

**Robincrest Landscaping and Construction, Inc., Debtor, and Robincrest Landscaping and Construction, Inc., Debtor-in-Possession and Joaquin Lopez.** Case 13-CA-27857

June 24, 1992

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On November 27, 1989, the National Labor Relations Board issued an unpublished Order directing the Respondent, inter alia, to make whole employee Carlos Serpa for any loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) of the Act. On June 13, 1990, the United States Court of Appeals for the Seventh Circuit granted enforcement of the Board's Order.<sup>1</sup>

Subsequently, a controversy having arisen over the amount of backpay due Serpa under the Board's Order, the Regional Director for Region 13 issued a compliance specification alleging the amount of backpay due the discriminatee. Thereafter the Respondent filed an answer admitting in part and denying in part the specification. The General Counsel filed with the Board a Motion to Strike Portions of the Respondent's Answer and for Partial Summary Judgment. On June 12, 1991,<sup>2</sup> the Board granted the General Counsel's Motion to Strike and for Summary Judgment except with regard to the allegations concerning the amount of interim earnings. Pursuant to the Board's Supplemental Decision and Order, a hearing was held before Administrative Law Judge Harold Bernard Jr. concerning the amount of interim earnings of discriminatee Serpa. Although fully apprised of the hearing, the Respondent did not enter any appearance or otherwise participate in the hearing. On March 9, 1992, the judge issued the attached supplemental decision granting the General Counsel's motion for judgment on the pleadings and ordering that the Respondent make whole discriminatee Serpa by paying him the amount set forth in the compliance specification. Thereafter, the General Counsel filed a limited exception.

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

The Board has considered the record and the supplemental decision in light of the limited exception and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Supplemental Order.

<sup>1</sup> Case 90-2010 (unpublished).

<sup>2</sup> 303 NLRB 377.

ORDER

The National Labor Relations Board adopts the recommended Supplemental Decision of the administrative law judge and orders that the Respondent, Robincrest Landscaping and Construction, Inc., Debtor, and Robincrest Landscaping and Construction, Inc., Debtor-in-Possession, Skokie and Chicago, Illinois, their officers, agents, successors, and assigns, shall make whole Carlos Serpa by payment to him of \$6125, plus interest accrued to the date of payment as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws.

*Diane Reynolds, Esq.*, for the General Counsel.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

HAROLD BERNARD, JR., Administrative Law Judge. I heard this backpay case in Chicago, Illinois, on January 10, 1992, pursuant to the Board's June 12, 1991 Supplemental Decision and Order, which directed that a hearing be conducted before an administrative law judge for the purpose of taking evidence concerning the amount of interim earnings attributable to employee Carlos Serpa for purposes of determining the amount of backpay necessary to make him whole for any loss of earnings resulting from Respondent's unfair labor practices in violation of Section 8(a)(1) of the Act. (G.C. Exh. 1-(P).)

Although fully apprised by oral and written timely notice beforehand of the date, time, place, and nature of the hearing before me, Respondent<sup>1</sup> made known its intention to the Regional Office not to enter any appearance therein through counsel or otherwise, and in fact made no appearance itself or by any representative at this hearing. After first considering the proof establishing proper and timely notice, allowing additional time for unforeseen delays which may have confronted Respondent, and inquiring as to possible efforts by Respondent or a representative to contact the court regarding its nonappearance, I concluded that Respondent intended not to make an appearance, though it had been accorded a full opportunity to do so, and opened the hearing. Neither on that day or since has Respondent communicated with the court, all of which clearly warrants the conclusion that it intentionally relinquished its opportunity to contest the allegations in the backpay specification set for hearing concerning the amount due employee Serpa.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent having failed to present any evidence in support of its denial in its answer to the backpay specification as it relates to employee Serpa or any evidence to support its affirmative defense that Serpa willfully incurred losses in earnings, the amounts of the award therein are established. *Mutual Maintenance Service*, 244 NLRB 211 (1979), *enfd.* as modified 659 F.2d 33 (7th Cir. 1980); *Fischbach/Lord Electric Co.*, 300 NLRB 474 (1990), and *Aircraft & Heli-*

<sup>1</sup> Respondent's name appears as amended at the hearing.

*copter Leasing*, 227 NLRB 644, 646 (1976), enfd. mem. 97 LRRM 3228 (9th Cir. 1978). Accordingly, counsel for the General Counsel's motion at hearing for judgment on the pleadings is granted.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

ORDER

The Respondent, Robincrest Landscaping and Construction, Inc., Debtor, and Robincrest Landscaping and Construc-

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<sup>2</sup>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.

tion, Inc., Debtor-In-Possession, Skokie and Chicago, Illinois, their officers, agents, successors, and assigns, shall make whole employee Carlos Serpa the amount of backpay set forth in the backpay specification.<sup>3</sup> The Respondent shall pay net backpay less tax withholding required by Federal and state law. Interest shall be payable on any amount due until such time as it is paid.<sup>4</sup>

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<sup>3</sup>G.C. Exh. 1, p. 3-7.

<sup>4</sup>Interest shall be computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Interest on amounts accrued prior to January 1, 1987, shall be computed in accordance with *Florida Steel Corp.*, 231 NLRB 651 (1977). Backpay continues to accrue until Respondents comply with the Board's Order.