

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR BOARD
FIFTH REGION**

N & R QUALITY CARE, LLC

and

Case 5-CA-34079

INDIA TAYLOR (nee JONES)

**MOTION TO TRANSFER CASE TO THE BOARD
AND FOR DEFAULT JUDGMENT**

Pursuant to Sections 102.24 and 102.56 of the National Labor Relations Board Rules and Regulations and Statement of Standard Procedures, Series 8, as amended, herein called the Rules, Counsel for the General Counsel respectfully moves that the National Labor Relations Board, herein referred to as the Board: (1) transfer this case and continue the proceedings before the Board; (2) deem the allegations set forth in the Compliance Specification and Notice of Hearing in Case 5-CA-34079 issued July 31, 2009, as admitted to be true without taking evidence supporting the allegations in the Compliance Specification and Notice of Hearing; and (3) grant Default Judgment and issue a Decision and Order herein on the basis of the following:

1. On July 31, 2009, the Regional Director for Region 5 issued a Compliance Specification and Notice of Hearing, herein Compliance Specification, in the above-captioned matter. A copy of the Compliance Specification, Affidavit of Service and information of delivery are attached hereto as Exhibits 1, 2, and 3 respectively.

2. The Compliance Specification in this case states, in pertinent part, that Respondent shall file an answer to the Compliance Specification by August 21, 2009, and absent such action, all the allegations in the Compliance Specification shall be deemed to

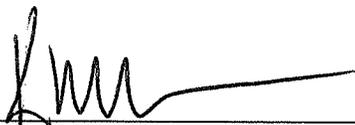
be true and shall be so found by the Board. Respondent did not file an answer to the Compliance Specification by August 21, 2009, and has given no satisfactory reason for its failure to have done so.

3. By letter dated August 25, 2009, sent to the same address used to serve the Compliance Specification as described above in paragraph 1, and transmitted by certified United States mail, Respondent was advised by the Regional Attorney that, absent the filing of an answer to said Compliance Specification in the Baltimore Regional Office by close of business on September 1, 2009, a Motion for Default Judgment would be filed. To date, no answer has been filed and Respondent has given no satisfactory reason for its failure to do so. On August 27, 2009, the United States Postal Service attempted to deliver the certified mail and a notice was left. To date, Respondent has not picked up the letter from the Post Office. It is well-settled that Respondent's failure to accept certified mail cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003). A copy of the August 25, 2009 letter to Respondent and information of delivery are attached as Exhibits 4 and 5.

WHEREFORE, Counsel for the General Counsel respectfully requests, in accordance with Sections 102.24 and 102.56 of the Board's Rules, that the Board deem all matters alleged in the Compliance Specification to be true, and that they be so found, and that a Decision and Order be issued containing findings of fact, conclusions of law, and an appropriate remedy for the violations stated therein, less monies paid.

Dated at Baltimore, Maryland, this 11th day of September, 2009.

Respectfully submitted,



Katrina H. Woodcock
Counsel for the General Counsel
National Labor Relations Board, Region 5
103 S. Gay Street, 8th Floor
Baltimore, MD 21202-4061
410-962-2752

INDEX OF ATTACHMENTS

- | | |
|-----------|----------------------------------------------------------------------------|
| Exhibit 1 | Compliance Specification and Notice of Hearing dated July 31, 2009 |
| Exhibit 2 | Affidavit of Service on Respondent dated July 31, 2009 |
| Exhibit 3 | Information of delivery for Compliance Specification and Notice of Hearing |
| Exhibit 4 | August 25, 2009 letter to Respondent |
| Exhibit 5 | Information of delivery for August 25, 2009 letter to Respondent |

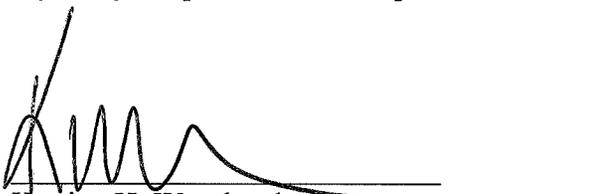
CERTIFICATE OF SERVICE

This is to certify that on this 11th day of September, 2009, copies of the Motion to Transfer Case to the Board and for Default Judgment were served by Federal Express next business day delivery the following:

Ms. Ruthette Fanin
N & R Quality Care, LLC
8613 Brighton Court
Fredericksburg, VA 22408

Ms. India Taylor
136 Baylor Drive
Montross, VA 22520

This is to further certify that on September 11, 2009, the Respondent was notified by telephone that a copy of the General Counsel's Motion to Transfer Case to the Board and for Default Judgment was being electronically filed on September 11, 2009 and that a copy was being sent by Federal Express overnight delivery. Counsel for the General Counsel also attempted to reach Ms. Taylor by telephone; however phone numbers listed were bad numbers.

A handwritten signature in black ink, appearing to read 'Katrina H. Woodcock', with a long horizontal line extending to the right.

Katrina H. Woodcock
Counsel for the General Counsel
National Labor Relations Board, Region 5
The Appraiser's Store Building, 8th Floor
103 S. Gay Street
Baltimore, Maryland 21202
410-962-2752

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

N & R QUALITY CARE, LLC

and

Case 5-CA-34079

INDIA TAYLOR (nee JONES)

COMPLIANCE SPECIFICATION AND NOTICE OF HEARING

The National Labor Relations Board, (herein referred to as the Board), having on November 17, 2008 issued its Order in Case 5-CA-34079, directing N & R Quality Care, LLC, Respondent herein, to offer India Jones, herein correctly called India Taylor or Taylor, immediate reinstatement to her former job as a home health aide, remove from its file all reference to the unlawful discharge, and make her whole for the losses she suffered as a result of the discrimination against her in violation of Section 8(a)(1) of the National Labor Relations Act; the United States Court of Appeals for the Fourth Circuit having on April 21, 2009, entered its judgment enforcing in full the provisions of the Board's Order; and a controversy having arisen over the amount of backpay due under the terms of the Board's Order and the Respondent's obligation to remove from its files all reference to the unlawful termination of India Taylor and to notify her in writing that it has done so and that the action will not be used against her in the future; the Regional Director of the National Labor Relations Board for the 5th Region, hereby issues this Compliance Specification and Notice of Hearing and alleges that the backpay owing to India Taylor is as follows:

WAGES

1. Taylor's backpay period for wages begins on September 25, 2007, and ends on October 31, 2008.
2. An appropriate measure of the gross backpay due Taylor is the amount she would have earned if continually employed by Respondent during the backpay period.

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1

3. (a) The calendar quarter gross backpay Taylor would have earned is defined as the sum of calendar quarter regular earnings and is set forth in Exhibit A.

(b) Regular earnings are computed by multiplying the average number of regular hours Taylor would have worked in the calendar quarter by the appropriate hourly wage rate.

(c) The average number of regular hours Taylor would have worked each week is 32.66.

(d) The appropriate wage rate for Taylor during the backpay period is \$9.50 per hour.

INTERIM EARNINGS

4. Calendar quarter interim earnings are the wages Taylor received from interim employers during the backpay period, computed on a quarterly basis. Taylor's interim earnings are set forth in Exhibit A.

5. During the backpay period, Taylor incurred calendar quarter expenses as set forth in Exhibit A.

6. Calendar quarter net interim earnings are the difference between calendar quarter interim earnings and calendar quarter expenses and are set forth in Exhibit A.

7. The calendar quarter net backpay is the amount by which calendar quarter gross backpay exceeds calendar quarter net interim earnings. The calendar quarter net backpay due is set forth in Exhibit A.

PAYMENTS MADE

8. In partial satisfaction of its backpay obligation, on or about March 30, 2009, Respondent remitted to the Regional Office of the National Labor Relations Board payment of \$5,000 for backpay due and \$625.09 in interest due, on or about June 8, 2009, Respondent remitted an additional payment of \$2,000 for backpay due, and on July 13, 2009, Respondent remitted an additional payment of \$2,000 for backpay due. These sums are being held in escrow at the U.S. Treasury. Respondent's liability for backpay is summarized in Exhibit B.

SUMMARY

9. Summarizing the facts and calculations specified above and on Exhibit A, the obligation of Respondent will be discharged by payment of \$12,725.64 to Taylor in net backpay, less payments to date. In addition, Respondent owes \$973.51 in the Employer's share of FICA contributions on the backpay due, and interest on backpay accrued to date, less payments to date. Further, in satisfaction of the remaining terms of the Board's Order, Respondent must remove from its records all reference to Taylor's discharge and must notify her in writing that this has been done and that the unlawful discharge will not be used against her.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be **received by this office on or before August 21, 2009, or postmarked on or before August 20, 2009.** Unless filed electronically in a PDF format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Sub-regional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a PDF document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a

compliance specification is not a PDF file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

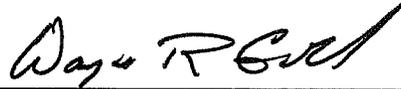
If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

NOTICE OF HEARING

PLEASE TAKE NOTICE that commencing at 10:00 a.m., E.D.T., on the 13th of October 2009, in Hearing Room 5600 East, 1099 14th Street, NW, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Form NLRB-4668, Statement of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

Dated at Baltimore, Maryland this 31st day of July 2009.



Wayne R. Gold, Regional Director
National Labor Relations Board - Region 5
103 S. Gay Street - 8th Floor
Baltimore, MD 21202

Attachments

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

N & R QUALITY CARE, LLC

and

INDIA TAYLOR (nee JONES)

Case 5-CA-34079

DATE OF MAILING July 31, 2009

**AFFIDAVIT OF SERVICE OF COMPLIANCE SPECIFICATION AND
NOTICE OF HEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified mail upon the following persons, addressed to them at the following addresses:

RESPONDENT:

CERTIFIED MAIL NO.: 7001 1940 0007 1748 9420

ATTN: MS. RUTHETTE FANNIN
N & R QUALITY CARE, LLC
4020 PLANK ROAD, SUITE B
FREDERICKSBURG, VA 22407

CHARGING PARTY:

ATTN: MS. INDIA JONES
4011 CANOPY WAY
FREDERICKSBURG, VA 22408

Signed in Baltimore, Maryland this 31st day of
July 2009

DESIGNATED AGENT

Aumunta Aumaller

NATIONAL LABOR RELATIONS BOARD

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2



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3



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 5
103 South Gay Street, 8th Floor
Baltimore, MD 21202-4061

August 25, 2009

MS. RUTHETTE FANIN
N & R QUALITY CARE, LLC
8613 BRIGHTON COURT
FREDERICKSBURG, VA 22408

Re: N & R Quality Care, LLC
Cases 5-CA-34079

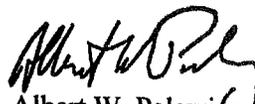
Dear Ms. Fanin:

As you are aware from the Compliance Specification in the above-captioned case, and pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, a Respondent in a case before the National Labor Relations Board shall file with the Regional Director an original and four (4) copies of an answer to the Compliance Specification within twenty-one (21) days from the service thereof. Respondent's Answer was due in this office by close of business on August 21, 2009. The Compliance Specification also notified you that Respondent shall serve a copy of its answer on each of the other parties.

To date, this office has not received an Answer from Respondent. Please be advised that if an Answer is not received in this office by close of business on Tuesday, September 1, 2009, this office will file a Motion for Default Judgment pursuant to Sections 102.23(a), (b) and 102.50 of the Board's Rules and Regulations, asking the Board to find the allegations in the Compliance Specification to be admitted as true. Enclosed is a courtesy copy of the Compliance Specification and Notice of Consolidated Hearing, previously served on Respondent.

If you have any questions or wish to discuss this matter further, please do not hesitate to call me at (410) 962-2811.

Very truly yours,


Albert W. Palewicz
Regional Attorney

Enclosure
Certified Mail No. 70011940000717485576

Cc:
MS. INDIA TAYLOR
136 BAYLOR DRIVE
MONTROSS, VA 22520

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4



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We attempted to deliver your item at 2:34 PM on August 27, 2009 in FREDERICKSBURG, VA 22408 and a notice was left. You may pick up the item at the Post Office indicated on the notice, go to www.usps.com/redelivery, or call 800-ASK-USPS to arrange for redelivery. If this item is unclaimed after 30 days then it will be returned to the sender. Information, if available, is updated periodically throughout the day. Please check again later.

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5