

Baddour, Inc. and Highway and Local Motor Freight Employees, Local 667, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Jerry Leonard Williams. Cases 26-CA-9846, 26-CA-9957, and 26-CA-10121

August 27, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On February 27, 1991, Administrative Law Judge Lawrence W. Cullen issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief and a reply to the Respondent's exceptions.

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

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below.

We adopt the judge's finding that Jerry Leonard Williams is entitled to the amount of backpay set out in the compliance specification.¹ We also adopt his finding that the sums earned by Larry Mayes in the first and second quarters of 1983 as set out in the compliance specification are proper. Contrary to the judge, we find that Mayes is entitled to the travel expenses he incurred when he moved from Memphis, Tennessee, to El Paso, Texas, and then when he moved back to Memphis from El Paso. We shall consider these expenses as offsetting the interim earnings that Mayes had in the relevant calendar quarters, and we shall recompute the net backpay owed Mayes accordingly.

Larry Mayes was illegally discharged by the Respondent, which is located in Memphis, Tennessee, on August 27, 1982. At that time, he was earning \$6.50 per hour as a maintenance mechanic. He obtained interim employment at Memphis State University as a heating, ventilation, and air-conditioning mechanic on November 1, 1982. His starting pay rate was \$6.19 per hour. Mayes left his job with Memphis State on November 6, 1983, while still earning \$6.19 per hour, to

move to El Paso, Texas, to go to work with his brother in his brother's business called Better Business Products. The job in El Paso resulted in Mayes receiving a \$70-a-week increase in pay, a company car, and a promise of a future opportunity to take over the business. His moving expenses to El Paso were \$895.80. Mayes remained in El Paso until May 23, 1985² when he returned to Memphis. He left El Paso as a result of his difficulties in dealing with his brother's wife who was also involved with the business and ultimately difficulties with his brother and his observation of financial problems encountered by the business which subsequently closed. Mayes had secured employment in Memphis at Burnett Freeman before he left El Paso. He was paid \$7.15 per hour there. His moving expenses back to Memphis were \$921.63. Mayes eventually returned to work at Memphis State in the fourth quarter of 1987.

In the compliance specification, the General Counsel sought reimbursement for Mayes of his moving expenses to and from El Paso and the judge denied those expenses. Based on the reasoning set out in *Big Three Industrial Gas*, 263 NLRB 1189, 1202-1203 (1982) (regarding the backpay entitlement of John E. Coryell), we shall reverse the judge and award those expenses.

In *Big Three*, the Board awarded moving expenses to Coryell, who had resigned his interim employment in Houston, Texas, and moved to California. Coryell lived and worked in California before moving to Houston to work for Big Three. After Coryell was fired by Big Three in August 1976, he secured interim employment in Houston which paid \$7.77 per hour rather than the \$7.20 per hour he had earned at Big Three. He worked at the interim employer for approximately 3 months and then quit "because he preferred California living and because he knew he could find acceptable employment there [footnote omitted]."³ In fact, Coryell found regular employment by the first quarter of 1977 in California.

In the backpay proceeding, Big Three argued that Coryell was not entitled to moving expenses to California because he had resigned from a higher paying interim job in Houston and had traveled to California for personal reasons where his earnings were lower than those he could have earned had he stayed at the Houston interim job. The judge rejected Big Three's contentions. First, he found that although Big Three had shown that the interim job had a higher hourly rate than the one at Big Three, it was conceivable that the employees at that job did not work the same amounts of substantial overtime that Big Three's employees did and thus Big Three had failed to show "that Coryell's overall earnings [at the interim employer] would have been at least equal to those he would have received"

¹The judge provided several grounds for concluding that the Respondent failed to comply with the Board's Order to reinstate Williams. In agreeing with the judge that the Respondent has not satisfied the Board's reinstatement order, we find it unnecessary to rely on his statement that "assuming arguendo that the cart controller position had been eliminated, this did not satisfy the Board's Order to return Williams to his former position or to a *substantially equivalent position* if his former position no longer existed," or his statement that "the layoff was not based on seniority and Respondent has not sustained its burden of proof to show that Williams would have been included in the layoff."

²The judge incorrectly listed that date as May 23, 1984.

³263 NLRB at 1202.

at Big Three.⁴ The judge rejected the argument that Coryell willfully avoided offsetting interim earnings by quitting the interim employer. Regarding Coryell's decision to return to California, the judge noted that this in and of itself did not reflect a willful failure to seek comparable employment. The judge found that, because of Coryell's longstanding residency in California, he was familiar with the job markets there, promptly obtained employment there, and eventually obtained a regular, long-term position at which he earned more than if he had stayed at Big Three. The judge concluded that because Coryell obtained comparable work in California at comparable earnings that the California job market was comparable to the Houston market and Big Three had thus failed to show that Coryell unreasonably failed to mitigate Big Three's backpay liability by quitting the interim employer and returning to California.

Applying the analysis in *Big Three* here, it is clear that, as in *Big Three*, the Respondent has "failed in its burden of showing that [Mayes'] overall earnings [at the interim employer] . . . would have been at least equal to those he would have received" at the Respondent.⁵ Indeed, it is clear that those earnings were less when Mayes left Memphis State than he would have been receiving at the Respondent. His rate then at Memphis State was \$6.19 per hour for a 37.5-hour workweek. At the Respondent, he had been earning \$6.50 per hour for a 40-hour workweek.⁶ Thus, in accord with *Big Three*, Mayes' quitting his Memphis State job did not establish a willful avoidance of offsetting interim earnings. In *Big Three*, given the circumstances of Coryell's decision to move to California, the judge next found that Big Three had failed to show that Coryell unreasonably failed to mitigate its backpay liability by moving to California. Similarly here, the Respondent has failed to show that Mayes' quitting his Memphis State job and moving to El Paso constituted an unreasonable failure to mitigate the Respondent's backpay liability. Particularly is this so when it is noted that the position that Mayes' took in El Paso paid even more than the job at Memphis State, thus reducing the Respondent's backpay liability from that incurred when he worked at Memphis State.

In refusing to award Mayes his moving expenses to El Paso, the judge found that Mayes' position at Memphis State was substantially equivalent to his original position at the Respondent and it therefore was not necessary for him to move to El Paso to secure substantially equivalent employment and that the Respondent should not pay his moving expenses in his doing so. In response, we note that although Mayes' position at Memphis State may be considered substan-

tially equivalent employment to the extent that it would defeat a claim that working there constituted a willful loss of earnings, such a finding does not answer the question before us here. Rather, based on *Big Three*, the question is whether Mayes' overall earnings at Memphis State would have been at least equal to those he would have received at the Respondent and further what type of position he sought to pursue elsewhere. Answering those questions as we have above, we find Mayes is entitled to his moving expenses from Memphis to El Paso.

Mayes remained in El Paso for approximately a year and a half. We have noted above the reasons Mayes offered for his decision to leave the position he had in El Paso. The judge found that "Mayes' actions in seeking and finding new employment in Memphis were prudent in view of the tenuous circumstances as they developed in the El Paso position." We agree with this assessment. Further, while not a requisite to our determination that Mayes is entitled to moving expenses back to Memphis from El Paso, we note that Mayes already had a job offer—at Burnett Freeman—before he returned to Memphis. There is no argument that by taking this particular position at Burnett Freeman, Mayes engaged in a willful loss of earnings.⁷ Accordingly, we will also reimburse Mayes for his moving expenses from El Paso to Memphis.

Summarizing, we note that Mayes moved to El Paso in the fourth quarter of 1983. He had interim earnings of \$3,560.52 from which we shall subtract his \$895.80 in moving expenses yielding net interim earnings of \$2,664.72 and a net backpay due Mayes in that quarter of \$923.68. Mayes moved back to Memphis in the second quarter of 1985. He had interim earnings then of \$3,984.06 from which we shall subtract \$921.63 in moving expenses for net interim earnings of \$3,062.43 and net backpay due of \$745.57 in that quarter. These revisions to the backpay due Mayes results in a total backpay of \$9,693.53 plus interest due him.

ORDER

The Respondent, Baddour, Inc., Memphis, Tennessee, its officers, agents, successors, and assigns, shall pay to Larry Mayes \$9,693.53 plus interest and to Jerry Leonard Williams \$32,890.63 plus interest.

⁷The Respondent does argue that Mayes' quitting his initial interim employment at Memphis State was unjustified. We have already rejected that contention.

John H. Goree, Esq., for the General Counsel.
William E. Hester, III, Esq. (Kullman, Inman, Bee, Downing & Banta), of New Orleans, Louisiana, for the Respondent.
Duria Jones, Jr., Organizing Agent, of Memphis, Tennessee, for the Charging Party.

⁴Id. at 1202.

⁵Id. at 1202.

⁶Overtime apparently was not a factor in either job.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on March 6, 1990, at Memphis, Tennessee. The hearing was held pursuant to a compliance specification issued on May 4, 1989, by the Regional Director for Region 26 of the National Labor Relations Board (the Board) and following an Order of the Board issued on January 4, 1990, denying Respondent's Motion for Partial Summary Judgment. The compliance specification, as amended in the first amended compliance specification and as further amended at the hearing is joined by Respondent's answer thereto filed May 24, 1989, and its answer to the first amended compliance specification and as also amended at the hearing and involves a dispute between the parties regarding the appropriate amount of backpay and expenses, if any due discriminatees Larry Mayes and Jerry Williams.

On the entire record in this proceeding, including my observations of the witnesses who testified, and after due consideration of the briefs filed by the General Counsel and counsel for the Respondent, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. BACKGROUND AND FACTS

On September 26, 1986, the Board issued its Decision, Order, and Direction of Second Election in *Baddour, Inc.*, 281 NLRB 546, directing the Respondent to reinstate and make whole employees Larry Mayes and Jerry Williams and two other employees not here involved. The Board's Order was enforced by the United States Sixth Circuit Court of Appeals by its Orders issued on August 15 and November 21, 1988. The controversies involving backpay and expenses in this case are as follows:

A. *Larry Mayes*

Mayes was discharged by Respondent from his position as a maintenance mechanic on August 27, 1982, and obtained interim employment with Memphis State University as a heating, ventilation, and air-conditioning mechanic on November 1, 1982. Mayes testified he was contacted by his brother, the owner of Better Business Products located in El Paso, Texas, offered a \$70-a-week increase in salary and an automobile with all expenses including insurance paid with the possibility of later taking over the business, and left his employment with Memphis State University on November 6, 1983, for the position with his brother's firm. Mayes incurred expenses in the move to El Paso, Texas, for himself and his family. Mayes continued to work for Better Business Products until May 23, 1984, when he returned to Memphis for a job with Burnett Freeman as a result of his difficulties in dealing with his brother's wife who was also involved with the business and ultimately difficulties with his brother and his observation of financial difficulties encountered by the business which subsequently closed. Mayes also incurred expenses in his move back to Memphis. After his return to Memphis, Mayes subsequently returned to work with Memphis State University.

Respondent is contesting the expenses incurred by Mayes for his moves from Memphis to El Paso and from El Paso

back to Memphis. Respondent also contends that when Mayes voluntarily terminated his employment with Memphis State and moved to El Paso to obtain work in a business run by a relative he abandoned his substantially equivalent employment with Memphis State. Respondent thus contends it should not be held liable for expenses incurred by Mayes for his moves to and from El Paso. Respondent also contends that the backpay for the first and second quarters of 1983 should be reduced as Mayes did not work all the scheduled hours available to him at Memphis State and would have earned \$3,018.11 during each of these quarters rather than his actual earnings of \$2,788.98 and \$2,793.67 for these two quarters. Respondent thus contends that if Mayes were not available to perform work at Memphis State, he would not have been available for all work with the Respondent and thus the gross backpay figures for the first and second quarters of 1983 should be reduced or the possible interim earnings with Memphis State for those quarters should be increased to reflect \$3,018.11.

In support of its position Respondent cites *NLRB v. Madison Courier*, 472 F.2d 1307, 1318 (D.C. Cir. 1972), wherein the court discussed the rule for an alleged discriminatee's entitlement to backpay as follows:

In order to be entitled to backpay, an employee must at least make reasonable efforts to find new employment which is substantially equivalent to the position [which he was discriminatorily deprived of] and is suitable to a person of his background and experience.

Respondent contends the job in El Paso was not comparable or substantially equivalent to Mayes' original position with Respondent and that Mayes' decision to abandon his job at Memphis State was not a reasonable one thus supporting its argument that it should not be charged with any loss such as expenses incurred by Mayes as a result of his abandonment of his job with Memphis State. Respondent also cites *NLRB v. Mastro Plastics Corp.*, 354 F.2d 170, 174 fn. 3 (2d Cir. 1965), for the proposition that an alleged discriminatee is not permitted to voluntarily abandon interim employment without good reason. Respondent concedes that the Board has ordered the payment of travel expenses in the past but contends that those cases all involved situations where the discriminatees could not obtain substantially equivalent employment in the same general geographic area and were forced to travel to other locations to obtain interim employment which necessitated the incurrence of travel expenses, whereas in this case the decision to leave his employment at Memphis State was an abandonment of his substantially equivalent employment for a job that was dissimilar to his original position with Respondent and that Mayes' decision was thus not a reasonable decision and Respondent should not be penalized therefor.

The General Counsel contends, however, that Mayes made diligent efforts to obtain interim employment during the backpay period and was successful in his original position with Memphis State and his subsequent positions with Better Business Products in El Paso, Texas, and his return to Memphis for a job with Burnett Freeman and his subsequent return to Memphis State where he was employed at the time of the supplemental hearing. The General Counsel further notes that Respondent's argument with respect to Mayes'

travel expenses for his employment in El Paso, Texas, and his subsequent return to Memphis ignores Respondent's willingness to take advantage of the higher level of pay received on the El Paso job as opposed to the Memphis State University job but would deny the travel expenses necessary to move to El Paso and also would deny the necessary travel expenses to return to Memphis for another position when the stability of the position in El Paso appeared in doubt.

My review of the evidence and the testimony of Mayes, which I credit in its entirety, convinces me that Mayes in all respects made reasonable and diligent efforts to obtain interim employment. Mayes' decision to move to El Paso to take the job with his brother's business with a \$70-a-week increase in pay a company car, and a promise of a future opportunity to take over the business does not appear to be an unreasonable abandonment of his job at Memphis State University such as would disqualify Mayes from future backpay if that were involved here. *Electrical Workers IBEW Local 401 (Stone & Webster)*, 266 NLRB 870 (1983); *Laborers Local 1440 (Southern Wisconsin Contractors)*, 243 NLRB 1169, 1172 (1979).

However, I also find that although the travel expenses incurred by Mayes and his family for the move to El Paso were incurred in his obtainment of this interim employment they should not be deducted from the interim backpay earned at the El Paso job. I also find that Mayes is not entitled to expenses for his move back to Memphis to obtain a position with Burnett. I credit Mayes' un rebutted testimony that the position in El Paso did not work out and appeared in jeopardy as a result of the attitude of his brother's wife and his brother toward him and the general downturn in the business. Although it appears that Mayes' actions in seeking and finding new employment in Memphis were prudent in view of the tenuous circumstances as they developed in the El Paso position, I do not find that Mayes is properly entitled to the travel expenses listed by the General Counsel. In denying Mayes the travel expenses to and from El Paso I do not find that his decisions to move to and from El Paso were unreasonable such as to cut off Respondent's backpay liability. However, it is clear that Mayes had a position at Memphis State University which was substantially equivalent to his original position with Respondent. Under these circumstances it clearly was not necessary for him to move to El Paso to secure equivalent interim employment and thus his incurrence of travel expenses for the trip to El Paso was the result of his voluntary actions based on his individual choice and to require the Respondent to underwrite these expenses would go beyond the concept of a make-whole remedy and would be punitive in nature. Similarly the move back from El Paso to Memphis resulted at least in part from the original voluntary move to El Paso and the Respondent should not be required to underwrite the expense of this move. The General Counsel has cited no case which would require an employer to underwrite travel expenses in such a circumstance.

I find that the sums earned by Mayes during the first and second quarters of 1983 are proper as set out in the compliance specification. I find that the Respondent has failed to establish that the lesser amount of earnings in these periods as compared to other periods were the result of the failure of Mayes' to report for work during this period. I have considered the testimony of Joe J. Katterjohn, the assistant direc-

tor of personnel at Memphis State, concerning Mayes' having worked all available hours during the first and second quarters of 1983 and the exhibits prepared to show the hours available to Mayes during these periods. Although I credit Katterjohn's testimony which would tend to show that there were more hours available to Mayes than Mayes actually had earnings for, I also credit Mayes' testimony that he worked all hours available to him and that the earnings in the third quarter in 1983 may have been higher than those in the earlier quarters as the result of an additional pay period in the third quarter. There was no evidence presented that Mayes at any time failed to report for work as required during his employment at Memphis and I find no basis for inferring that he did. At most, the difference in earnings between the first two quarters and the third quarter of 1983 gives rise to an uncertainty as to why Mayes' earnings were lower in the first two quarters of 1983 and it is well established that in a backpay case all doubts are resolved against the wrongdoer who created the situation giving rise to a need for backpay. *Kansas Refined Helium Co.*, 252 NLRB 1156 (1980).

B. *The Backpay of Jerry Williams*

The record shows that Williams was demoted from his job as a cart controller to a consolidator in October 1982 and that Williams sustained injury to his back while performing as a consolidator and was off work on workmen's compensation disability until April 11, 1983. Williams' demotion to the consolidator position was found to be violative of Section 8(a)(3) and (4) of the Act by an administrative law judge in the underlying decision in this case which was subsequently adopted by the Board and affirmed by the United States Circuit Court of Appeals for the Sixth Circuit. In the administrative law judge's decision adopted by the Board the Respondent was ordered to offer to return Williams to his original job as a cart controller or to a substantially equivalent position if that position no longer existed. On April 11, 1983, when Williams returned to his job as a cart controller from his disability on workmen's compensation he was permitted to work for that morning but was then told after working that morning that he was being laid off. Respondent contends this was part of a general layoff occurring around that time frame. Williams has not since been permitted to work for Respondent or offered any substantially equivalent employment.

Respondent contends that the layoff of Williams was part of a general layoff of employees which occurred in this period, that the positions of cart controller and consolidator were eliminated and subsequently incorporated into the work of other employees as required, and that any violation of the Act based on the layoff of Williams is time barred by Section 10(b) of the Act as there has never been a charge filed with the Board alleging the layoff as a violation of the Act.

The General Counsel contends that Respondent did not comply with the original order in the underlying unfair labor practice case, to return Williams to his original position as a cart controller or to a substantially equivalent position if that position no longer existed. In support of its position the General Counsel called several employees (Michael Dean, a former employee; Elton Hill, a current employee, and Anthony Graham, a current employer all, of whose testimony I credit), who testified that the cart controller duties were performed by other employees who were assigned to this job

after Williams was demoted. These employees as well as Williams also testified that there were several other positions which Williams could have been trained on or have initially performed such as maintenance apprentice, lift truckdriver, or order picker. Williams testified he was licensed as a lift truckdriver. Respondent concedes that seniority was not followed in the general layoff that occurred and that there were several jobs that did not require training or that new employees without any experience were routinely trained on by on-the-job training. Respondent's witness, Vice President Larry Hunsucker, also conceded that he was relying on an elimination of a job classification rather than his observations of the cart controlling process in his testimony that the cart controller position had been eliminated. Respondent contends that the duties of cart controller were assimilated by a number of its other employees as a result of the consolidation of its jobs coincidental with its reduction of its work force by the general layoff occurring in the spring of 1983 which it contends was economically motivated.

In addition to this issue, the Respondent contends that, assuming arguendo the "layoff" of Williams were found to have been violative of the Act, Williams is not entitled to backpay for various periods of unemployment between April 1983 and the present because of his failure to make a good-faith effort to obtain employment which would have mitigated the loss of income sustained by him. In this regard it should be noted that once the General Counsel comes forward and shows the calculation of the gross backpay in a backpay case, the Respondent has the burden of going forward and establishing that the General Counsel's calculations are inaccurate or that there is another reason mitigating against the award of backpay or a portion thereof. Respondent does not dispute the formula or calculations submitted by the General Counsel but rather contends that backpay should not be awarded to Williams in whole or in part because of willful idleness on his part and his failure to make a diligent effort to find or retain work. Initially Respondent points to the lengthy period of unemployment sustained by Williams from April 1983 to the third quarter of 1984 and to other periods of unemployment and a termination of employment by an interim employer as evidence that Williams did not make a reasonable good-faith search for work and that when he did find work he either abandoned it or was terminated for cause because of his own malfeasance. Respondent presented no evidence to sustain its burden in this regard but rather relied on the length of the unemployment periods and its cross-examination of Williams who testified at length concerning his difficulties and attempts to find employment during the backpay period. Williams testified that on the advice of his attorney that he could be discharged and precluded from future possible workmen's compensation benefits, if he did not disclose his previous back injury, he put down his previous back injury on applications he filed for employment. He testified that he made numerous inquiries and applications for employment in an industrial area in Memphis and at fast food outlets to no avail and it was not until he ceased reporting his back injury on his employment applications that he found work. As a result of difficulty in obtaining employment in the Memphis area he went to Atlanta, Georgia, at the suggestion of his sister where he located employment at a tire center where he was required to change heavy truck tires which aggravated his back injury and he thereafter left

that job. He subsequently returned to Memphis. He also worked as a guard in Memphis but was unable to get to certain of the jobs because of transportation problems as he did not have an automobile and the cost of commuting across town for the minimal wages he received on these jobs. He also worked at one cleaning establishment which closed and another cleaning establishment where he was discharged because of his supervisor's dissatisfaction with the method he used in cleaning a carpet.

C. Analysis

Initially I find that the Respondent failed to comply with the Board's Order in the underlying unfair labor practice case to return Williams to his job as a cart controller or to a substantially equivalent position. I find that Respondent's actions in permitting Williams to return to his cart controller position for all of one morning and then terminating him on the ground that this job had been eliminated constituted no offer of reinstatement whatsoever, *Middle Earth Graphics*, 283 NLRB 1049 (1987). I find it obvious from the credited testimony of other employees of Respondent that the job of cart controller was not actually eliminated but rather that other employees were transferred either on a full- or part-time basis to this position to perform the work. Furthermore, assuming arguendo that the cart controller position had been eliminated, this did not satisfy the Board's Order to return Williams to his former position or to a *substantially equivalent position* if his former position no longer existed. I find based on Williams' testimony and the testimony of other employees and former employees called by the General Counsel in this case that there were substantially equivalent positions to which Williams could have been returned if the Respondent had complied with the Board's Order in this case such as lift truckdriver, maintenance apprentice, or order picker. Williams was a licensed lift truckdriver and the evidence as conceded by Respondent's vice president of personnel, Don Eure, disclosed that newly hired employees are routinely hired into these positions and trained on the job. Moreover the layoff was not based on seniority and Respondent has not sustained its burden of proof to show that Williams would have been included in the layoff. Accordingly I find that Respondent failed to comply with the order to restore Williams to his former position or to a substantially equivalent position if this position no longer existed. I reject Respondent's 10(b) defense as I find it was unnecessary for a separate charge to be filed for the "layoff" of April 11, 1983, of Williams as I find Respondent's permitting Williams to return to his cart controller position for all of one morning before telling him he was laid off was no offer of reinstatement at all and did not comply with the Board's Order to return Williams to his former position or to a substantially equivalent position if his former position no longer existed.

With respect to the amount of backpay due Williams, I find that the calculations of backpay as amended at the hearing submitted by the General Counsel were proper and should be awarded to Williams in that amount. Initially, I find on the basis of the foregoing credited testimony and the evidence as a whole that Williams made a reasonably diligent search for work during the backpay period and was successful in obtaining work during much of this period notwithstanding his back injury and other setbacks which occurred. I credit Williams' testimony that he made earnest ef-

forts to obtain employment during this backpay period. See *Electrical Workers IBEW Local 401 (Stone & Webster)*, 266 NLRB 870 (1983); *Keller Aluminum Chairs Southern*, 171 NLRB 1252, 1257 (1968); *Fort Lock Corp.*, 233 NLRB 78 (1977); *NLRB v. Brown & Root*, 311 F.2d 447 454 (8th Cir. 1963).

II. CONCLUSIONS AND RECOMMENDATIONS

The backpay figures for Mayes and Williams set forth in the specification by the General Counsel as amended at the hearing are correct and Respondent has failed to meet its burden of proof in attacking their accuracy. According to my calculations from the specifications as amended at the hearing, the net backpay due Mayes is \$7,876.16 plus interest and the net backpay due Williams is \$32,890.63 plus interest. Mayes is not entitled to expenses for the trips of himself and his family to and from El Paso, Texas.

On the basis of the foregoing findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended¹

ORDER

The Respondent, Baddour, Inc., Memphis, Tennessee, its officers, agents, successors, and assigns, shall pay to Larry Mayes \$7,876.10 and to Jerry Leonard Williams \$32,890.63, both awards with interest thereon as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).²

¹If 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.

²In accordance with our decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), interest on and after January 1, 1987, shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to January 1, 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621), shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977).