

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

CAPITOL TRANSPORTATION, INC.,

and

Case 12-CA-188221

ARCADIO VIÑAS, an Individual,

and

Cases 12-CA-181123; 12-CA-183368
12-CA-187845; 12-CA-199292
12-CA-201424; 12-CA-213526

UNION DE TRONQUISTAS DE PUERTO
RICO, LOCAL 901, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

and

Case 12-CA-180495

ELIAS TORRES, and Individual

ERRATUM

The decision in this case, which issued on April 30, 2019, inadvertently omitted certain provisions from the recommended Remedy, Order and Notice to Employees that are necessary to effectuate the policies of the National Labor Relations Act, consistent with my findings of fact, conclusions of law, recommended cease and desist orders and Notice to Employees. In accordance with the unopposed request of the General Counsel, the decision is corrected as follows:

1. **Remedy** (replacing first two paragraphs)

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. With respect to the Respondent's discriminatory discharge of Luis Lleras, Arcadio Viñas and Elias Torres, it shall be ordered to offer them reinstatement to their former positions or, if those positions no longer exist, in substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, discharging, if necessary, any employees hired in their place. Lleras, Viñas and Torres shall be made whole for any loss of earnings they may have suffered due to the discrimination against them. All unit employees who were laid off after July 1, 2016, in order to assign unit work to subcontracted or temporary employees, or in violation of their

seniority rights, shall be made whole for any loss of earnings resulting from said layoffs. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950),

with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 30 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). The Respondent shall also be required to expunge from its files any reference to the unlawful terminations of Lleras, Viñas and Torres, and to notify them in writing that this has been done.

In accordance with the Board's decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant 35 part 859 F.3d 23 (D.C. Cir. 2017), the Respondent shall be ordered to compensate Lleras, Viñas and Torres, and all unit employees who were laid off after July 1, 2016, in order to assign unit work to subcontracted or temporary employees, or in violation of their seniority rights, for their search-for-work and interim employment expenses regardless of whether those expenses exceed their interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Also, in accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2016), Respondent shall compensate Lleras, Viñas, Torres, and all unit employees who were laid off after July 1, 2016, in order to assign unit work to subcontracted or temporary employees, or in violation of their seniority rights, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and in accordance with *Advo-Serv of New Jersey, Inc.*, 363 NLRB No. 143 (2016), and, within 21 days of the date the amount of backpay is fixed either by the agreement or Board order, file with the Regional Director for Region 12, a report allocating backpay to the appropriate calendar year(s). Finally, the Respondent shall also be required to post a Notice to Employees, both in English and Spanish.

2. **Order** (replacing and/or reordering Sections 2(c) through (j))

(c) Make whole all employees in the above unit who were laid off after July 1, 2016, in order to assign unit work to subcontracted or temporary employees, or in violation of their seniority rights, for any loss of earnings and other benefits resulting from said layoffs.

(d) Compensate Luis Lleras, Arcadio Viñas and Elias Torres, and all unit employees who were laid off after July 1, 2016, in order to assign unit work to subcontracted or temporary employees, or in violation of their seniority rights, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and within 21 days of the date the amount of backpay is fixed either by the agreement or Board order, file with the Regional Director for Region 12, a report allocating the backpay awards to the appropriate calendar year(s).

(e) Rescind the unilateral transfer of unit work to subcontractors and restore the status quo by restoring the unit to where it would have been without the unilateral change.

(f) Liquidate the accrued annual and sick leave benefits of former employees Mario Reyes, Hiram Lozada and any other former unit employee whom the Respondent failed to compensate for such benefits.

(g) Upon request, meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the employees in the above unit with respect to wages, hours of work, and other terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement.

(h) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharge will not be used against them in any way.

(i) 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.

(j) Within 14 days after service by the Region, post at its facility in San Juan, Puerto Rico copies of the attached notice marked "Appendix"¹ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 12, 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, the 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. In the event that, during the pendency of these proceedings, 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 July 1, 2016.

3. **Notice to Employees** (replacing third WE WILL paragraph relating to compensation of adverse tax consequences)

WE WILL compensate Luis Lleras, Arcadio Viñas and Elias Torres and all unit employees who were laid off after July 1, 2016, in order to assign unit work to subcontracted or temporary employees, or in violation of their seniority rights, for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and within 21 days of the date

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the amount of backpay is fixed either by the agreement or Board order, file with the Regional Director for Region 12, a report allocating the backpay awards to the appropriate calendar year(s).

Dated, Washington, D.C. May 28, 2019

A handwritten signature in black ink, appearing to read "Michael A. Rosas". The signature is written in a cursive, slightly slanted style.

Michael A. Rosas
Administrative Law Judge