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G4S Secure Solutions (USA) Inc., A Division of G4S Regulated Security Solutions, Inc. f/k/a The Wackenhut Corporation and Thomas Frazier and Cecil Mack. Cases 12–CA–026644 and 12–CA–026811

June 5, 2019

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN AND EMANUEL

On December 20, 2018, Administrative Law Judge Robert A. Ringler issued the attached supplemental decision. The Respondent filed exceptions and an argument in support, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel filed cross-exceptions and an argument in support, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions and to adopt the recommended Supplemental Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board orders that the Respondent, G4S Secure Solutions (USA) Inc., a Division of G4S Regulated Security Solutions, Inc. f/k/a The Wackenhut Corporation, West Palm Beach, Florida, its officers, agents, successors and assigns, shall make whole

¹ We find merit in the General Counsel’s exception to the judge’s determination of discriminatee Cecil Mack’s interim earnings for the first quarter of 2011. In so finding, we rely on the State of Florida’s Department of Revenue report listing Mack’s earnings, on which the Region reasonably relied, rather than Mack’s admittedly imprecise testimony, which he provided 7 years after the relevant time period. We also find merit in the General Counsel’s uncontested exception to a \$10 calculation error by the judge. We have revised the backpay determination accordingly.

² We shall amend the recommended Supplemental Order to reflect that Mack had interim earnings of \$9230.76 in the first quarter of 2011, and to additionally increase by \$10 the net backpay due Mack. Thus, the corrected net backpay amount due Mack for the entire backpay period is \$362,213.58.

In the underlying decision reported at 362 NLRB 1072 (2015), the Board ordered the Respondent to compensate Mack for the adverse tax consequences of receiving a lump sum backpay award and to file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters. Id. at 1075. The United States Court

Cecil Mack by paying him \$362,213.58, 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), minus tax withholdings required by Federal and State laws.

Dated, Washington, D.C. June 5, 2019

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

John King, Esq., for the General Counsel.
Fred Seleman, Esq., for the Respondent.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This supplemental compliance proceeding was held in Miami, Florida, on May 23, 2018, pursuant to an amended compliance specification (the Specification). The Specification calculated backpay due under the National Labor Relations Board’s (the Board) Decision and Order in *G4S Regulated Security Solutions*, 362 NLRB No. 134 (2015) (the Order).¹ G4S objects, inter alia, to the Specification’s treatment of Cecil Mack’s interim earnings and imposition of liability for his adverse tax consequences.

of Appeals for the Eleventh Circuit enforced the Board’s order in full. *G4S Regulated Security Solutions v. NLRB*, 670 Fed. Appx. 697 (11th Cir. 2016) (per curiam). Accordingly, we note that the Respondent remains obligated to compensate Mack for the adverse tax consequences of receiving a lump sum payment in the amount ordered herein. As to the report-filing remedy, we recognize that we are powerless to modify a court-enforced order, see *NLRB v. Gimrock Construction, Inc.*, 695 F.3d 1188, 1192–1194 (11th Cir. 2012); *Scepter, Inc. v. NLRB*, 448 F.3d 388, 391 (D.C. Cir. 2006), and we do not purport to do so here. We observe, however, that the Board has since revised this remedy to require employers to file a report with the Regional Director (rather than the Social Security Administration, which will not accept such a report before it receives the affected employee’s W-2 forms) allocating backpay to the appropriate calendar years (rather than quarters). See *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

¹ On November 21, 2016, the Order was affirmed by the U.S. Court of Appeals for the Eleventh Circuit in an unpublished opinion, and judgment was entered. (GC Exh. 1(o-p)).

DISCUSSION

I. ORDER

The Order found that G4S Regulated Solutions, a Division of G4S Secure Solutions (USA) Inc. (G4S) violated the National Labor Relations Act (the Act) by firing Thomas Frazier and Cecil Mack. It ordered a make-whole remedy for their lost wages and reimbursement for any adverse tax consequences associated with receiving such backpay in a lump-sum payment.

II. PROCEDURAL HISTORY

A. *Litigation of Substantive Liability*

On June 27, 2011, an Administrative Law Judge (the ALJ) issued an Initial Decision in this case, which found that Mack and Frazier were supervisors and dismissed unfair labor practice charges related to their firings. On September 28, 2012, the Board reversed the Initial Decision, found that they were not supervisors and remanded the case to the ALJ. 358 NLRB 1701 (2012). On November 16, 2012, the ALJ issued a Supplemental Decision, which held that G4S unlawfully fired them and ordered a make-whole remedy (the Supp. ALJD). On December 21, 2012, G4S filed exceptions.²

On January 11, 2013, the General Counsel (the GC) filed cross-exceptions, which challenged the Supp. ALJD's failure to require reimbursement for excess federal tax liability under *Latino Express, Inc.*, 359 NLRB 518 (2012). On April 30, 2013, the Board issued a Supplemental Decision and Order, which affirmed the Supp. ALJD, but, modified the order to include tax reimbursement under *Latino Express*. See 359 NLRB 947, 947 fn. 1 (2013).

On May 13, 2013, G4S filed a petition for review of the Board's Supplemental Decision and Order in the D.C. Circuit Court of Appeals (the D.C. Circuit). On June 27, 2014, the Board issued an Order holding this case in abeyance, and setting aside its Supplemental Decision and Order.³ On July 25, 2015, the Board issued a revised Decision and Order, which reviewed the record de novo, reaffirmed the unlawful firings, and ordered a remedy that calculated damages and interest under *F. W. Woolworth* and included excess federal tax reimbursement under *Don Chavas LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).⁴

On July 23, 2015, G4S filed a petition for review in the Eleventh Circuit Court of Appeals. On August 26, 2015, the Board filed a cross-petition for enforcement. Although G4S appealed the supervisory and termination issues, it did not appeal the remedy itself (i.e., the application of *F. W. Woolworth* and *Don Chavas LLC d/b/a Tortillas Don Chavas*). On November 21, 2016, the Eleventh Circuit issued an unpublished decision, which denied G4S' appeal and affirmed the Board.⁵

² The exceptions did not challenge the remedy, including the calculus of damages under *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

³ The Board took this action under *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014). It later requested dismissal of the petition for review in the D.C. Circuit, which was granted.

⁴ *Don Chavas LLC d/b/a Tortillas Don Chavas* essentially reaffirmed *Latino Express*.

B. *G4S' Partial Compliance*

G4S, thereafter, partially complied with the Board's Order. It offered reinstatement to Mack and Frazier, posted a Notice citing its violations, and made a lump-sum payment of back wages to Frazier.⁶ Regarding Mack, it refused, however, to tender a lump-sum payment and raised objections to his interim earnings deductions and the remedial application of *F. W. Woolworth* and *Don Chavas LLC d/b/a Tortillas Don Chavas*, which led to this compliance hearing.

C. *Specification*

On April 17, 2018, Region 12 of the Board issued the Specification. On April 24, 2018, G4S filed its Amended Answer.

D. *Motion to Strike Parts of G4S' Amended Answer*

On May 11, 2018, the GC moved to strike parts of the Amended Answer (the Motion).⁷ The GC asserted that: the Amended Answer improperly denied matters that were litigated before the Board and Eleventh Circuit (e.g., supervisory status and the validity of firings); and G4S is barred from objecting to backpay calculations under *F. W. Woolworth* and *Don Chavas LLC d/b/a Tortillas Don Chavas* because it failed to previously raise such objections before the Board and Eleventh Circuit.

III. RULING ON MOTION TO STRIKE

The Motion is granted. In *American Eagle Protective Services Corp.*, the Board held:

"Issues litigated and decided in an unfair labor practice proceeding may not be relitigated in the ensuing backpay proceeding." . . . By choosing not to file exceptions . . . Respondents chose not to question whether . . . a different make-whole remedy [is warranted]. . . . Accordingly. . . . [they are] barred from raising these affirmative defenses at the compliance stage of this proceeding.

366 NLRB No. 144, slip op. at 2 (2018) (citations and footnotes omitted). Paragraphs 1, 2, and 6(a), (d), (e), (f), and (h) of the Amended Answer are, accordingly, stricken to the extent that they deny supervisory status and the invalidity of the firings. The Motion is also sustained to the extent that it challenges backpay calculations under *F. W. Woolworth* and compensation for tax consequences under *Don Chavas LLC d/b/a Tortillas Don Chavas*, inasmuch as G4S failed to previously object to these remedies. *Aroostook County Regional Ophthalmology Center*, 332 NLRB 1616 (2001).

IV. REMAINING ISSUES

Although the Motion resolved several issues, other matters remain open. These open issues involve, inter alia: Mack's interim earnings calculations for various quarters; his search-for-work efforts; and whether he engaged in gross misconduct in losing an

⁵ On January 24, 2017, the Eleventh Circuit denied G4S' request for a panel rehearing.

⁶ Frazier has been made whole, and is not at issue in this litigation.

⁷ Although the Motion was filed before the May 23, 2018 compliance hearing, the parties were advised at a prehearing conference that my ruling would be incorporated in this Supplemental Decision.

interim job.

V. COMPLIANCE PROCEEDING RECORD⁸

A. Introduction

On February 2, 2010, G4S unlawfully terminated Mack. In August 2017, he was reinstated to his lieutenant position, in accordance with the Board's Order.

B. Work History and Interim Employment

1. Unemployment Benefits: February 2010 to August 2010

Mack initially received state unemployment benefits (UI). He received such benefits until August 2010, when he was hired by Rent-A-Wheel, his first interim employer.

2. Rent-A-Wheel Employment: August 2010 to June 2011

In August 2010, Mack started working for Rent-A-Wheel. He began in a full-time collections specialist job, which he held for about 2 weeks. He was then promoted to an assistant store manager slot, which he held for another 2 weeks. Around mid-September 2010, he was promoted to a full-time store manager position at a \$44,000 annual salary. In June 2011, he was fired for allegedly taking an improper payment, i.e., depositing an early payment into the wrong customer account. He said that he thought that his actions were valid and was trained to handle transactions this way by a former manager. He stated that the payment at issue always remained in the customer's name (i.e., was never deposited under his name).

3. UI Benefits Rejection

Following this separation, he applied for UI benefits, which Rent-A-Wheel challenged. He averred that he did not receive his hearing notice, and that his UI claim was consequently rejected.

4. Rent-A-Center Acceptance (RAC) Employment: February 2012 to March 2013

In February 2012, Mack began at RAC as a collection specialist. He worked 40 hours per week for \$13 per hour. He continued to search for a better job during this period and eventually accepted a slot with the United States Postal Service (USPS).

5. USPS Employment: March 2013 to July 2017

In March 2013, Mack began as a USPS city carrier; he worked about 60 hours per week at \$14.10 per hour. In mid-2015, he became a full-time city carrier earning \$17.25 per hour. He also received improved health coverage and a thrift savings retirement plan (TSP) (i.e., a 401K plan benefit). He continued to work for the USPS until his July 31, 2017 reinstatement to G4S.

6. Search-For-Work Efforts

a. General Counsel's Position

Mack applied for dozens of law enforcement, civil service, security, retail and other jobs, while he was unemployed. (Tr. 24–57; GC Exhs. 4–5.) He filed job applications in person, via email and on company websites. He made multiple phone calls in

furtherance of his job search. He attempted to maximize his interim earnings by seeking out higher-paying jobs even when he was already employed, as exemplified by his pursuit of the USPS job. He also attempted to increase his marketability by receiving state training in cable technician and splicer work. As a result of such efforts, he remained gainfully employed during the majority of his backpay period.

b. G4S' Stance

Claude Seltzer, a certified vocational rehabilitation counselor, testified that he has expertise regarding the southern Florida job market.⁹ He prepared for his testimony by reviewing Mack's background (i.e., his employment application and training certificates) and help wanted ads for security guards listed in the Miami Herald. (R. Exh. 4.) He opined that, from 2010 to 2013, there were several open security officer and supervisory jobs that Mack could perform. (Tr. 107.) He added that, in May 2014, the Miami area had 19,420 security guard positions averaging \$11 per hour. (R. Exh. 3.) He claimed that Mack's job search was deficient because he should have filed more applications in person, with the goal of obtaining impromptu interviews. However, he conceded, on cross-examination, that the newspaper ads relied upon in forming his opinion did not describe how many available jobs, if any, existed, and agreed that he did not know many other unemployed licensed security guards were competing against Mack during the relevant period. (Tr. 120–23.) He also denied knowing how many nuclear security officer jobs existed in southern Florida during the relevant period (i.e., Mack's G4S job), and agreed that G4S' Turkey Point facility is the only nuclear plant in the area that he was aware of.

VI. ANALYSIS

A. Compliance Proceeding Standards

Compliance proceedings restore the status quo ante existing before the unfair labor practice. *Hubert Distributors, Inc.*, 344 NLRB 339, 341 (2005). An unfair labor practice finding is presumptive proof of backpay liability. *Beverly California Corp.*, 329 NLRB 977, 978 (1999). The GC must first adduce the gross backpay amount due. *Hansen Bros. Enterprises*, 313 NLRB 599, 600 (1993). Thereafter, the burden shifts to the respondent to reduce its liability. *Church Homes, Inc.*, 349 NLRB 829, 838 (2007). The GC need only show that his gross backpay amounts are reasonable and non-arbitrary. *Performance Friction Corp.*, 335 NLRB 1117 (2001).

B. Specification and Contentions

1. Rent-A-Wheel

a. Interim Earnings: Third Quarter of 2010

The Specification reasonably calculated third quarter 2010 interim earnings. G4S made this argument concerning this quarter:

Mack was credited with only \$901.94 of interim earnings for the third quarter of 2010, which resulted in net backpay of \$18,941.28 for that quarter. . . . [H]e started with Rent A Wheel

⁸ Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

⁹ He has testified as an expert in cases involving lost earnings, labor markets and transferable skills.

“right in the middle” of August 2010, . . . [i.e.] on or about August 16, 2010. Based on annual compensation of approximately \$44,000 per year, he had interim earnings . . . [of] \$846.15 per week from August 16, 2010 through September 30, 2010, for total interim earnings in that quarter of \$5,923.08 (rather than the \$901.94 of interim earnings shown in the Compliance Specification). That means the net back pay for the third quarter of 2010 should be \$13,920.14 (rather than \$18,941.28).

(Br. at 2.)¹⁰

G4S mischaracterizes the record. It avers that the Specification’s accounting of third quarter earnings are invalid because Mack started a \$44,000 per year job in mid-August 2010, which is incorrect. In fact, Mack did not start the \$44,000 per year manager job until mid- to late-September 2010, after first working as a collections specialist and assistant store manager at lower wages. G4S, thus, failed to show that this calculation was unreasonable.

b. Interim Earnings: First Quarter of 2011

G4S demonstrated that the Specification’s first quarter interim earnings for 2011 are unreasonable. It asserted that:

Mack . . . ma[de] . . . \$44,000 per year [at] . . . Rent A Wheel (Tr. at 34), . . . [i.e.,] approximately \$846.15 per week. Although the first quarter of 2011 consisted of thirteen weeks, the Compliance Specification, Appendix H, only lists interim earnings of \$9,230.75 for that quarter, rather than \$10,999.95 (13 weeks x \$846.15 per week). As such, the net backpay for the first quarter of 2011 should be \$9,011.21 (rather than \$10,780.40).

(Br. at 2.)

This argument is persuasive; the Specification failed to account for Mack earning \$44,000 per year in salary during this quarter. This matter was not addressed by the GC’s brief. Mack’s interim earnings for the first quarter of 2011 should, thus, be elevated from \$9230.75 to \$10,999.95, and his net backpay for this quarter should be reduced accordingly.

c. Interim Earnings: Second Quarter of 2011

G4S failed to show that the Specification’s second quarter interim earnings for 2011 are unreasonable. It G4S asserted that:

Mack was terminated from Rent A Wheel in “about the middle” of June 2011. (Tr. at 35.) Assuming that . . . [he] was terminated no earlier than June 17, then he was making . . . \$846.15 per week from the start of the third quarter of 2011 until June 17, which is . . . eleven weeks. That results in total interim earnings for that quarter of \$9,307.65 (rather than \$8,557.60). As such, the net backpay for the second quarter of 2011 should be \$10,703.51 (rather than \$11,453.56).

(Br at 2–3.)

Given that the record is unclear on the exact firing date, and Mack vaguely set it as, “probably about the middle” of June, G4S failed to show that the GC setting this date as occurring earlier in June was unreasonable. (Tr. 35.) G4S was consistently able to address this ambiguity by subpoenaing Mack’s records from Rent-A-Wheel, which was never done. This omission estopped it from challenging the Specification’s reasonableness for this quarter.

d. Effect of the Rent-A-Wheel Firing on Interim Earnings

G4S failed to show that Mack’s Rent-A-Wheel firing should toll backpay. The Board has held that a discharge, in isolation, is insufficient to establish a willful loss of employment that tolls backpay. The employer has the burden of showing that a discriminatee “engaged in deliberate or gross misconduct” that warrants the tolling of backpay. See, e.g., P*I*E. *Nationwide*, 297 NLRB 454, 454–455 (1989); *Cassis Management Corp.*, 336 NLRB 961, 966–967 (2001) (“deliberate courting of discharge”). The Board has, consequently, found that a firing based upon poor performance is not a willful job loss. *Barberton Plastics Products, Inc.*, 146 NLRB 393, 396 (1964), enf. denied on other grounds 354 F.2d 66 (6th Cir. 1965).

G4S failed to meet its burden of showing that Mack “deliberately courted” his firing. He was fired for placing funds in an incorrect account. He did not attempt to steal, was never charged with theft by a local law enforcement agency, and never placed the funds in his name. He provided un rebutted testimony that a former supervisor told him to handle transactions in the manner that got him fired. In sum, G4S failed to show a deliberate loss of employment.¹¹

2. Search-for-Work Efforts: December 2011

G4S failed to show that Mack was unavailable for employment in December 2011 and that his backpay should be tolled for this period. The Board has held that short delays in beginning a job search should not to be held against an employee, and that one’s efforts during the entire backpay period are relevant. *Colorado Forge Corp.*, 285 NLRB 530, 538 (1987). Moreover, backpay is not precluded solely because a discriminatee stopped filing applications for a quarter. *Cornwell Co.*, 171 NLRB 342, 343 (1968). The Board, instead, reviews “the entire backpay period . . . to determine whether . . . in light of all circumstances, a reasonable continuing search” occurred. *Id.*

G4S failed to show that Mack was unavailable for employment in December 2011. *First*, when Mack was asked at the hearing whether he searched for work in December 2011, he replied, “it was the holidays, so I can’t recall to the best of my knowledge.” (Tr. 50–51.) This lack of recall from 7 years ago is not an expression of an unwillingness to work. *Second*, the record contrarily shows that Mack was willing to work during this period, as demonstrated by the quantity of job applications he filed shortly before December 2011. (Tr. 42–50.) *Third*, even assuming arguendo that he temporarily stopped applying for work during the holiday season, this temporary cessation of

¹⁰ “Brief” refers to G4S’ postcompliance hearing brief dated July 9, 2018.

¹¹ Mack, at worst, lost his job through negligence, and, at best, was unjustly fired for doing what he had been told. Neither option is a willful employment loss.

application filing is insufficient to toll backpay. *Cornwell*, supra. Finally, a review of Mack's entire backpay period demonstrates an individual, who consistently sought work and remained employed to the best of his ability.

3. Interim Earnings: USPS Retirement Benefits

G4S failed to show that Mack's vested TSP retirement benefit from the USPS should be deducted from interim earnings. G4S contended that:

[T]he USPS made contributions to a retirement plan . . . [of] \$5,000.00, . . . which he was 100% vested at the time of his separation. . . . Since this was a substantial benefit . . . he would not have been entitled had he been employed by Respondent . . . , total net backpay calculation should be reduced by \$5,000.

(Br. at 10.)

G4S' contention is invalid. First, fringe benefit contributions paid by an interim employer generally do not offset gross wages. *Tualatin Electric, Inc.*, 331 NLRB 36, 42-43 (2000), enf. 253 F.3d 714 (D.C. Cir. 2001); NLRB Casehandling Manual, Part 3, Compliance Proceedings, §10552.4 ("contributions to a retirement fund are not normally treated as interim earnings and offset against gross backpay."). Second, even assuming arguendo that the TSP is an offset, G4S failed to meet its burden of proof on this issue. Specifically, although the record reveals that Mack was vested in a TSP account valued at around \$5000, the record does not indicate what percentage of this vested TSP benefit was paid by him directly and deducted from his wages, or whether he might also be subject to extensive early withdrawal penalties, if the vested TSP balance were withdrawn and treated as interim earnings. Given these evidentiary lapses on a subject where G4S held the burden of proof, it would be unreasonable to treat the TSP as interim earnings.¹² *United Enviro Systems*, 323 NLRB 83 (1997).

4. Working Less than 50 Hours Per Week for Interim Employers

G4S failed to show that Mack working for interim employers for less than the 50 hours per week he worked for G4S should result in a deduction from his backpay. The Board has specifically rejected this contention. See, e.g., *United Supermarkets, Inc.*, 287 NLRB 394, 398 (1987) (discriminatee should not be penalized for accepting part-time employment rather than waiting for a full-time offer); *Lundy Packing Co.*, 286 NLRB 141, 144 (1987) (same); *Be-Lo Stores*, 336 NLRB 950, 955 (2001) (no off-set where record failed to show that discriminatee was offered or refused to accept additional employment to make up for lost hours); *F. E. Hazard, Ltd.*, 303 NLRB 839 (1991) (no duty to continue to search for a more lucrative job or search for the most lucrative interim employment); *Fugazy Continental Corp.*, 276 NLRB 1334, 1338 (1985), enf. 817 F.2d 979 (2d Cir. 1987) (same).

5. Search-for-Work: February 2010 to August 2010, and June

2011 to February 2012

G4S failed to show that Mack's efforts to find interim employment from February 2010 to August 2010, and from June 2011 to February 2012 were insufficient, and warrant reducing his net backpay. It avers that security jobs were plentiful during these periods and that his efforts to secure employment were deficient because he applied to several jobs electronically and did not apply in-person unless invited to interview. See (Tr. at 107-111) (Seltzer testimony).

The Board has held that a discriminatee is entitled to backpay, as long as they make a "reasonably diligent effort to obtain substantially equivalent employment." *Moran Printing*, 330 NLRB 376 (1999). A "good faith" job search effort is:

[C]onduct consistent with an inclination to work and to be self-supporting and that such inclination is best evidenced not by a purely mechanical examination of the number or kind of applications for work which have been made, but rather by the sincerity and reasonableness of the efforts made by an individual in his circumstances to relieve his unemployment.

Flannery Motors, Inc., 330 NLRB 994, 996 (2000). Valid mitigation does not require success; it only requires an honest, good faith effort. *Fabi Fashions*, 291 NLRB 586, 587 (1988). Job search efforts are evaluated in light of all of the circumstances, and are measured over the complete backpay period, as opposed to isolated portions. *First Transit Inc.*, 350 NLRB 825 fn. 8 (2007). Any doubt or uncertainty is resolved in favor of the innocent employee claimant, and not the respondent wrongdoer. *NLRB v. NHE/Freeway, Inc.*, 545 F.2d 592, 594 (7th Cir. 1976); *NLRB v. Miami Coca-Cola Bottling Co.*, 360 F.2d 569, 572-573 (5th Cir. 1966). In sum, an employer does not meet its burden of showing an inadequate job search by showing lack of employee success in obtaining interim employment or low interim earnings. *United Food & Commercial Workers Local 1357*, 301 NLRB 617 (1991).

Mack's made a "reasonably diligent effort to obtain substantially equivalent employment." He submitted volumes of applications, worked for three different employers outside his area of expertise, worked during the vast majority of his backpay period, received promotions from two of his three employers, and even continued to search for higher-paying work at the USPS while employed at RAC. In reviewing his backpay period as a whole, it becomes readily apparent that he made an honest effort to find work and remain employed. Although G4S' expert witness Seltzer opined that he could have been even more successful in his pursuit of interim employment, this contention does not undercut his strong overall commitment to remaining employed during his backpay period. Thus, I find that his limited inability to procure interim employment between 2010 and 2012 does not warrant a backpay reduction.

6. Summary

Mack shall receive backpay in accordance with the following table, which incorporates corrected interim earnings for the first

¹² For example, treating monies that Mack deducted from his wages and deposited into his TSP as interim earnings would be double-counting interim earnings (i.e., counting wages once, and TSP deductions twice).

quarter of 2011 and a ministerial correction:¹³

Quarter	Gross Backpay	Interim Earnings	Net Backpay
1	\$12,211.21	\$0.00	\$12,211.21
2	\$19,843.22	\$0.00	\$19,843.22
3	\$19,843.22	\$901.94	\$18,941.28
4	\$19,843.22	\$11,157.58	\$8,685.64
1	\$20,011.16	\$10,999.95	\$9,011.21
2	\$20,011.16	\$8,557.60	\$11,453.56
3	\$20,011.16	\$0.00	\$20,011.16
4	\$21,550.48	\$0.00	\$21,550.48
1	\$20,214.97	\$4,178.58	\$16,036.39
2	\$20,214.97	\$8,174.52	\$12,040.45
3	\$20,214.97	\$8,623.02	\$11,591.95
4	\$20,214.97	\$8,958.13	\$11,256.84
1	\$22,303.37	\$11,609.59	\$10,693.78
2	\$22,303.37	\$10,367.15	\$11,936.22
3	\$22,303.37	\$7,993.18	\$14,310.19
4	\$22,303.37	\$7,993.18	\$14,310.19
1	\$22,159.28	\$10,879.96	\$11,279.32
2	\$22,159.28	\$10,879.96	\$11,279.32
3	\$22,159.28	\$10,879.96	\$11,279.32
4	\$22,159.28	\$10,879.96	\$11,279.32
1	\$20,679.81	\$12,074.66	\$8,605.15
2	\$20,679.81	\$12,074.66	\$8,605.15
3	\$20,679.81	\$12,550.54	\$8,129.27
4	\$20,679.81	\$13,574.06	\$7,105.75
1	\$22,698.13	\$13,400.18	\$9,297.95
2	\$22,698.13	\$13,684.80	\$9,013.33
3	\$22,698.13	\$11,847.16	\$10,850.97
4	\$24,444.14	\$13,068.57	\$11,375.57
1	\$21,247.31	\$12,972.05	\$8,275.26
2	\$21,247.31	\$12,972.05	\$8,275.26
3	\$4,903.23	\$2,993.55	\$1,909.68
			<u>\$360,434.39</u>

¹³ Gross backpay for the first quarter of 2016 has been corrected from \$22,688.13 to \$22,698.13.

CONCLUSION

Based upon the findings and analysis set forth above, and on the record as a whole, I issue the following recommended supplemental.¹⁴

ORDER

The Respondent, G4S Regulated Solutions, a Division of G4S Secure Solutions (USA) Inc., West Palm Beach, Florida, its officers, agents, successors, and assigns, shall consistent with the Specification as modified by the foregoing findings, satisfy its obligation to make whole Cecil Mack by paying him backpay in the amount of \$360,434.39 in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), that is compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), plus compensation for the adverse tax consequences of receiving a lump-sum backpay award in accordance with *Don Chavas LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), minus tax withholdings required by Federal and State laws. It shall also file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters.

Dated, Washington, D.C. December 20, 2018

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended

Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes,