

**H & D Trucking, Inc. and Local 299, International Brotherhood of Teamsters, AFL-CIO.**<sup>1</sup> Case 7-CA-29281

September 30, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On January 16, 1990, the National Labor Relations Board issued a Decision and Order<sup>2</sup> directing the Respondent, inter alia, to make Calvin LeBlanc, Daniel Nibarger, and Ronald Wolfe whole for any losses they may have suffered as a result of the Respondent's unfair labor practices. On July 31, 1990, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due under the Board's Order as enforced by the court, the Regional Director for Region 7, on March 29, 1991, issued a compliance specification and notice of hearing alleging the amounts of backpay due the discriminatees under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.

On July 16, 1991, the General Counsel filed with the Board Motions to Transfer Case to the Board and for Default Summary Judgment, with exhibits attached. Subsequently, on July 18, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Default Summary Judgment should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

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

On the entire record, the Board makes the following

Ruling on the Motion for Default Summary  
Judgment

Section 102.56 of the Board's Rules and Regulations provides that if an answer is not filed within 21 days from the service of the compliance specification, the Board may find the allegations of the specification to be true and enter an appropriate order. The compliance specification served on the Respondent states that

“pursuant to Section 102.54”<sup>3</sup> of the Board's Rules and Regulations:

[T]he Respondent shall, within twenty-one (21) days from the date [of the specification] file with the Regional Director, acting in this matter as agent of the Board, an original and four (4) copies of an answer to this Specification. Said Section 102.54 [sic] provides that to the extent that such Answer fails to deny allegations of the Specification in the manner requested under the Board's Rules and Regulations, and failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them.

At the time of the issuance of the compliance specification, the Respondent's last known address was the location at which it had been served and had received the underlying complaint. The specification was thus served upon the Respondent at that address and was returned by the U.S. Postal Service with a stamp indicating “Authorized Time for Forwarding has Expired.” Thereafter, a May 1, 1991 certified mail letter advising the Respondent that an answer was due and that default summary judgment would be sought if an answer was not submitted by May 10, 1991 was sent by the Regional attorney to the Respondent at its last known address. The return receipt of that letter bears a U.S. Postal Service date stamp of May 8, 1991, and shows that an unknown party crossed out the Respondent's last known address appearing on the return receipt card and handwrote another address on the card. By letter of June 5, 1991, the Regional attorney again wrote the Respondent advising that an answer was due and if none were filed by June 19, 1991, then default summary judgment would be sought. This letter was sent by certified and regular mail to the last known address of the Respondent; to the address handwritten on the earlier return receipt card; and to an address discovered by making a telephone inquiry to the Respondent's business. The regular mail envelope addressed to the Respondent's last known address was returned to the Regional Office with a U.S. Postal Service stamp indicating “Authorized Time for Forwarding has Expired.” The other two regular mail envelopes have never been returned to the Regional Office. The three certified mail letters, including their contents, were returned to the Regional Office. Upon one of the three envelopes was an unsigned handwritten note that stated: “This paperwork was signed by mistake. I don't know anything about H & D

<sup>1</sup> The name of the Charging Party has been changed to reflect the new official name of the International Union.

<sup>2</sup> 297 NLRB 543.

<sup>3</sup> The compliance specification misidentifies the relevant section. It should refer to Sec. 102.56. This inadvertent error in the specification does not defeat summary judgment.

Trucking. Thank you.” To date, no answer has been filed by the Respondent.<sup>4</sup>

In the absence of good cause for the Respondent’s failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the General Counsel’s Motion for Default Summary Judgment. Accordingly, we conclude that the net backpay due the three discriminatees is as stated in the compliance specification and we will order payment of that amount by the Respondent to the three discriminatees.<sup>5</sup>

<sup>4</sup>The failure or refusal by the Respondent to claim certified mail does not defeat the purposes of the Act. *Oceana No 1, Inc.*, 295 NLRB No. 10 fn. 2 (June 15, 1989) (not reported in Board volumes).

<sup>5</sup>The underlying decision also found that the Respondent had violated the Act regarding a fourth discriminatee. While the General Counsel’s present Motion for Default Summary Judgment indicates

## ORDER

The National Labor Relations Board orders that the Respondent, H & D Trucking, Inc., Dearborn, Michigan, its officers, agents, successors, and assigns, shall make whole the discriminatees named below, by paying the amounts following their names, plus interest accrued to the date as prescribed in *New Horizons for the Retarded*,<sup>6</sup> minus tax withholding required by Federal and state laws:

Calvin LeBlanc	\$35,792
Daniel Nibarger	\$27,665
Ronald Wolfe	\$27,232

that the compliance specification sets out backpay amounts due all four discriminatees the specification in fact seeks backpay only for the three discriminatees listed below.

<sup>6</sup>283 NLRB 1173 (1987).