R-Max Services, LLC *and* Teamsters Local Union No. 355, a/w International Brotherhood of Teamsters.[1] Case 5–CA–32210

December 30, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file a timely answer to the complaint. Upon a charge filed by the Union on November 3, 2004, the General Counsel issued the complaint on January 29, 2005, against R-Max Services, LLC, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act by discharging employee Shawn Williams because of his union and concerted activities. The Respondent failed to file a timely answer.

On April 18, 2005, the General Counsel filed a Motion for Default Judgment with the Board. On April 21, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 5, 2005, the Respondent, appearing pro se, filed a timely response to the motion and Notice to Show Cause. On May 23, 2005, the General Counsel filed a reply.

On October 27, 2005, the Board issued an Order giving the Respondent 10 additional days from receipt of the Order to provide any reasons for its failure to file an initial timely answer. The Respondent, however, did not file any response to the Board's Order.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by February 11, 2005, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 9, 2005, notified the Respondent that unless an answer was received by March 16, 2005, a motion for default judgment would be filed.[2] No answer or request for an extension of time was filed by March 16, 2005.

After the General Counsel filed his Motion for Default Judgment and the Board issued its Notice to Show Cause, the Respondent's General Manager, proceeding pro se, filed the following letter with the Board:

> In response to your Order transferring proceeding to the board and Notice to show cause that I have attached, I am responding to the situation regarding Mr. Shawn Williams.
>
> Mr. Williams was let go by our company on approximately September 29, 2004 due to the fact that we were notified by our customer (DHL) that Mr. Williams had falsified his delivery documents. We are sub contractors for DHL express. Our drivers act as representatives of DHL but are under our employment. If DHL informs us of any falsification or other derogatory incidents regarding our drivers we review each and every situation to determine the worthiness of the charge and then must make a decision.
>
> In this case, DHL had documentation that Mr. Williams brought back a number of packages to the station and scanned them all within a minute or two after stating that he had attempted to deliver the packages throughout the day.

Thus, the Respondent's response essentially denied that it had unlawfully discharged Williams.

In our October 27, 2005 Order, we found that the Respondent's response adequately answered the critical complaint allegation. However, we also found that the response did not set forth any "good cause" justification for failing to file a timely answer to the the complaint in the first place.[3] Thus, we adhered to the teaching of *TNT Logistics North America, Inc.*, 344 NLRB 489 (2005), that a respondent must explain why its answer was not timely filed.[4] Nevertheless, because the Respondent was

[1] We have amended the caption to reflect the disaffiliation of the International Brotherhood of Teamsters from the AFL–CIO effective July 25, 2005.

[2] The March 9, 2005 letter was sent to the Respondent by certified mail. The Postal Service attempted to deliver the letter and notification was left at the Respondent's address. The Respondent, however, failed to claim the certified letter. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited therein.

[3] *Patrician Assisted Living Facility*, 339 NLRB 1153, 1154 (2003).

[4] Member Schaumber notes that he dissented in *Patrician Assisted Living Facility* and that he concurred in relevant part in *TNT Logistics North America, Inc.* In his view, in assessing a respondent's "good cause" showing, the proper analysis to apply is that utilized by the federal courts, i.e., the reasons the answer was untimely, the merits of the respondent's defense, and whether any party would suffer prejudice were the default set aside.

Member Schaumber agrees with his colleagues that a respondent must answer the complaint and explain its prior failure to respond in a timely fashion. However, he believes the Board's Notice to Show Cause form should be amended to make clear that dual requirement for future litigants. Nonetheless, Member Schaumber agrees that default judgment is appropriate here, where the Respondent was given an additional opportunity to set forth reasons for its failure to file a timely answer, but did not submit any response to our October 27, 2005 Order.

appearing pro se, we recognized that the Respondent may not have realized its obligation to supply a "good cause" justification for its failure to file a timely answer. Accordingly, we stated

> [I]n our discretion, we will give the Respondent 10 days from receipt of this Order to give any reasons for lack of an initial timely answer. Upon receipt of same, we shall rule on the adequacy of those reasons. Absent a response, we shall grant the General Counsel's motion for default judgment.

As indicated above, the Respondent has not responded to our Order. Thus, the Respondent has failed to show good cause for its failure to file a timely answer, and we reject as untimely the answer set forth in its response to the Notice to Show Cause. Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with an office and place of business in Bridgeville, Delaware (the Respondent's facility), has been engaged in the business of providing parcel delivery services for DHL Express, Inc.

During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, provided services valued in excess of $50,000 from its Bridgeville, Delaware facility directly to points located outside the State of Delaware.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Rick Rutland	-	Owner
Pete Stoneman	-	Facility Manager

On or about August 20, 2004, the Respondent terminated the employment of its employee Shawn Williams.

The Respondent discharged Williams because he joined, formed and/or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) and (3) by discharging Shawn Williams, we shall order the Respondent to offer Williams full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The Respondent shall also be required to remove from its files all references to the unlawful discharge of Williams, and to notify him in writing that this has been done and that the discharge will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, R-Max Services, LLC, Bridgeville, Delaware, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees because they join, form and/or assist Teamsters Local Union No. 355, a/w International Brotherhood of Teamsters, or any other labor organization, or because they engage in concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Shawn Williams full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make Shawn Williams whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharge of Shawn Williams, and within 3 days thereafter, notify him in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Bridgeville, Delaware, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 20, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge employees because they join, form and/or assist Teamsters Local Union No. 355, a/w International Brotherhood of Teamsters, or any other labor organization, or because they engage concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Shawn Williams full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Shawn Williams for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful discharge of Shawn Williams, and WE WILL, within 3 days thereafter, notify him in writing that this has been done, and that the unlawful discharge will not be used against him in any way.

R-MAX SERVICES, LLC