

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD)	
)	
Petitioner)	
)	
v.)	No. 17-2617
)	
TRANS-ED, INC.)	
)	
Respondent)	

**MOTION OF THE NATIONAL LABOR RELATIONS BOARD
FOR ENTRY OF DEFAULT JUDGMENT
AND TO SUSPEND BRIEFING SCHEDULE**

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

The National Labor Relations Board, by its Deputy Associate General Counsel, respectfully moves this Court for entry of default judgment against TRANS-ED, Inc. (“the Company”), and to suspend the briefing schedule in the above-captioned case pending resolution of this motion, and shows:

1. On July 24, 2017, the National Labor Relations Board filed an application for the enforcement of its February 6, 2017 Decision and Order issued against the Company. 365 NLRB No. 25.
2. As of the date of this motion, no attorney has appeared on behalf of the Company, and the Company has not answered the Board’s application for enforcement.

3. It is settled law “that a corporation may appear in the federal courts only through licensed counsel.” *United States v. Cocivera*, 104 F.3d 566, 572 (3d Cir. 1996) (quoting *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 201-02 (1993)). Given the Company’s failure to appear through counsel, the Board is entitled to a default judgment enforcing its Order in full against the Company. *See, e.g., Emp. Painters’ Tr. v. Ethan Enters., Inc.*, 480 F.3d 993, 998 (9th Cir. 2007) (failure by corporation to retain counsel suffices to support default judgment); *accord Sec. & Exch. Comm’n v. Desai*, 672 F. App’x 201, 203 n.1 (3d Cir. 2016) (finding “no abuse of discretion in the District Court’s entry of a default judgment” for “the failure of the corporation to secure counsel . . .”).¹

4. Moreover, under Federal Rule of Appellate Procedure 15(b)(2), “[w]ithin 21 days after the application for enforcement [of an agency order] is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.” The Company’s answer was due on August 14,

¹ On August 9, 2017, the Office of the Clerk notified Glenn M. Finkel (counsel for the Company before the Board, who was served with the application for enforcement in this case) that he had not submitted an appearance form or disclosure statement as requested in a docketing letter dated July 25, 2017, that he must do so by August 23, 2017, and that “[i]f the forms are not filed within the time stated, it will be presumed that you do not wish to participate in the appeal(s). You will receive no further notice of any action in the appeal(s), including issuance of a briefing schedule.” Mr. Finkel did not reply to this notification and no counsel has appeared, or filed a disclosure statement, on behalf of the Company.

2017. Because the Company has not answered the Board's application for enforcement, a default judgment enforcing the Board's order is warranted. *See Trafford Distrib. Ctr. v. NLRB*, 478 F.3d 172, 182 (3d Cir. 2007) (enforcing Board's order pursuant to Fed. R. App. P. 15(b)(2) based on employer's failure to answer the Board's application for enforcement).

5. On October 5, 2017, the Court issued a briefing schedule, pursuant to which the Board's brief is due on November 14. In order to conserve resources, the Board requests that the Court suspend the briefing schedule pending the resolution of this motion for entry of default judgment.

WHEREFORE, the Board respectfully requests that this Court grant the Board's motion for entry of a default judgment, enforcing the Board's Order in full. A proposed judgment is attached for the Court's convenience. The Board further requests that the Court suspend the briefing schedule pending the resolution of that default motion.

Respectfully submitted,

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
this 11th day of October, 2017

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 530 words of proportionally-spaced, 14-point type, the word processing system used was Microsoft Word 2010.

/s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570
(202) 273-2960

Dated at Washington, DC
this 11th day of October, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2017, I electronically filed the foregoing document with Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half St SE
Washington, DC 20570

Dated at Washington, D.C.
this 11th day of October, 2017

UNITED STATES COURT OF APPEALS
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 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 entry of a judgment against Respondent , Trans-Ed, Inc., in Board Case No. 22-CA-170891, dated February 6, 2017, and reported at 365 NLRB No. 25. The National Labor Relations Board having moved for entry of a default judgment enforcing its order, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Trans-Ed, Inc., its officers, agents, successors, and assigns shall abide by said order (See Attached Order and Appendix).

BY THE COURT

Circuit Judge

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

TRANS-ED, INC.

ORDER

Trans-Ed, Inc., Paterson, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Discharging or otherwise discriminating against any of its employees because they engage in union or other protected concerted activities.
 - (b) 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) Within 14 days from the date of this Order, offer Luis Del Toro full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
 - (b) Make Luis Del Toro whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the judge's decision, plus reasonable search-for-work and interim employment expenses.
 - (c) Compensate Luis Del Toro for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.
 - (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Luis Del Toro, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

- (e) 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.
- (f) Within 14 days after service by the Region, post at its Paterson, New Jersey facility copies of the attached notice in English and Spanish marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22, 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 February 26, 2016.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 22 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 discharge or otherwise discriminate against any of our employees because they have engaged in union or other protected concerted 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, within 14 days from the date of the Board's Order, offer Luis Del Toro full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Luis Del Toro whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, plus reasonable search-for-work and interim employment expenses.

WE WILL compensate Luis Del Toro for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharge of Luis Del Toro, and WE WILL,

within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

TRANS-ED, INC.

The Board's decision can be found at www.nlr.gov/case/22-CA-170891 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 Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

