



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

July 12, 2016

Clerk, United States Court of
Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 1702
New York, NY 10007

Re: Clarification Letter, Docket 16-1517,
NLRB v. Guy Brewer 43 Inc. d/b/a
Checkers, Board Case No. 29-CA-161438

Dear Clerk:

It has come to our attention that the submission of our Application for Summary Entry of a Judgment Enforcing an Order of the National Labor Relations Board was inadvertently dated for September 10, 2016. Attached is an amended application with the date corrected to reflect the actual date of submission to the Circuit, May 10, 2016.

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

practices occurred in New York. The Board's final order issued on April 28, 2016, and is reported at 363 NLRB No. 173.

B. Proceedings Before the Board

1. On January 21, 2016, a Complaint and Notice of Hearing was issued in Case No. 29-CA-161438, charging Respondent with certain violations of the Act. The complaint, in part, advised the Respondent that under the Board's Rules (29 C.F.R. 102.20 and 102.21), the Respondent was required to file an answer on or before February 4, 2016, and that if the Respondent failed to file an answer, the allegations of the complaint would be deemed to be true.

2. Having not received an answer, Counsel for the General Counsel, on February 4, 2016, sent the Respondent a letter advising that if an answer was not received by February 11, 2014, Counsel for the General Counsel would seek a default judgment in the case.

3. The Respondent did not file an answer.

4. On February 18, 2016, Counsel for the General Counsel filed with the Board a Motion for Default Judgment based upon the Respondent's failure to file an answer to the complaint.

5. By order dated February 19, 2016, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until March 4, 2016, to file

with the Board in Washington, D.C., a response to the Motion for Default Judgment.

6. Respondent did not file a response. The allegations in the motion remained undisputed.

7. The Board, on April 28, 2016, issued its Decision and Order, granting the Motion for Default Judgment in the absence of good cause being shown for Respondent's failure to file an answer, and entering an appropriate order against the Respondent.

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

On these facts, the Board is entitled to summary enforcement of its order against Respondent. Where a respondent in a Board proceeding fails to file an answer to the unfair labor practice complaint in a timely manner, the Board may, pursuant to Board Rule 102.20, absent a showing of "good cause," deem the complaint's allegations admitted, and then may enter an order, essentially by default, against the respondent. No cause for Respondent's failure to file an answer was alleged or shown here.

It is settled that the Board 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.” This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). 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., KBI Security Service, Inc. v. NLRB*, 91 F.3d 291, 295 (2d Cir. 1996); *NLRB v. Ferguson Electric Co.*, 242 F.3d 426, 435 (2d Cir. 2001); *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 order in full. A proposed judgment is attached.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 10th day of May, 2016

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

| | | |
|-----------------------------------|---|-----------------|
| NATIONAL LABOR RELATIONS BOARD | : | |
| | : | |
| Petitioner | : | No. |
| v. | : | |
| | : | Board Case No.: |
| GUY BREWER 43 INC. D/B/A CHECKERS | : | 29-CA-161438 |
| | : | |
| Respondent | : | |

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Before:

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Guy Brewer 43 Inc. d/b/a Checkers, its officers, agents, successors, and assigns, enforcing its order dated April 28, 2016, in Case No. 29-CA-161438, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Guy Brewer 43 Inc. d/b/a Checkers, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith

FOR THE COURT:

NATIONAL LABOR RELATIONS BOARD

v.

GUY BREWER 43 INC. D/B/A CHECKERS

ORDER

Guy Brewer 43 Inc. d/b/a Checkers, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Threatening employees with unspecified reprisals if they engage in protected concerted and union activities.
 - (b) Decreasing employees' hours because they support the Union and engage in protected concerted activities, and to discourage employees from engaging in these activities.
 - (c) Discharging employees because they support the Union and engage in protected concerted activities, and to discourage employees from engaging in these activities.
 - (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Rescind the reduction in Shawnette Richardson's hours.
 - (b) Within 14 days from the date of this Order, offer Shawnette Richardson and Lawrence Williams full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
 - (c) Make Shawnette Richardson, Shanzealise Lincoln, and Lawrence Williams whole for any loss of earnings or benefits they may have suffered as a result of their unlawful discharges and the unlawful decreasing of Shawnette Richardson's hours, in the manner set forth in the remedy section of this decision.
 - (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Shawnette Richardson,

Shanzealise Lincoln, and Lawrence Williams and the unlawful decreasing in Richardson's hours, and within 3 days thereafter, notify them in writing that this has been done and that the discharges and reduction in hours will not be used against them in any way.

- (e) Compensate Shawnette Richardson, Shanzealise Lincoln, and Lawrence Williams for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year for each employee.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix" in both English and Spanish. Copies of the notice, in English and Spanish, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 2015.
- (h) Within 21 days after service by the Region, file with the Regional Director for Region 29 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with unspecified reprisals if you engage in protected concerted and union activities.

WE WILL NOT decrease your hours because you support the Union and engage in protected concerted activities and to discourage you from engaging in those activities.

WE WILL NOT discharge you because you support the Union and engage in protected concerted activities and to discourage you from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the reduction in Shawnette Richardson's hours.

WE WILL, within 14 days from the date of the Board's Order, offer Shawnette Richardson and Lawrence Williams full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Shawnette Richardson, Shanzealise Lincoln, and Lawrence Williams whole for any loss of earnings and other benefits resulting from their unlawful discharges and the unlawful decreasing of Shawnette Richardson's hours, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharges of Shawnette Richardson, Shanzealise Lincoln, and Lawrence Williams and our unlawful decreasing of Shawnette Richardson's hours and WE WILL, within 3 days thereafter, notify them

in writing that this has been done and that the discharges and reduction in hours will not be used against them in any way.

WE WILL compensate Shawnette Richardson, Shanzealise Lincoln, and Lawrence Williams for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 29, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

GUY BREWER 43 INC. D/B/A CHECKERS

The Board's decision can be found at www.nlr.gov/case/29-CA-161438 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

| | | |
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| NATIONAL LABOR RELATIONS BOARD | : | |
| | : | |
| Petitioner | : | No. |
| v. | : | |
| | : | Board Case No.: |
| GUY BREWER 43 INC. D/B/A CHECKERS | : | 29-CA-161438 |
| | : | |
| Respondent | : | |

CERTIFICATE OF SERVICE

The undersigned certifies that one copy each of the Board's application for summary entry of judgment, proposed judgment and agency appeal pre-argument statement (Form C-A), in the above-captioned case, has this day been served by first class mail upon the following party at the address listed below:

Karen Baney, Owner
Guy Brewer 43 Inc. d/b/a Checkers
43 Empire Blvd.
Brooklyn, NY 11225-3315

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 10th day of May, 2016