3, 2012

Markus D. Ebert, Esq.
Baysys Technologies LLC
24233 Lankford Hwy
Accomac, VA 23301-1330

Re: Baysys Technologies, LLC
Case: 5-CA-36314

Dear Mr. Ebert:

As you are aware from the Compliance Specification in the above-captioned case, and pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, a Respondent in a case before the National Labor Relations Board shall file with the Regional Director an original and four (4) copies of an answer to the Compliance Specification within twenty-one (21) days from the service thereof. Respondent's Answer was due in this office by close of business on December 30, 2011. The Compliance Specification also notified you that Respondent shall serve a copy of its answer on each of the other parties.

To date, this office has not received an Answer from Respondent. Please be advised that if an Answer is not received in this office by close of business on Tuesday, January 10, 2012, this office will file a Motion for Default Judgment pursuant to Sections 102.23(a), (b) and 102.50 of the Board's Rules and Regulations, asking the Board to find the allegations in the Compliance Specification to be admitted as true. Enclosed is a courtesy copy of the Compliance Specification and Notice of Consolidated Hearing, previously served on Respondent.

If you have any questions or wish to discuss this matter further, please do not hesitate to call me at (410) 962-2880.

Very truly yours,

Heather Keough
Compliance Officer

Enclosure

Certified Mail No. 0710 0780 0000 3626 2873

cc: See page 2

MOTION FOR DEFAULT JUDGMENT EXHIBIT 4

cc:

DONTRAY L. TULL
20774 BAYSIDE RD
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