



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

August 23, 2018

Marcia M. Waldron, Esquire
Clerk, United States Court of
Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790

*Re: NLRB v. Shirley Express, LLC and RLS
Transportation, LLC, as a single and/or
joint employers, Board Case Nos. 22-CA-
141644 and 22-CA-149763*

Dear Ms. Waldron:

On January 5, 2017, this Court entered judgment in No. 16-4187 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 October 25, 2017. The Board issued its Supplemental Order determining the amount due on July 12, 2018.

The Board now wishes to obtain enforcement of its Supplemental Order and is enclosing an original of the Board's application for summary entry of a judgment enforcing the Board's order in this case, and a proposed judgment.

Please serve a copy of the application on Respondent, whose addresses appear on the service list. Additional copies are provided for service on the Respondent. 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,

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

cc & documents to: Service List

SERVICE LIST

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REGIONAL DIRECTOR

David Leach, Regional Director
National Labor Relations Board
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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.
SHIRLEY EXPRESS, LLC AND RLS TRANSPORTATION,	:	22-CA-141644
LLC, AS A SINGLE AND/OR JOINT EMPLOYERS	:	22-CA-149763
	:	
Respondents	:	

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

To the Honorable, the Judges of the United States
Court of Appeals for the Third 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 Order against Shirley Express, LLC and RLS Transportation, LLC, as a single and/or joint employers (“Respondents”) issued in Board Case Nos. 22-CA-141644 and 22-CA-149763, on July 12, 2016. The Board is entitled to summary enforcement of its Supplemental Order in full because Respondent failed to file with the Board exceptions to the administrative law judge’s decision. 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 New Jersey. The Board's final order issued on July 12, 2016.

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 November 9, 2016. 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. 16-4187, on January 5, 2017.

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 October 25, 2017, 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 November 15, 2017, and that if it failed to file an answer, the Board may find, pursuant to a motion for default judgment, that the allegations in the Compliance Specification are true and

Respondents would be precluded from introducing any evidence controverting those allegations.

3. Following a hearing before an administrative law judge, the judge issued a decision on March 6, 2018, recommending that an order be issued directing Respondent to make whole the named individuals, by paying them the amounts listed after their names.

4. On March 6, 2018, the Board issued an order transferring the proceeding to the Board and notifying the Respondent that the Board must receive exceptions to the administrative law judge's decision by April 3, 2018.

5. Section 10(c) of the Act (29 U.S.C. § 160(c)) provides that "if no exceptions are filed [with the Board] within twenty days after service [of the administrative law judge's decision] upon the parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed." Section 102.46 and 102.48 of the Board's Rules and Regulations (29 C.F.R. 102.46 and 102.48) implement this provision and provide that, in the event no exceptions are filed within 28 days, the decision of the administrative law judge shall be adopted by the Board and all objections and exceptions thereto are waived for all purposes.

6. Respondent did not file exceptions with the Board.

7. In the absence of any exceptions to the administrative law judge's decision, on July 12, 2018, the Board issued an order adopting the findings and conclusions of Administrative Law Judge Lauren Esposito as contained in her Decision and Order (JD(NY)-06-18), and ordered that Shirley Express, LLC and RLS Transportation, LLC, as a single and/or joint employers, its officers, agents, successors, and assigns, to pay the amounts set forth in the recommended Order of the Administrative Law Judge.

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 because, by failing to file exceptions with the Board challenging the administrative law judge's decision, the Respondent failed to raise any issues before the Board. Section 10(e) of the Act (29 U.S.C. § 160(e)) provides that "no objection that has not been urged before the Board . . . shall be considered by the court, unless the failure or neglect to urge such objection shall be excused by extraordinary circumstances." This limitation is jurisdictional and its application is mandatory. *Woelke & Romero Framing v. NLRB*, 456 U.S. 645, 666-67 (1982). Interpreting this requirement, this Court and other circuits have consistently held that a respondent's failure to file any exceptions before the Board entitles the Board, absent extraordinary circumstances, to summary entry of a judgment enforcing its order. *Oldwick Materials, Inc. v. NLRB*, 732 F2d 339, 340-

41 (3d Cir. 1984); *NLRB v. Int'l Union of Operating Eng'rs, Local 86*, 357 F.2d 841, 846-47 (3d Cir. 1966). *Accord, e.g., NLRB v. Tri-State Warehouse & Distrib.*, 677 F.2d 31, 31 (6th Cir. 1982); *NLRB v. Pugh & Barr, Inc.*, 194 F.2d 217, 218-21 (4th Cir. 1952). No extraordinary circumstances are present here.

WHEREFORE, the Board respectfully requests that the Court take jurisdiction of the proceedings, serve notice of the filing of this application upon Respondent, and enter judgment summarily enforcing the Board's order in full. A proposed judgment is attached.

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

Dated in Washington, D.C.
this 23rd day of August, 2018

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case Nos.
SHIRLEY EXPRESS, LLC AND RLS TRANSPORTATION, LLC, AS A SINGLE AND/OR JOINT EMPLOYERS	:	22-CA-141644
	:	22-CA-149763
	:	
Respondents	:	

JUDGMENT ENFORCING A SUPPLEMENTAL ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

Before:

This Court having on January 5, 2017, in No. 16-4187, entered its judgment enforcing in full the Order of the National Relations Board in Board Case No. 22-CA-26959, the Board on July 12, 2018, issued its Supplemental 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, Shirley Express, LLC and RLS Transportation, LLC, as a single and/or joint employers, its officers, agents, successors, and assigns, must pay to the individuals below the amounts specified after their names.

<u>Name</u>	<u>Backpay Owed</u> ¹	<u>Interest on Backpay</u>	<u>Interim Expenses</u>	<u>Excess Tax Liability</u>
Ariel Coira	\$27,363	\$3,026	---	\$587
Carlos Ruiz	\$4,307	\$517	---	\$86
Benjamin Pizarro	\$15,122	\$1,697	\$5,757	\$368

¹ Minus tax withholdings required by Federal and State law.

Javier Madrid	\$8,692	\$848	---	\$144
Javier Diaz	\$18,864	\$1,144	---	\$326

Mandate shall issue forthwith.

BY THE COURT

Circuit Judge

DATED:

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
 :
 :
 Petitioner : No.
 v. :
 : Board Case Nos.
 SHIRLEY EXPRESS, LLC AND RLS TRANSPORTATION, : 22-CA-141644
 LLC, AS A SINGLE AND/OR JOINT EMPLOYERS : 22-CA-149763
 :
 Respondents :

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:

Brayan Velarde
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/s/ Linda Dreeben

Linda Dreeben
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1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 23rd day of August, 2018