



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

March 16, 2017

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *NLRB v. Red Devil Auto & Fleet
Repair, LLC*, Board Nos. 28-CA-146421
and 28-CA-152886

Dear Ms. Dwyer:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's supplemental 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 St., S.E.
Washington, D.C. 20570
(202) 273-2960

cc & documents to: Service List

SERVICE LIST

RESPONDENT:

Jayson Finch, Owner
Red-Devil Auto & Fleet Repair, LLC
13341 W. Calavar Circle
Surprise, AZ 85379

Tel: (623) 204-8313
Fax: (602) 487-7322
Email. red-devil@cox.net

CHARGING PARTY:

Robert D. Kamalo
4408 West Lodge Drive
Laveen Village, AZ 85339

Cell: (480) 993-6229
E-mail: rdkamalo@gmail.com

REGIONAL DIRECTOR:

Cornele A. Overstreet, Regional Dir.
National Labor Relations Board
2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.:
RED DEVIL AUTO & FLEET REPAIR, LLC	:	28-CA-146421,
	:	28-CA-152886
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 Ninth Circuit:

The National Labor Relations Board (the “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 Decision and Order of January 24, 2017, issued in Board Case Nos. 28-CA-146421 and 28-CA-152886 against Red Devil Auto & Fleet Repair, LLC (Respondent).

The Board is entitled to summary enforcement of its supplemental order because Respondent failed to file an answer to the 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 unfair labor

practices occurred in Arizona. The Board's Supplemental Order issued on January 24, 2017, and is reported at 365 NLRB No. 19.

B. Proceedings Before the Board

1. On March 17, 2016, the Board issued an unpublished order, adopting, in the absence of exceptions, the Administrative Law Judge's decision in Red Devil Auto & Fleet Repair, LLC, Cases 28-CA-146421 and 28-CA-152886 (JD(SF)-04-16) (ALJD) and ordered that Red Devil Auto & Fleet Repair, LLC take the action set forth in the recommended Order of the Administrative Law Judge.

2. On July 22, 2016, Respondent executed a Stipulation wherein it waived its rights under Section 10(e) and (1) of the Act (29 U.S.C. 160(e) and (f) to contest either the propriety of the Board's Order issued on March 17, 2016, or the findings of fact and conclusions of law underlying that Order; but retained its right to a hearing before an administrative law judge of the Board to determine the amount of backpay due.

3. On September 29, 2016, a Compliance Specification and Notice of Hearing was issued in Case Nos. 28-CA-146421 and 28-CA-152886 setting forth the amount of backpay due. The compliance specification, in part, advised the Respondent that under the Board's Rules Section 102.56, Respondent was required to file an answer by October 20, 2016, and that if the Respondent failed to file an answer, the allegations of the complaint would be deemed to be true.

4. Respondent did not file an answer.

5. Having not received an answer, on October 27, 2016, the Region sent Respondent a letter advising that if no answer was received by November 3, 2016, the Board's Regional Office may file a Motion for Default Judgment with the Board.

6. The Respondent did not file an answer nor did it request an extension of time to file an answer.

7. On November 4, 2016, the General Counsel filed with the Board a motion to transfer and continue matter before the Board and for Default Judgment.

8. By order dated November 8, 2016, the Board transferred the case to itself and issued a Notice to Show Cause, giving Respondent until November 22, 2016, to file with the Board in Washington, D.C., a response to the Motion for Default Judgment.

9. Respondent still did not file a response.

10. On January 24, 2017, the Board issued its Supplemental Decision and Order, granting the Motion for Default Judgment in the absence of good cause being shown for Respondent's failure to file a timely answer, and entering an appropriate order against the Respondent.

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 in a timely manner, the Board may, pursuant to Board Rule 102.20 and Board Rule 102.56(c), absent a showing of “good cause,” deem the 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.” 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., NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th Cir. 1991); *Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th 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
1015 Half St., S.E.
Washington, D.C. 20570

Dated in Washington, D.C.
this 16th day of March, 2017

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 :
 Petitioner : No.
 v. :
 : Board Case Nos.:
 RED DEVIL AUTO & FLEET REPAIR, LLC : 28-CA-146421,
 : 28-CA-152886
 Respondent :

JUDGMENT ENFORCING A SUPPLEMENTAL 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, Red Devil Auto & Fleet Repair, LLC, its officers, agents, successors, and assigns, enforcing its supplemental order dated January 24, 2017, in Case Nos. 28-CA-146421 and 28-CA-152886, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Red Devil Auto & Fleet Repair, LLC, its officers, agents, successors, and assigns, shall make whole discriminatee Robert D. Kamalo by paying him the amount of \$10,281.40, 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), and minus tax withholdings required by Federal and State laws.¹

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer, Clerk

¹ This amount does not yet include any excess tax. As set forth in the compliance specification, the Respondent is also liable for the adverse tax consequences for any discriminatee receiving a lump-sum backpay award. These amounts may be updated to reflect the actual date of payment. Any adverse tax consequences shall be reported in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016); *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

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FOR THE NINTH CIRCUIT

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RED DEVIL AUTO & FLEET REPAIR, LLC	:	28-CA-146421,
	:	28-CA-152886
Respondent	:	

CERTIFICATE OF SERVICE

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

Jayson Finch, Owner
Red-Devil Auto & Fleet Repair, LLC
13341 W. Calavar Circle
Surprise, AZ 85379

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

Dated at Washington, D.C.
this 16th day of March, 2017