

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 27 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

THE MARKET BY JENNIFER'S LLC,

Respondent.

No. 20-71663

NLRB No. 28-CA-236704
National Labor Relations Board

ORDER

Before: SCHROEDER, HAWKINS, and CALLAHAN, Circuit Judges.

The application (Docket Entry No. 1-2) of the National Labor Relations Board for enforcement of its May 6, 2020 order is granted. Unless objections as to form are received within fourteen days of the date of this order, the form of judgment submitted at Docket Entry No. 2 will be the judgment of the court.

The Clerk will serve the proposed judgment submitted at Docket Entry No. 2 on respondent.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.
THE MARKET BY JENNIFER’S LLC	:	28-CA-236704
	:	
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 summary entry of a judgment against Respondent, The Market by Jennifer’s LLC, its officers, agents, successors, and assigns, enforcing its order dated May 6, 2020, in Case No. 28-CA-236704, reported at 369 NLRB No. 72, and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, The Market by Jennifer’s LLC, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Endorsed, Judgment Filed and Entered

/s/ Molly Dwyer
Molly Dwyer
Clerk

NATIONAL LABOR RELATIONS BOARD

v.

THE MARKET BY JENNIFER'S LLC

ORDER

The Market by Jennifer's LLC, Phoenix, Arizona, its officers, agents, successors, and assigns shall:

1. Cease and desist from
 - (a) Ceasing to schedule employees for work because they engage in concerted activities with other employees for the purposes of mutual aid and protection and to discourage employees from engaging in protected activity.
 - (b) Discharging employees because they engage in concerted activities with other employees for the purposes of mutual aid and protection and to discourage employees from engaging in protected activity.
 - (c) 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 discharged employee Joanne Raus 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) Make Joanne Raus whole for any loss of earnings and benefits suffered as a result of the discrimination against her, and also make Raus whole for reasonable search-for-work and interim employment expenses, plus interest, in the manner set forth in the remedy section of this decision.
 - (c) Compensate Joanne Raus for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 28, 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 year for Raus.
 - (d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Joanne Raus, and within 3 days

thereafter, notify Raus in writing that this has been done and that the unlawful action will not be used against her in any way.

- (e) Post at its Phoenix, Arizona facility copies of the attached notice marked “Appendix.”¹ Copies of the notice, on forms provided by the Regional Director for Region 28, 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 19, 2019.
- (f) Within 21 days after service by the Region, file with the Regional Director for Region 7 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.

¹ If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of the paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Mailed by Order of the National Labor Relations Board” shall read “Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES

MAILED 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 stop scheduling you for work because you engage in concerted activities with other employees for the purposes of mutual aid and protection by complaining to us regarding the wages, hours, and working conditions of our employees and by raising concerns about sexual harassment with other employees and with us.

WE WILL NOT discharge you because you engage in protected concerted activities with other employees.

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 this Order, offer discharged employee Joanne Raus 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.

WE WILL make Joanne Raus whole for any loss of earnings and benefits suffered as a result of her discharge, plus interest, and WE WILL also make Raus whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Joanne Raus for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 28, and WE WILL, 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 year for Raus.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Joanne Raus, and WE WILL, within 3 days thereafter, notify Raus in writing that this has been done and that the unlawful action will not be used against her in any way.

THE MARKET BY JENNIFER'S LLC

The Board's decision can be found at www.nlr.gov/case/28-CA-236704 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.

