



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

February 18, 2016

Clerk, United States Court of
Appeals for the Seventh Circuit
Everett McKinley Dirksen Courthouse
219 South Dearborn Street, Rm. 2722
Chicago, IL 60604

Re: *NLRB v. Linda Construction, Inc.*,
Board Case No. 13-CA-125200

Dear Clerk:

On March 13, 2015, this Court entered judgment in No. 15–1125 enforcing the Board’s initial order. A controversy having arisen over the amount due under the Board’s order, the Regional Director issued a compliance specification and notice of hearing on July 6, 2015. The Board issued its Supplemental Decision and Order determining the amount due on October 28, 2015.

I am submitting the Board’s application for summary entry of a judgment enforcing the Board’s Supplemental Decision and Order in this case and a proposed judgment.

Please serve a copy of the application on Respondent, whose address appears on the service list. I have served a copy of the Board’s application and proposed judgment on each party admitted to participate in the Board proceedings, and their names and addresses also appear on the service list.

I am counsel of record for the Board, and all correspondence should be addressed to me. I would appreciate your furnishing the Board’s Regional Director, whose name and address also appear on the service list, with a copy of all

correspondence the Court sends to counsel in this case, and a copy of the judgment issued.

Very truly yours,

/s/ Linda Dreeben

Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

Linda McGee, President
Linda Construction, Inc.
18633 Nightengale
Country Club Hills, IL 60478

Tel: (773) 995-6920
Cell: (773) 447-0313

CHARGING PARTY:

Teamsters Local Union No. 731
1000 Burr Ridge Pkwy Ste 300
Burr Ridge, IL 60527-0845

Tel: (630) 887-4100
Fax: (630) 887-4114

REGIONAL DIRECTOR:

Peter Sung Ohr, Regional Director
National Labor Relations Board
The Rookery Building
209 South LaSalle Street, Suite 900
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RESPONDENT:

Jessie L. McGee
Linda Construction, Inc.
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CHARGING PARTY'S COUNSEL:

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UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
LINDA CONSTRUCTION, INC.	:	13-CA-125200
	:	
Respondent	:	

APPLICATION FOR SUMMARY ENTRY OF A
JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Seventh Circuit:

The National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)), applies to this Court for summary entry of a judgment enforcing its Supplemental Order against Linda Construction, Inc. (“Respondent”). The Board is entitled to summary enforcement of its Supplemental Order because Respondent failed to file an answer to the Board’s compliance specification and the Board entered an order by default. In support, the Board shows:

A. Jurisdiction of this Court

This Court has jurisdiction over this application under Section 10(e) of the Act (29 U.S.C. § 160(e)). Venue is proper in this Circuit because the activities

giving rise to this proceeding occurred in Illinois. The Board's final order issued on October 28, 2015, and is reported at 363 NLRB No. 28.

B. Proceedings Before the Board

1. The underlying controversy was brought before the Court by the Board's application for enforcement of its Order issued September 30, 2014. That order directed Respondent, in part, to make whole certain employees for any loss of earnings or benefits they may have suffered by reason of the discrimination against them. The Court entered its judgment enforcing the Board's Order in full in No. 15-1125, on March 13, 2015.

2. A controversy having arisen over the amount of backpay due discriminatees under the terms of the Board's order, the Regional Director issued and served on Respondent a compliance specification and notice of hearing on July 6, 2015, alleging the amount of backpay due under the Board's Order. The specification advised Respondent that, under the Board's Rules (29 C.F.R. 102.56), it was required to file an answer by July 27, 2015, and that if it failed to file an answer, the allegations of the specification would be deemed to be true and Respondent would be precluded from introducing any evidence controverting them.

3. Respondent failed to file an answer.

4. Having not received an answer, counsel for the General Counsel, on August 7, 2015, sent Respondent a letter advising that if no answer was filed by August 14, 2015, the Regional Office would file a motion for default judgment with the Board.

5. Respondent did not file an answer.

6. On August 27, 2015, the General Counsel filed with the Board a Motion for Default Judgment based on Respondent's failure to file an answer to the compliance specification. On September 1, 2015, the Board issued an order, transferring the proceeding to itself and a Notice to Show Cause, giving Respondent until September 15, 2015, to file with the Board in Washington, D.C., a response to the motion for default judgment.

7. Respondent did not file a response.

8. On October 28, 2015, the Board granted the Motion for Default Judgment and issued its Supplemental Decision and Order. The order directed Respondent to make the payments due to the Local 731, IBT Garage Attendants, Linen and Laundry Health and Welfare Fund and to the Local 731 IBT Garage Attendants Pension Fund, in the amounts set forth, plus interest accrued to the date of payment.

C. The Board Is Entitled to Summary Enforcement of Its Supplemental Order

On these facts, the Board is entitled to summary enforcement of its supplemental order against Respondent. Where a respondent in a Board proceeding fails to file an appropriate answer to the compliance specification in a timely manner, the Board may, pursuant to Board Rule 102.56(c), find the specification to be true and enter an order, essentially by default, against the respondent. The Board, further, is entitled to have that default judgment summarily enforced. Under Section 10(e) of the Act (29 U.S.C. § 160(e)), no objection that has not been urged before the Board shall be considered by a court of appeals “unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.” Interpreting that requirement, courts have consistently held that a respondent’s failure to assert any defense before the Board entitles the Board, absent extraordinary circumstances, to summary enforcement of its order. *See, e.g., Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *NLRB v. Dane County Dairy*, 795 F.2d 1313, 1319-21 (7th Cir. 1986); *Oldwick Materials, Inc. v. NLRB*, 732 F.2d 339, 341 (3d Cir. 1984); *NLRB v. Aaron Convalescent Home*, 479 F.2d 736, 738-39 (6th Cir. 1973). No such circumstances have been alleged or shown here.

WHEREFORE, the Board respectfully requests that the Court, after serving notice of the filing of this application on Respondent, enter judgment summarily enforcing the Board's supplemental order in full. A proposed judgment is attached.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dated in Washington, D.C.
this 18th day of February, 2016

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
	:	
v.	:	
	:	
	:	Board Case No.:
LINDA CONSTRUCTION, INC.	:	13-CA-125200
	:	
Respondent	:	

JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

Before:

This Court having on March 13, 2015, in No. 15–1125, entered its judgment enforcing in full the Order of the National Relations Board in Board Case No. 13-CA-125200, the Board on October 28, 2015, issued its Supplemental Decision and Order fixing the amount due and having thereafter applied to this Court for summary entry of a judgment specifying the amount due:

IT IS HEREBY ORDERED AND ADJUDGED by the Court that the Respondent, Linda Construction, Inc., its officers, agents, successors, and assigns,

shall make the payments due the following funds in the amounts set forth, plus interest accrued to the date of payment.

Local 731, IBT Garage Attendants, Linen and Laundry Health and Welfare Fund	\$105,676.60
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Local 731 IBT Garage Attendants Pension Fund	\$94,392.20
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TOTAL AMOUNT DUE: \$200,068.80

Judge, United States Court of
Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
LINDA CONSTRUCTION, INC.	:	13-CA-125200
	:	
Respondent	:	

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment and proposed judgment, in the above-captioned case, has this day been served by first class mail upon the following parties at the addresses listed below:

Linda McGee, President
Linda Construction, Inc.
18633 Nightengale
Country Club Hills, IL 60478

Jessie L. McGee
Linda Construction, Inc.
18633 Nightengale
Country Club Hills, IL 60478

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570

Dated at Washington, D.C.
this 18th day of February, 2016