

V & J Cleaners Co. and Frank Kimbrough, a Sole Proprietor d/b/a Touch of Magic Cleaners, and Frank Kimbrough, an Individual; Single Employers and/or Alter Egos and Local 25, Service Employees International Union, AFL-CIO.
Case 13-CA-27139

February 25, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

On February 28, 1991, the National Labor Relations Board issued its Decision and Order in the above-captioned matter, directing among other things, that the Respondent offer immediate reinstatement to discriminatees Mary Williams and Veneta Allen and make them whole for losses suffered as a result of the Respondent's unfair labor practices.¹ On November 8, 1991, the United States Court of Appeals for the Seventh Circuit issued its judgment enforcing in full the backpay provisions of the Board's Order.² A controversy having arisen over the amount of backpay due the discriminatees, on September 30, 1992,³ the Regional Director for Region 13 issued and served on the parties 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. The Respondent filed its answer on October 19, which, the Region informed it on October 22, was not in compliance with the Board's Rules and Regulations. On November 12, the Respondent filed its amended answer.

On December 14, the General Counsel filed a Motion to Strike Portions of the Respondent's Answer to the Backpay Specification and for Partial Summary Judgment. The General Counsel's motion contends that portions of the Respondent's answer to the specification fail to conform to the requirements of Section 102.56 of the Board's Rules and Regulations. The General Counsel moves that the Board strike such portions of the Respondent's answer to the specification, and that all allegations of the specification should be found to be true with the exception of the amount of interim earnings and offsets and those regarding the single-employer and alter ego status of the Respondent. On December 16, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

¹ 301 NLRB 1152.

² Unpublished judgment (Docket No. 91-3373).

³ Except where otherwise indicated, all dates are in 1992.

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

On the entire record in this case, the Board makes the following

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Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

Although the amended answer admits that the Respondent has failed to make an unconditional offer of reinstatement to Williams and Allen and admits the definition of a calendar quarter, it denies allegations of the specification that the backpay period for each discriminatee began on July 2, 1987, i.e., the date of the discriminatory discharges, and allegations regarding the quarterly gross pay formulas, hourly rates for each quarter, and hours that the discriminatees would have worked in each quarter, all on the basis that the discriminatees are not entitled to backpay. By these an-

swers, the Respondent not only seeks improperly to relitigate the underlying unfair labor practice—a matter previously decided by the Board and the court, but it also has failed to comply with the Board’s Rules by specifically stating the basis for its disagreement with the computation of gross backpay and offering an alternative method of computation or supporting figures. Insofar as the amended answer seeks to relitigate matters that have already been resolved and that are therefore inappropriate for compliance proceedings, and insofar as the amended answer generally denies allegations concerning the computation of gross backpay, the answer is deficient and thus the allegations are deemed to be true. We therefore grant the General Counsel’s motion to strike the corresponding paragraphs from the Respondent’s answer, and we shall grant the General Counsel’s Motion for Partial Summary Judgment.

The remaining allegations of the specification, i.e., those pertaining to the interim earnings of each discriminatee and the offsets from gross backpay of each and the Respondent’s single-employer and alter ego status, having been answered in accordance with the Board’s Rules and in large part denied, the Respondent is entitled to a hearing in the instant compliance proceeding as to them.

ORDER

It is ordered that the General Counsel’s Motion to Strike Portions of the Respondent’s Answer to the Backpay Specification and for Partial Summary Judgment is granted with respect to all allegations in the compliance specification except as to interim earnings and offsets for the discriminatees and the issue regarding the single-employer and alter ego status of the Respondent.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 13 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning interim earnings and offsets of the discriminatees, and the issue of the single-employer and alter ego status of the Respondent. The judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge’s decision on the parties, the provisions of Section 102.46 of the Board’s Rules and Regulations shall be applicable.