

Dickens Inc. and Wenqing Lin. Cases 29–CA–029080, 29–CA–029198, and 29–CA–029254

September 27, 2012

SECOND 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, Dickens Inc., has failed to file an answer to the amended compliance specification.

On May 26, 2011, the National Labor Relations Board issued a Supplemental Decision and Order,¹ that, among other things, directed the Respondent to make whole discriminatees Wenqing Lin and Miaona Wu for any loss of earnings and other benefits they suffered as a result of the Respondent's unlawful conduct in violation of Section 8(a)(4) and (1) of the Act. On September 30, 2011, the United States Court of Appeals for the Second Circuit entered its judgment enforcing, in full, the Board's Order.²

A controversy having arisen over the amount of moneys due the discriminatees, on May 30, 2012, the Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order. On June 15, 2012, the Respondent filed a purported answer. By letter dated June 18, 2012, counsel for the Acting General Counsel advised the Respondent that the document filed on June 15, 2012, did not meet the answer requirements set forth in Section 102.56(b) of the Board's Rules and Regulations. The Respondent was further advised that if it did not file a sufficient answer by June 25, 2012, a motion for default judgment may be filed.

On June 21, 2012, the Respondent filed a purported revised answer to the compliance specification.³ On July

9, 2012, the Regional Director issued an amended compliance specification and notice of hearing. The Respondent failed to file any answer to the amended compliance specification.

By letter dated July 31, 2012, counsel for the Acting General Counsel advised the Respondent that no answer to the amended compliance specification had been filed, and that if an answer was not received on or before August 7, 2012, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On August 8, 2012, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On August 15, 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 Respondent again filed no response. The allegations in the motion and in the amended compliance specification 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

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 compliance specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the compliance specification and without further notice to the respondent, find the compliance 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 amended compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the amended 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 the discriminatees is as stated in the amended compliance specification, and we will order the Re-

find it unnecessary to determine whether the Respondent's purported revised answer was a legally sufficient answer under Sec. 102.56 of the Board's Rules and Regulations, because in any event, it does not raise a genuine issue of material fact regarding the allegations in the amended compliance specification. See, e.g., *Nick & Bob Partners*, 345 NLRB 1092, 1093 (2005) ("Summary judgment is appropriate when a respondent does not raise a genuine issue of material fact.")

¹ 356 NLRB 1298.

² 11-3352.

³ The Respondent's purported revised answer, which does not appear to have been served on the charging party, did not admit or deny any of the allegations set forth in pars. I, II,B, III, and IV of the compliance specification. The purported revised answer denied the allegations in par. II,A, inasmuch as the Respondent argued that the discriminatees should not be compensated for 10 holidays that fell during their backpay period. Notwithstanding the Respondent's failure to furnish the appropriate supporting figures for the amounts owed, on June 25, 2012, counsel for the Acting General Counsel informed the Respondent that she would amend the computation of gross backpay to reflect the removal of nine paid holidays, because the Respondent's payroll records demonstrated that with the exception of one holiday, its employees did not work or receive holiday pay during the backpay period. These changes are reflected in the amended compliance specification issued on July 9, 2012, to which no answer has been filed. Accordingly, we

spondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Dickens Inc., Commack, New York, its officers, agents, successors, and assigns, shall make whole Wenqing Lin and Miaona Wu, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283

NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws:

Wenqing Lin	\$16,566
Miaona Wu	18,486
TOTAL BACKPAY DUE:	\$35,052