



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

September 13, 2019

Michael E. Gans, Esquire
Clerk United States Court of
Appeals for the Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South Tenth St., Rm 24.329
St. Louis, MO 63102

Re: *NLRB v. First Student*, Board Case No.
14-CA-225201

Dear Mr. Gans:

I am enclosing the Board's application for summary entry of a judgment enforcing the Board's order in this case, and copies of 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/ David Habenstreit

David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half St., S.E.
Washington, D.C. 20570
(202) 273-2960

cc: Service List

SERVICE LIST

RESPONDENT:

Steve Jones
First Student
485 St. Peters Howell Rd.
St. Charles, MO 63304

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RESPONDENT'S COUNSEL:

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CHARGING PARTY'S COUNSEL:

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REGIONAL DIRECTOR:

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
	:	Petitioner
	:	No.
v.	:	
	:	
	:	Board Case No.:
FIRST STUDENT	:	14-CA-225201
	:	
	:	
	:	Respondent

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 Eighth 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 order against First Student (Respondent). The Board is entitled to summary enforcement of its order because Respondent did not respond to the Board’s Notice to Show Cause why the General Counsel’s Motion for Default Judgment should not be granted. Consequently, 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 Missouri. The Board's final order issued on June 14, 2019, and is reported at 368 NLRB No. 9.

B. Proceedings Before the Board

1. A charge and an amended charge were filed on August 6, 2018, and September 18, 2018, respectively, alleging that the Respondent violated Section 8(a)(3) and (1) of the Act. Subsequently, prior to the issuance of a complaint, the parties entered into an informal settlement agreement which was approved by the Region 14 Director for on October 2, 2018. The settlement agreement required the Respondent to take certain affirmative actions to remedy various unfair labor practices and to notify the Regional Director in writing of the steps that have been taken to comply with the Agreement.

2. The settlement agreement contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices. Thereafter, the General Counsel may file a Motion for Default Judgment with the Board on the allegations of the Complaint. The Charged Party understands and agrees that all of the allegations of the Complaint will be deemed admitted and that it will have waived its right to file an Answer to such Complaint. *The only issue that the Charged Party may raise before the*

Board will be whether it defaulted on the terms of this Settlement Agreement. The General Counsel may seek, and the Board may impose, a full remedy for each unfair labor practice identified in the Notice to Employees. The Board may then, without necessity of trial or any other proceeding, find all allegations of the Complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an Order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board Order ex parte, after service or attempted service upon Charged Party at the last address provided to the General Counsel. (emphasis added)

3. By letter dated October 5, 2018, the Region sent the Respondent a copy of the conformed settlement agreement with a cover letter explaining the remedial actions the Respondent was required to take to comply.

4. By letter dated November 29, 2018, the region's compliance officer notified the Respondent that it had failed to comply with the terms of the agreement. The letter provided 14 days for Respondent to cure its non-compliance with the agreement and warned that, in the event Respondent failed to comply, the Regional Director would issue a complaint and may file a motion for default judgment with the Board.

5. The Respondent did not comply.

6. On January 17, 2019, the Regional Director, pursuant to the terms of the noncompliance provision of the settlement agreement, issued a complaint.

7. On February 1, 2019 and the General Counsel filed a Motion for Default Judgment with the Board.

8. On February 14, 2019, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The order notified Respondent that a response must be filed by February 28, 2019.

9. The Respondent did not file a response.

10. In the absence of a response, the Board granted the Motion for Default Judgment and entered an appropriate order against the Respondent.

C. The Board Is Entitled to Summary Enforcement of Its Order

On these facts, the Board is entitled to summary enforcement of its order against Respondent. Respondent did not file a response to the general counsel's Motion for Default Judgment. The Board therefore granted the Motion for Default Judgment and entered an appropriate order.

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., Father and Sons Lumber v. NLRB*, 931 F.2d 1093, 1095-96, 1097 (6th Cir. 1991); *NLRB v. Continental Hagen Corp.*, 932 F.2d 828, 830 (9th 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 order in full. A proposed judgment is attached.

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

Dated in Washington, D.C.
this 13th day of September, 2019

NATIONAL LABOR RELATIONS BOARD

v.

FIRST STUDENT

ORDER

First Student, St. Charles, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Encouraging or discouraging membership in Teamsters Local 610 by discharging or otherwise discriminating against employees in response to a union demand when it has reasonable grounds for believing the demand is unlawful.
 - (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, and to the extent the Respondent has not already done so, offer Janeen Wallington full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.
 - (b) To the extent it has not already been done, make Janeen Wallington whole for any loss of earnings and other benefits suffered as a result of the discrimination against her, in the manner set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses.
 - (c) Compensate Janeen Wallington for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 14, 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 Janeen Wallington, and within 3 days thereafter, notify her in writing that this has been done and that the discharge will not be used against her 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 facility in St. Charles, Missouri, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 14, 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 July 31, 2018.
- (g) Within 21 days after service by the Region, file with the Regional Director for Region 14 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 MEMBERS AND 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 encourage or discourage your membership in Teamsters Local 610 by discharging or otherwise discriminating against you in response to a union demand when we have reasonable grounds for believing that the demand is unlawful.

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 Janeen Wallington immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges enjoyed, to the extent it has not already been done.

WE WILL make Janeen Wallington whole for any loss of earnings and other benefits resulting from her discharge, less any net interim earnings, plus interest, to the extent it has not already been done, and WE WILL also make Janeen Wallington whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Janeen Wallington for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 14, 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 of the date of the Board's Order, remove from our files any reference to the unlawful discharge of Janeen Wallington, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the unlawful discharge will not be used against her in any way.

FIRST STUDENT

The Board's decision can be found at www.nlr.gov/case/14-CA-225201 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.



