

**Stone Carving & Restoration Enterprise, Inc. and
Dean Korpan. Case 5-CA-21475**

November 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On October 29, 1991, the National Labor Relations Board issued an order adopting, in the absence of exceptions, the decision of the administrative law judge, *inter alia*, ordering Stone Carving & Restoration Enterprise, Inc. to make whole Dean Korpan, an individual, for loss of earnings and other benefits resulting from its unfair labor practices in violation of the National Labor Relations Act. On June 10, 1992, the United States Court of Appeals for the Fourth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, on March 29, 1993, the Acting Regional Director for Region 5 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 failed to file an answer.

By letters dated May 21 and June 29, 1993, counsel for the General Counsel advised the Respondent and its attorney that no answer to the compliance specification had been received and that unless an appropriate answer was filed by May 30 and July 9, 1993, respectively, summary judgment would be sought. The Respondent filed no answer.

On October 25, 1993, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and for Summary Judgment, with exhibits attached. On October 28, 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.

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 discriminatee is as stated in the compliance specification and we will order payment by the Respondent of the amount to the discriminatee, plus interest accrued on the amount to the date of payment minus tax withholdings required by Federal and state laws.

ORDER

The National Labor Relations Board orders that the Respondent, Stone Carving & Restoration Enterprise, Inc., Lanham, Maryland, its officers, agents, successors, and assigns, shall make whole the individual named below, 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:

Dean Korpan \$19,615
Dated, Washington, D.C. November 22, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD