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Cobalt Coal Ltd., Westchester Coal, L.P., and Cobalt Coal Corp. Mining Inc., a Single Employer and United Mine Workers of America, AFL-CIO.
Case 09-CA-112146

December 14, 2015

SUPPLEMENTAL DECISION AND ORDER

**BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN**

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On May 2, 2014, the National Labor Relations Board issued an unpublished Order adopting the findings and conclusions of Administrative Law Judge Paul Bogas' Decision, issued on March 28, 2014,¹ finding that the Respondent, Cobalt Coal Ltd., Westchester Coal, L.P., and Cobalt Coal Corp. Mining Inc., a single employer, violated Section 8(a)(5), (3), and (1) of the Act by, inter alia, unlawfully contracting out bargaining unit work without notice to or bargaining with the Union, rather than recalling bargaining unit employees, because the employees had engaged in protected concerted and union activities. The Board's Order required the Respondent to take the action set forth in the Administrative Law Judge's recommended Order, directing the Respondent to offer reinstatement to 23 former employees and to make those employees whole for any loss of earnings they suffered as a result of the Respondent's unlawful conduct.² On July 21, 2014, the United States Court of Appeals for the Fourth Circuit entered its judgment enforcing the Board's Order in full.³

A controversy having arisen over the amount of backpay due the discriminatees, on September 2, 2015, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it must file a timely answer 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.

¹ JD-15-14.

² The administrative law judge's decision recommended that the Respondent offer reinstatement to 23 former employees, including Bryan Harlow. However, the compliance specification notes that no backpay or expenses are claimed for Harlow because of his unavailability for work during the backpay period.

³ No. 14-1604.

By letter dated September 24, 2015, the Region advised the Respondent that no answer to the compliance specification had been received, and that unless an answer was filed by October 5, 2015, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

On October 7, 2015, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On October 8, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted.⁴ The Respondent again filed no response. The allegations in the motion and the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the 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 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 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 grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification,⁵ and we will order the Respondent to pay those amounts, plus additional backpay that may accrue in the event mining operations resume at the Westchester mine,⁶ plus interest accrued to the date of payment.

⁴ On November 5, 2015, the Board resent the Order Transferring Proceeding to the Board and Notice to Show Cause to one of the parties, upon receiving a corrected address.

⁵ A review of the calculations in the appendices to the compliance specification revealed that the backpay amounts listed in par. 16 of the compliance specification for Raymond Aragon, Lance Barbour, and Fred Coleman were incorrect. We have corrected those amounts as listed below in the Order.

⁶ The compliance specification provides that the backpay period for all the discriminatees begins on October 14, 2013, the date the Respondent unlawfully refused to recall the discriminatees to work, and continues until at least May 14, 2014, when operations at the Westches-

ORDER

Dated, Washington, D.C., December 14, 2015

The National Labor Relations Board orders that the Respondent, Cobalt Coal Ltd., Westchester Coal, L.P., and Cobalt Coal Corp. Mining Inc., a single employer, Hensley, West Virginia, its officers, agents, successors, and assigns, shall make whole the following discriminatees by paying them the amounts following their names, plus additional backpay that may accrue in the event mining operations resume at the Westchester mine, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), minus tax withholdings required by Federal and State laws.⁷

William Addair	–	\$24,306.49
Raymond Aragon	–	47,906.00
Lance Barbour	–	21,198.62
Phillip Barker	–	36,332.43
Daniel Beavers	–	23,669.65
Bruce Blankenship	–	6,384.00
James Bowles	–	19,742.47
Eddie Branch, Sr.	–	45,380.34
Lonnie Christian, II	–	19,655.65
Fred Coleman	–	25,794.26
William Hyden	–	14,909.27
Wendell Kennedy	–	28,318.50
Brandon Lovell	–	24,248.45
James Mitchem	–	16,583.61
William Mullins	–	25,071.90
Joseph Pack	–	25,741.00
Johnny Simms	–	10,729.78
Steven Simpson	–	20,239.28
Daniel Smith	–	32,634.09
Mickle Thomas	–	4,790.51
Bobby Thompson	–	20,881.46
Richard Toler	–	<u>7,778.02</u>

TOTAL AMOUNT DUE: \$502,295.78

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

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ter mine were suspended due to a Mine Safety and Health Administration (MSHA) violation. The compliance specification further provides that the backpay period for the discriminatees may continue in the event that mining operations resume at the Westchester mine.

⁷ As set forth in the compliance specification, the Respondent is also liable for any adverse tax consequences for any discriminatee receiving a lump-sum backpay award. Although the compliance specification calculated the adverse tax consequences, that amount may need to be updated to reflect the actual date of payment.