

Dismantlement Consultants, Ltd., Inc. and Warren Pate. Case 9-CA-30441

September 30, 1993

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge and an amended charge filed by Warren Pate, an Individual, on March 1 and 12, 1993,¹ respectively, the Regional Director for Region 9 of the National Labor Relations Board issued a complaint on April 22 against Dismantlement Consultants, Ltd., Inc., the Respondent, alleging that it has violated Section 8(a)(3) and (1) of the National Labor Relations Act. Copies of the charges and the complaint were properly served on the Respondent. On July 13, the Respondent, proceeding pro se, filed a letter dated June 18 purporting to be an answer to the complaint.

On July 13, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment, with exhibits attached. On July 15, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 28, the Respondent filed a notice of appearance of counsel, a response to the Notice to Show Cause,² and an amended answer to the complaint.

The complaint alleges that, inter alia, from December 3 through 18, 1992, employee Pate raised concerns with the Respondent and among other employees about employees being exposed to asbestos, and that on or about December 17, 1992, Pate filed a complaint with the Occupational Safety & Health Administration (OSHA) concerning asbestos in the work area at the Respondent's DuPont jobsite. The complaint further alleges that because of these activities or because he assisted the Union,³ the Respondent has refused to recall Pate to the jobsite since about January 4 in violation of Section 8(a)(3) and (1) of the Act. According to uncontroverted allegations in the Motion for Summary Judgment and Memorandum in Support, the General Counsel, by letter dated June 9, notified the Respondent that unless an answer was filed by the close of business on June 17, a motion for summary judgment would be filed.

By letter dated June 18, the Respondent, through its vice president of administration, Kathy Shaffer, wrote

to counsel for the General Counsel. In that letter the Respondent admitted certain complaint allegations. It further stated, inter alia, that after insulation material was exposed on the DuPont jobsite in December 1992, a representative of the Respondent met with a DuPont safety coordinator, who was also engaged in a meeting with Pate and that shortly after the meeting, a union representative came on the site. The Respondent further stated that its December 1992 layoffs were based on lack of work, and that beginning in January 1993, employees were rehired "strictly based on past job performance as it related to the type of work to be completed." The Respondent concluded that, "[a]t no time was any discriminatory practices [sic] used in regard to hiring, rehiring or terminating any employees."

The General Counsel acknowledges the Respondent's June 18 letter, but contends that it is not a sufficient and complete answer because it does not specifically admit, deny, or explain each of the facts alleged in the complaint, as required by Section 102.20 of the Board's Rules and Regulations. In these circumstances, the General Counsel requests that certain allegations of the complaint be deemed to be admitted to be true.

In its response to the Notice to Show Cause, the Respondent contends that the assertions in its June 18 letter regarding the safety meeting after which a union representative came on site comply with Rule 102.20 by explaining "the extent of Respondent's knowledge of Warren Pate's participation in activities concerning the insulation materials." Additionally, citing Section 102.23 of the Board's Rules and Regulations, the Respondent submits that it should be permitted to file its amended answer of July 28, which it contends raises genuine issues of material fact.⁴ Finally, contending that its initial answer represented a good-faith effort to deny the allegations of the complaint, the Respondent notes that it cooperated fully with the Board's investigation of the alleged unfair labor practices and has retained counsel to ensure future compliance with the Board's procedural rules. For all these reasons, the Respondent maintains that the General Counsel's motion for summary judgment should be denied.

Having duly considered the matter, we find that summary judgment is not appropriate here. The Respondent's June 18 letter specifically denies the complaint's allegation that the Respondent unlawfully refused to recall Pate because he engaged in protected activity. We note that, in addition to the specific denial of discriminatory employment practices, the answer contains an explanation of the Respondent's selection of employees for recall.⁵ Further although the answer does not address each fact alleged in the complaint, its

¹All dates are in 1993 unless otherwise indicated.

²The response is entitled "Respondent's Memorandum in Response to and in Opposition to Motion for Summary Judgment."

³The complaint alleges that the Respondent and Kentucky Laborers' District Counsel are parties to a collective-bargaining agreement covering certain of the Respondent's employees at its DuPont jobsite in Louisville, Kentucky.

⁴Sec. 102.23 provides in pertinent part that a respondent may amend its answer at any time prior to the hearing.

⁵*Tri-Way Security*, 310 NLRB 1222 (1993); *Steeltec Inc.*, 302 NLRB 980 (1991).

specific denial of the substance of the complaint raises substantial and material issues of fact warranting a hearing before an administrative law judge. Under the circumstances, and because the letter was filed without the benefit of counsel, we will not preclude a determination on the merits simply because of the Respondent's failure to comply with all of the Board's procedural rules.⁶

⁶Although it does not appear that the Respondent's letter was served on the Charging Party as required by Sec. 102.21, we note the pro se basis on which the Respondent was proceeding. See *Acme Building Maintenance Co.*, 307 NLRB 358 fn. 6 (1992).

Accordingly, the General Counsel's Motion for Summary Judgment is denied.⁷

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 9 for further appropriate action.

⁷Under the circumstances, we accept the Respondent's amended answer. See *Florida Steel Corp.*, 222 NLRB 586 (1976). Cf. *Wheeler Mfg. Co.*, 296 NLRB 6 (1989) (where the respondent's failure to file a timely and adequate answer was not supported by a showing of good cause, Board declined to accept the answer filed with the response to the Notice to Show Cause).