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Ed's Beans Inc. d/b/a Crazy Mocha Coffee *and* Sharyn Marie Sefton *and* Emily Raden-Shore. Cases 06–CA–265396 and 06–CA–265574

June 22, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL AND RING

The Acting General Counsel seeks a default judgment in this case on the ground that Ed's Beans Inc. d/b/a Crazy Mocha Coffee (the Respondent) has failed to file an answer to the amended consolidated complaint. Upon a charge and amended charges filed by Sharyn Marie Sefton (Sefton) on August 28 and December 20, 2020, and March 23, 2021, respectively, and a charge and amended charges filed by Emily Raden-Shore (Raden-Shore) on September 2 and December 18, 2020, and March 29, 2021,[1] respectively, the Acting General Counsel issued an order consolidating cases, consolidated complaint and notice of hearing (the initial complaint) on January 8, alleging that the Respondent has violated Section 8(a)(1) of the Act. On January 11, the Respondent filed an answer to the consolidated complaint. On March 31, the Acting General Counsel issued an amended consolidated complaint and amended notice of hearing (the amended complaint) alleging that the Respondent violated Section 8(a)(1) by, among other things, discharging employees because they engaged in protected concerted activities. The amended complaint informed the Respondent that an answer was due by April 14.

On April 13, the Respondent filed a motion to withdraw its answer to the initial complaint. The motion also stated that the Respondent did not intend to file an answer to the amended complaint. On April 14, the Regional Director issued an order postponing the hearing indefinitely, and on April 20 she granted the Respondent's motion to withdraw its answer to the initial complaint. Although properly served copies of the charges, amended charges, initial complaint and amended complaint, the Respondent failed to file an answer to the amended complaint.

On April 22, the Acting General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on April 23, 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 filed a response to the Notice to Show Cause on May 5, asserting that it was involved in Chapter 11 bankruptcy proceedings, in which the Board had filed a proof of claim, and that the Respondent was near a financial settlement with the Board. These asserted defenses are without merit.[2] The allegations in the motion 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 102.20 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 amended complaint affirmatively stated that unless an answer was received by April 14, the Board may find, pursuant to a motion for default judgment, that the allegations in the amended complaint are true.[3]

In the absence of good cause being shown for the failure to file a timely answer, we deem the factual allegations in the amended complaint to be admitted as true.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business in Cranberry Township, Pennsylvania (the Respondent's Headquarters facility), and has been engaged in operating public restaurants selling food and beverages.

Annually, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000 and purchased and received goods valued in excess of $5000 directly from points outside the Commonwealth of Pennsylvania.

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[1] All dates are 2021 unless otherwise indicated.

[2] It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933, 933 fn. 2 (1989), and cases cited therein. Board proceedings fall within 11 U.S.C. § 362(b)(4) and (5), the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See also *NLRB v. 15th Avenue Iron Works, Inc*., 964 F.2d 1336 (2d Cir. 1992); *Cardinal Services*, 295 NLRB at 933 fn. 2; accord *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

[3] Although the Region did not issue a reminder letter prior to filing its motion for default judgment, this omission does not excuse the Respondent's failure to file a timely answer. *Daviola Productions*, 366 NLRB No. 25, slip op. at 1 fn. 2; *St. Regis Enterprises, LLC*, 364 NLRB No. 137, slip op. at 3 fn. 5 (2016) (citing *Bricklayers Local 31*, 309 NLRB 970, 970 (1992)).

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

1. 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:

Edward Wethli	-	President and Owner
Kim Garrett	-	General Manager
Katie Suchy	-	Zone Manager
Douglas Wampler	-	Zone Manager

2. About May 22, 2020, the Respondent, by Edward Wethli, by telephone, demanded that employees remove a petition concerning complaints about safety and communications from social media.

3. About June 12, 2020, the Respondent, by Edward Wethli, in a Zoom meeting, told employees they would be discharged because they engaged in protected concerted activity by complaining about their working conditions.

4. About July 30, 2020, the Respondent, by Edward Wethli, by telephone, told employees that they would not be recalled from layoff because they engaged in protected concerted activity by complaining about their working conditions.

5. About August 24, 2020, the Respondent, by Kim Garrett, by electronic mail, informed employees that they would not be rehired because they engaged in protected concerted activity by complaining about their working conditions.

6. About May 18, 2020, the Respondent's employees Sharyn Marie Sefton, Emily Raden-Shore, Melissa Ciccocioppo, and Abigail Rideout engaged in concerted activities with each other and other employees for the purposes of collective bargaining and other mutual aid and protection, by making demands regarding communication, wages, recall rights, and worker safety.

7. About June 12, 2020, the Respondent discharged the following employees:

Sharyn Marie Sefton

Emily Raden-Shore

Melissa Ciccocioppo

Abigail Rideout

8. About June 12, 2020, and on various dates thereafter, the Respondent refused to recall and to consider for recall the employees named above in paragraph 7.

9. The Respondent engaged in the conduct described in paragraphs 7 and 8 because the named employees engaged in the conduct described in paragraph 6, and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the conduct described above in paragraphs 2–5 and 7–8, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) 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 unlawfully discharged Sharyn Marie Sefton, Emily Raden-Shore, Melissa Ciccocioppo, and Abigail Rideout and failed to recall them and to consider them for recall because they engaged in concerted activities with each other and other employees for the purposes of collective bargaining and other mutual aid and protection and to discourage employees from engaging in these or other concerted activities, we shall order the Respondent to offer Sefton, Raden-Shore, Ciccocioppo, and Rideout full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make Sefton, Raden-Shore, Ciccocioppo, and Rideout whole, with interest, for any loss of earnings and other benefits that they may have suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers*, *Inc.*, 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Sefton, Raden-Shore, Ciccocioppo, and Rideout for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net

backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

We shall also order the Respondent to compensate Sefton, Raden-Shore, Ciccocioppo, and Rideout for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 6, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay-allocation report, we shall order the Respondent to file with the Regional Director for Region 6 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021).

Further, we will order the Respondent to remove from its files any reference to the unlawful discharges of Sharyn Marie Sefton, Emily Raden-Shore, Melissa Ciccocioppo, and Abigail Rideout and to notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Ed’s Beans Inc., d/b/a Crazy Mocha Coffee, Cranberry Township, Pennsylvania, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Demanding that employees remove petitions concerning complaints about safety and communications from social media.

(b) Telling employees they would be discharged because they engaged in protected concerted activity by complaining about their working conditions.

(c) Telling employees that they would not be recalled from layoff because they engaged in protected concerted activity by complaining about their working conditions.

(d) Discharging employees because they engaged in concerted activities with each other and other employees for the purposes of collective bargaining and other mutual aid and protection and to discourage employees from engaging in these or other concerted activities.

(e) Refusing to recall employees and to consider them for recall because they engaged in concerted activities with each other and other employees for the purposes of collective bargaining and other mutual aid and protection and to discourage employees from engaging in these or other concerted activities.

(f) 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 Sharyn Marie Sefton, Emily Raden-Shore, Melissa Ciccocioppo, and Abigail Rideout full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Sefton, Raden-Shore, Ciccocioppo, and Rideout whole for any loss of earnings or other benefits suffered as a result of the unlawful discharges and the failure to recall them and to consider them for recall since June 12, 2020, with interest, in the manner set forth in the remedy section of this decision.

(c) Compensate Sefton, Raden-Shore, Ciccocioppo, and Rideout for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 6, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

(d) File with the Regional Director for Region 6 a copy of each backpay recipient’s corresponding W-2 form(s) reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Sefton, Raden-Shore, Ciccocioppo, and Rideout, and within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

(f) 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.

(g) Post at its Cranberry Township, Pennsylvania facility copies of the attached notice marked “Appendix.”[4]

[4] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by

Copies of the notice, on forms provided by the Regional Director for Region 6, 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. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If 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 May 22, 2020.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 6 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.

Dated, Washington, D.C. June 22, 2021

Lauren McFerran, Chairman

William J. Emanuel, Member

John F. Ring, Member

(SEAL) 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 demand that you remove petitions concerning complaints about safety and communications from social media.

WE WILL NOT tell you that you will be discharged because you engage in protected concerted activity by complaining about your working conditions.

WE WILL NOT tell you that you will not be recalled from layoff because you engaged in protected concerted activity by complaining about your working conditions.

WE WILL NOT discharge you because you engaged in concerted activities with each other and other employees for the purposes of collective bargaining and other mutual aid and protection and to discourage employees from engaging in these or other concerted activities.

WE WILL NOT refuse to recall you and to consider you for recall because you engaged in concerted activities with each other and other employees for the purposes of collective bargaining and other mutual aid and protection and to discourage employees from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of this Order, offer Sharyn Marie Sefton, Emily Raden-Shore, Melissa Ciccocioppo, and Abigail Rideout full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Sharyn Marie Sefton, Emily Raden-Shore, Melissa Ciccocioppo, and Abigail Rideout whole for any loss of earnings or other benefits suffered as a result of the discrimination against them, with interest.

WE WILL make Sefton, Raden-Shore, Ciccocioppo, and Rideout whole for any loss of earnings or benefits suffered as a result of the unlawful discharges and the failure to recall them and consider them for recall since June 12, 2020, with interest.

electronic means. 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."

WE WILL compensate Sefton, Raden-Shore, Ciccocioppo, and Rideout for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 6, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years.

WE WILL file with the Regional Director for Region 6 a copy of each affected unit employee's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of Sefton, Raden-Shore, Ciccocioppo, and Rideout, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

ED'S BEANS INC., D/B/A CRAZY MOCHA COFFEE

The Board's decision can be found at www.nlrb.gov/case/06-CA-265396 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.