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Falcon Wheel Division L.L.C. and General Truck Drivers, Chauffeurs & Helpers of San Pedro, Wilmington, Long Beach & Vicinity, Local 692, International Brotherhood of Teamsters, AFL-CIO. Case 21-CA-34646

May 19, 2004

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On November 20, 2002, the Board issued a Decision and Order¹ that, among other things, directed Falcon Wheel Division L.L.C., the Respondent, to offer reinstatement to and make whole Jose Martell for any loss of earnings and other benefits he may have suffered as a result of his unlawful layoff. On August 13, 2003, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee, on March 15, 2004, the Regional Director 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 April 5, 2004, counsel for the General Counsel advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by April 12, 2004, a motion for default judgment would be filed. Nevertheless, the Respondent did not file an answer.

On April 16, 2004, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On April 20, 2004, 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 did not file a response. The allegations in

¹ 338 NLRB No. 70 (2002).

² 03-71440.

the motion and in the compliance specification are therefore undisputed.

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

Ruling on Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an 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 Default 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 Default Judgment. Accordingly, we conclude that the net backpay due Jose Martell is as stated in the compliance specification, and we will order the Respondent to pay him that amount, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Falcon Wheel Division L.L.C., Gardena, California, its officers, agents, successors, and assigns, shall make whole Jose Martell by paying him \$11,460.15, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws.

Dated, Washington, D.C. May 19, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD