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Berg Product Design, Inc. and Warehouse, Mail Order, Office, Technical and Professional Employees Union, Local 743, affiliated with International Brotherhood of Teamsters, AFL-CIO.
Case 13-CA-31690

March 7, 1997

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On April 28, 1995, the National Labor Relations Board issued a Decision and Order,¹ inter alia, ordering Berg Product Design, Inc., Wheeling, Illinois, to make whole the discriminatee for any loss of earnings and other benefits resulting from his discharge in violation of the National Labor Relations Act. Thereafter, the parties executed a stipulation in which the Respondent waived its rights under Section 10(e) and (f) of the Act to seek judicial review of the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatee, on December 20, 1996, the Regional Director for Region 13 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 letter dated January 13, 1997, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by January 31, 1997, summary judgment would be sought. The Respondent filed no answer.

On February 7, 1997, the General Counsel filed with the Board a Motion to Transfer Case to the Board and for Summary Judgment, with exhibits attached. On February 11, 1997, 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.

¹317 NLRB 92.

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 said amount to the discriminatee, plus interest accrued on said amount to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Berg Product Design, Inc., Wheeling, Illinois, its officers, agents, successors, and assigns, shall make whole Florentino Manzano by paying him \$19,987, plus interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and state laws.

Dated, Washington, D.C. March 7, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD