

Black Diamond Service, Inc. and Freight Drivers, Helpers, Dockmen and Allied Workers, Local Union No. 375 affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 3-CA-15998

November 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On October 2, 1991, the National Labor Relations Board issued an Order adopting, in the absence of exceptions, the decision of the administrative law judge, directing Black Diamond Service, Inc. to make whole certain unit employees and benefit funds for losses resulting from unfair labor practices in violation of the National Labor Relations Act. On November 27, 1992, the U. S. Court of Appeals for the Second Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due discriminatees, on May 5, 1993, the Regional Director for Region 3 issued a compliance specification and notice of hearing¹ 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 failed to file an answer.

By letter dated October 4, 1993, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by October 8, 1993, summary judgment would be sought. The Respondent filed no answer.

On October 19, 1993, the General Counsel filed with the Board a motion to transfer case to and to continue proceeding before the Board and for summary judgment and issuance of a supplemental decision and order, with exhibits attached. On October 21, 1993, 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 again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

¹The compliance specification that was sent to the Respondent by certified mail was returned to the Regional Office marked "F.O.E." (Forwarding Order Expired). However, the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Thereafter, the compliance specification was again served on the Respondent by certified mail at its 81 Botsford Place, Buffalo, New York and 1223 Mt. Read Avenue, Rochester, New York facilities and at the last known address of the Respondent's president.

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. Accordingly, we conclude that the net backpay due the discriminatees and benefit funds is as stated in the compliance specification and we will order payment by the Respondent of the amounts.

ORDER

The National Labor Relations Board orders that the Respondent, Black Diamond Service, Inc., Rochester and Buffalo, New York, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the backpay amounts listed below, 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, and by payment to the appropriate benefit funds the totals listed below:

John M. Farleo	\$ 2,343.85
Robert P. Metzger	1,116.05
New York State Teamsters Council & Hospital Fund	13,009.92
New York State Teamsters Pension and Retirement Fund	10,639.20

Dated, Washington, D.C. November 15, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD