

Luz Construction, Inc., a Division of Luz International Limited and Dale Bagley. Case 31-CA-18954

December 14, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 24, 1992, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering Luz Construction, Inc., a division of Luz International Limited, to make whole Dale Bagley (the discriminatee) for loss of earnings and other benefits resulting from his discharge in violation of the National Labor Relations Act.

A controversy having arisen over the amount of backpay due the discriminatee, on August 17, 1992, the Regional Director for Region 31 issued a compliance specification and notice of hearing alleging the amount due 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.

By letter dated October 5, 1992, counsel for the General Counsel advised the Respondent, its trustees in bankruptcy, the Respondent's vice president and general counsel, and its attorney that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 14, 1992, summary judgment would be sought. The Respondent filed no answer.

On November 9, 1992, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment on Compliance Specification, with exhibits attached. On November 12, 1992, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

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

¹ 306 NLRB No. 151.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. 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 grant the General Counsel's Motion for Summary Judgment.² Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent to the discriminatee.

ORDER

The National Labor Relations Board orders that the Respondent, Luz Construction, Inc., a division of Luz International Limited, Boron, California, its officers, agents, successors, and assigns, shall make whole Dale Bagley, by paying him the amount following his name, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Dale Bagley	\$2497.50
-------------	-----------

² Although the record indicates that the Respondent has filed for chapter 7 bankruptcy, it is well settled that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. *Phoenix Co.*, 274 NLRB 995 (1985). Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. *Id.*