

Chauffeurs, Teamsters & Helpers Local Union No. 186, International Brotherhood of Teamsters, AFL-CIO and Martin W. Fry and Associated General Contractors of California, Inc., & Teamsters Joint Council No. 42, Parties to the Contract. Cases 31-CB-8837 and 31-CB-8838

September 29, 1995

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN
AND TRUESDALE

On May 17, 1994, the National Labor Relations Board issued a Decision and Order in this proceeding in which it ordered Chauffeurs, Teamsters & Helpers Local Union No. 186, International Brotherhood of Teamsters, AFL-CIO, the Respondent, to make whole for his money losses and loss of contributions to funds established by the relevant collective-bargaining agreement the registrant who should have been dispatched to the Fru-Con job rather than R.T. Jones.¹ A controversy having arisen over the amount of backpay and trust fund payments due under the terms of the Board's Order, the Regional Director for Region 31 issued a compliance specification and notice of hearing on January 30, 1995, alleging the amounts due. Pursuant to notice, a hearing was held before Administrative Law Judge Gerald A. Wacknov on May 19, 1995.

On July 7, 1995, the administrative law judge issued his Supplemental Decision and Order. The Respondent and the Charging Party filed joint exceptions and a supporting brief.

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

The Board has considered the record and the attached supplemental decision in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions.

ORDER

The National Labor Relations Board orders that the Respondent, Chauffeurs, Teamsters & Helpers Local Union No. 186, International Brotherhood of Teamsters, AFL-CIO, Ventura, California, its officers, agents, and representatives shall make Jason Laws whole by payment to him of the amounts of backpay set forth below, less tax withholding required by Federal and state laws. Interest shall be computed and paid in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, the Respondent shall make Jason Laws whole by payments of contributions on his behalf including liquidated damages into the Western Conference of Teamsters Pension Trust Fund in the amounts set forth below, plus any additional

¹ 313 NLRB 1232 (1994).

319 NLRB No. 26

amounts due as set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

	<i>Net Backpay</i>	<i>Pension Contributions</i>	<i>Liquidated Damages</i>
Jason Laws	\$11,998.48	\$2,445.52	\$294.66

Bernard Hopkins, Esq., for the General Counsel.
David A. Rosenfeld, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of Oakland, California, for the Respondent and the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. A hearing in this compliance matter was held before me in Los Angeles, California, on May 19, 1995. On May 17, 1994, the National Labor Relations Board issued a Decision and Order in the above-captioned matter finding that the Respondent Union had violated Section 8(b)(2) and (1)(A) of the Act (313 NLRB 1232 (1994)). The Board's Order, inter alia, provides that the Respondent:

Make whole for his money losses and loss of contributions to funds established by the relevant collective-bargaining agreement the registrant who should have been dispatched rather than J. T. Jones to the Fru-Con job.

Thereafter, on January 30, 1995, the Regional Director for Region 31 of the National Labor Relations Board (the Board) issued a compliance specification alleging that backpay in the amount of \$11,998.48, plus interest, was owed to Jason Laws, alleged to be the registrant who should have been dispatched to the Fru-Con job, and further, that the Respondent's contributions to the Western Conference of Teamsters Pension Trust Fund for credit to the account of Jason Laws should be \$2,445.52 plus liquidated damages in the amount of \$294.66.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. The parties argued the matter orally at the hearing, and since the close of the hearing briefs have been received from counsel for the General Counsel, and counsel for the Respondent and the Charging Party.¹ On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

The General Counsel takes the position that, as alleged in the compliance specification, the amounts set forth above are owing to Jason Laws, a registrant for employment on the Respondent's out-of-work list, who should have been dispatched to the Fru-Con job on April 27, 1992. The Respond-

¹ In this matter the Respondent and the Charging Party are represented by the same counsel as the interests of these parties coincide.

ent takes the position that a different registrant, namely, Martin Fry, the Charging Party, would have been referred to the Fru-Con job, and that therefore backpay is owed to Fry rather than Laws. Further, the Respondent takes the position that since the Respondent herein is a labor organization rather than an employer, the Respondent should not be required to pay liquidated damages to the trust fund.

It is agreed by the parties that on April 27, 1992, the first three names on the Respondent's official out-of-work (dispatch) list were as follows:

J.T. Jones
Jason Laws
Marty Fry

The Board specifically found that J.T. Jones was improperly placed at the head of the dispatch list, and as a result was improperly dispatched to the Fru-Con job on April 27, 1992. Accordingly, the General Counsel maintains that Jason Laws, the second registrant on the list, should have been referred to the job and is therefore entitled to be made whole. The Respondent takes the position that Fry, rather than Laws, should have been in the second position on the list, as Laws had turned down several jobs prior to April 27, 1992, and therefore should have been relegated to the bottom of the list. Further, the Respondent maintains that Laws made an insufficient effort to mitigate the Respondent's backpay liability.

The first contention of the Respondent is that during the period prior to April 27, 1992, while Laws was among the top few registrants on the out-of-work list, he turned down three or more referrals and, in accordance with the hiring hall dispatch procedures, should have been removed from his position on the list. The dispatch procedures for the hiring hall (General Dispatching Practices: Par. 9) provides, *inter alia*, that a registrant may refuse to accept a dispatch three times before being relegated to the bottom of the list or being removed from the list for a 30-day period. Thus, the rules clearly permit registrants to be selective regarding the jobs they wish to accept, without jeopardizing their placement on the list.

Laws testified that in March 1992 he was offered a job through the hiring hall but elected to turn it down; this job is continuing to date. Laws further testified that it was the only time he turned down a job prior to April 27, 1992. The Respondent, relying on certain dispatch lists, argues that the lists indicate that three or more individuals other than Laws were sent out to various jobs during times when Laws was at the top of the list, and that this necessarily indicates that, in fact, Laws turned down three or more jobs.

The record evidence shows that the Respondent customarily notes on the out-of-work list when a registrant has declined a job, and the lists, introduced into evidence, do not corroborate the Respondent's position that Laws declined any jobs after April 27, 1992. Moreover, the Respondent did not call as a witness the dispatcher who maintained the lists and referred the registrants at the time in question. There could

be various explanations for Laws being passed over prior to April 27, 1992. For example, employers have the right to request specific individuals from the list; or the dispatcher may have made a mistake by referring others rather than Laws. Unless the dispatcher is presented as a witness to provide an explanation for his dispatching methods, the Respondent's contention in this regard is mere speculation. Moreover, I credit the testimony of Laws, who appeared to have a clear recollection of the events in question, and I find that he turned down only one job prior to April 27, 1992, as was his right under the applicable procedures without losing his placement on the list.

Next, the Respondent maintains that part of the work of the employee dispatched to the Fru-Con job was that of a warehouseman who performed shipping and receiving responsibilities and also was in charge of the "crib cage," which required that the individual "issue" tools. This was the job, according to the Respondent's witness, Martin Fry, who was familiar with the Fru-Con job, of either a "partsman" or, according to Fry, a "warehouseman." The registration form submitted by Laws specifically shows that he was willing to perform "warehouseman's" duties. I therefore find that this contention of the Respondent is without merit.

The Respondent also takes the position that subsequent to April 27, 1992, Laws did not seek other work and has therefore failed to mitigate the Respondent's backpay liability. However, the record shows that at all material times Laws was a registrant on the Respondent's out-of-work list, and this is conclusive evidence of his ongoing attempt to seek work. Further, during this period of time Laws did not know that the Respondent had unlawfully failed to dispatch him to any jobs, and therefore he was under no obligation to mitigate his backpay.²

CONCLUSIONS OF LAW³

On the basis of the foregoing and the entire record herein, I conclude that the Respondent's obligation under the Board's Order will be discharged by the payment of the amounts as alleged in the compliance specification and set forth above to Jason Laws, as the registrant who would have been referred to the Fru-Con job absent the Respondent's unlawful conduct as found by the Board. As the Respondent has not presented any persuasive argument or cited any applicable precedent regarding its contention that it should not be held liable for the liquidated damages, as alleged, I recommend that the Respondent also pay to the trust fund the liquidated damage amount as set forth above.

² Although the Respondent raised other issues at the hearing, it did not pursue them in its brief. In any event, the record clearly shows that they are without merit.

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.