

Charles Zanetis and Shayne L. Zanetis d/b/a Quality Hotel and Marvine Nesbeth. Case 9–CA–30145

August 19, 1998

SECOND SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On April 26, 1994, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, ordering the Respondent, Charles S. Zanetis and Shayne L. Zanetis d/b/a Quality Hotel to reinstate and make whole discriminatees Wanda Alexander, Dale Brown, Sharon Davis, Barbara Hall, Latasha Hall, Shannon McDole Harriman, Pearl McDole, Janet Mitchell, Marvine Nesbeth, and Tujuaniana Perry, for loss of earnings and benefits they suffered resulting from the Respondent’s unfair labor practices in violation of Section 8(a)(1) of the Act. On March 12, 1996, the United States Court of Appeals for the Sixth Circuit enforced the Board’s Order.²

A controversy having arisen over the amount of backpay due, on August 13, 1996, the Regional Director for Region 9 issued a compliance specification and notice of hearing alleging the amount of backpay due the discriminatees. On October 28, 1996, the Respondent, proceeding *pro se*, filed an answer to the specification, but with the Sixth Circuit, and not the Board’s Regional Office. On November 12, 1996, the General Counsel filed a Motion for Default Summary Judgment with the Board, citing the Respondent’s alleged failure to file an answer to the specification. The Sixth Circuit forwarded the Respondent’s answer to the Board’s Division of Judges on November 18, 1996. On December 6, 1996, the General Counsel filed with the Board a Motion for Partial Summary Judgment and Motion to Strike Portions of the Respondent’s Answer to the Compliance Specification.

On May 30, 1997, the Board issued its Supplemental Decision and Order³ denying the General Counsel’s initial Motion for Summary Judgment but granting the General Counsel’s Motion for Partial Summary Judgment, except with regard to the allegations concerning the amounts of interim earnings, and the motion to strike portions of the Respondent’s answer.

Pursuant to the Board’s Supplemental Decision and Order, a hearing was held on February 24, 1998, before Administrative Law Judge David L. Evans to determine interim earnings of the discriminatees and the net backpay liability. Although duly served notice of that hearing, the Respondent did not appear. After producing evidence from the compliance officer of the Regional Office as to how the computations in the specification had been made, the General Counsel made a motion for a bench decision under Section 102.45 of the Board’s

Rules and Regulations. The judge granted the motion for a bench decision and issued an order that the Respondent make whole the discriminatees by paying them the amounts set forth in the specification. The Respondent filed exceptions to the judge’s Second Supplemental Decision and Order, and the Acting General Counsel filed a brief in opposition.

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

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,⁴ and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board orders that the Respondent, Charles Zanetis and Shayne L. Zanetis, d/b/a Quality Hotel, Louisville, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the Order and make whole the individuals named below by paying them the amounts following their names plus interest as computed pursuant to *New Horizons for the Retarded*, 283 NLRB 1173 (1987), less any taxes withheld pursuant to state or Federal law:

Wanda Alexander	\$1,518
Dale Brown	2,000
Barbara Hall	0
Sharon Davis	8,293
Latasha Hall	3,782
Sharon McDole Harriman	3,335
Pearl McDole	8,625
Janet Mitchell	7,117
Marvine Nesbeth	2,308
Tujuaniana Perry	507
TOTAL:	\$37,485

⁴ We find without merit the Respondent’s contention that a new hearing should be held. Although the Respondent did not appear at the hearing, a letter from the Respondent’s counsel was hand-delivered to the General Counsel and the judge during the hearing alleging that counsel for the General Counsel had represented to the Respondent that there would be a conference call with the judge before the date of the hearing to discuss postponement of the hearing and a possible settlement. After reading the letter admitted into evidence as G.C. Exh. 3 in the presence of the judge, counsel for the General Counsel stated on the record that the portion of the letter concerning an alleged conference call was untrue. Further, counsel for the General Counsel referred to a letter dated February 18, 1998, which she had written to the Respondent, and which was admitted into evidence as G.C. Exh. 2(b), in which she informed the Respondent that the judge had asked her to advise the Respondent to seek counsel and that he did not intend to initiate a conference call. It is clear from the judge’s decision that he accepted counsel for the General Counsel’s representations on this matter as true.

The record further shows that the Respondent had ample time to seek counsel to represent it at the hearing, and it offered no explanation as to why it had only retained counsel the day before the hearing. Furthermore, at no time has the Respondent made an offer of proof concerning any factual disputes over alleged interim earnings on the part of the discriminatees, which was the sole issue before the judge.

¹ 313 NLRB 1119.

² No. 94–6425 (unpublished).

³ 323 NLRB 154.