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**Tri-State Rigging LLC and Zachery Wayne Edwards.**  
Case 10–CA–344807

January 27, 2025

DECISION AND ORDER

BY CHAIRMAN KAPLAN AND MEMBERS PROUTY  
AND WILCOX

The General Counsel seeks a default judgment in this case on the ground that Tri-State Rigging LLC (the Respondent) has failed to file an answer to the complaint. Upon a charge filed by Zachery Wayne Edwards on June 20, 2024,<sup>1</sup> the General Counsel issued a complaint and notice of hearing on October 21 against the Respondent, alleging that it has violated Section 8(a)(1) of the Act. The Respondent failed to file an answer.

On November 20, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On November 21, 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,<sup>2</sup> and the General Counsel filed a reply.

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 states that unless an answer is received on or before November 4, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel’s motion disclose that the Region, by letter dated November 6, notified the Respondent that unless an answer was received by November 13, a motion for default judgment would be filed. The Respondent filed no answer or request for an extension of time to file an answer by that date, and, for the reasons discussed below, we find that the Respondent has not established good cause to excuse that failure.

Although the Board has shown some leniency toward respondents who, like here, proceed without the benefit of counsel, the Board has consistently held that pro se status alone does not establish a good cause explanation for failing to file a timely answer. See, e.g., *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co.*, 338 NLRB 1068, 1068 (2003). Where a pro se respondent fails to timely file an answer, despite being reminded to do so, and provides no good cause explanation for its failure to file a timely answer,

<sup>1</sup> All dates are in 2024, unless otherwise indicated.

subsequent attempts to file an answer will be denied as untimely. *Patrician Assisted Living Facility*, 339 NLRB at 1153–1154 (citing *Kenco Electric & Signs*, 325 NLRB 1118, 1118 (1998)).

Here, there is no dispute that the Respondent did not answer the complaint despite counsel for the General Counsel’s repeated, explicit directions to do so. Nor has the Respondent offered an explanation sufficient to constitute good cause for its failure to file a timely answer. The Respondent claims that it should be excused from doing so by the General Counsel’s purported delay in providing it with the “evidence necessary to assess the allegations.” However, the Respondent’s mistaken belief that it was entitled to prehearing discovery, see *Offshore Mariners United*, 338 NLRB 745, 746–747 (2002) (reaffirming Board’s longstanding policy against prehearing discovery), does not excuse its failure to file a timely answer, see *Dong-A Daily North America*, 332 NLRB 15, 16 fn. 7 (2000) (stating that “a respondent that ‘is without knowledge’ of facts alleged in a complaint need only state that it is ‘without knowledge,’ and the Board will treat that statement as a denial”) (quoting *M. J. Wood & Associates*, 325 NLRB 1065, 1066 fn. 5 (1998)). Moreover, the Respondent did not request an extension of time, which too “is a factor demonstrating lack of good cause.” *Id.* at 16 (quoting *Day & Zimmerman Services*, 325 NLRB 1046, 1047 (1998)).

Accordingly, we deem the allegations of the complaint to be admitted as true, and 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 has been a limited liability company with a location in Bowling Green, Kentucky (the Respondent’s facility), and has been engaged in the business of providing rigging, lifting, and transportation needs to construction contractors.

Annually, in conducting its operations described above, the Respondent purchases and receives at the Respondent’s facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky.

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:

<sup>2</sup> The Respondent was given additional time to cure its initial, procedurally deficient filing.

Greg Payne – Foreman  
 Ernie Salisbury – General Manager

2.(a) About February 21, 2024, the Respondent's employee Zachery Edwards engaged in concerted activities with other employees for the purpose of mutual aid and protection by discussing wages.

(b) About February 21, 2024, the Respondent discharged Zachery Edwards.

(c) The Respondent engaged in the conduct in subparagraph (b) because Zachery Edwards engaged in the conduct described above in subparagraph (a) and to discourage employees from engaging in these or other concerted activities.

#### CONCLUSION OF LAW

By the conduct described above in paragraph 2, 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 unfair labor practices of the Respondent described above 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) by discharging employee Zachery Edwards for engaging in protected concerted activity, we shall order the Respondent to offer him full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent

position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We shall also order the Respondent to make Edwards whole, with interest, for any loss of earnings and other benefits suffered as a result of the unlawful discharge. 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 *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the Respondent shall also compensate Edwards for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings.<sup>3</sup> Compensation for these harms 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.

Further, we shall order the Respondent to compensate Edwards for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 10 allocating the backpay award to the appropriate calendar year(s). *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 10 a copy of Edwards's corresponding W-2 form(s) reflecting the backpay award. *Cascade Containerboard*

<sup>3</sup> In *Airgas USA, LLC*, 373 NLRB No. 102, slip op. at 1 fn. 2 (2024), the Board explained that its decision in *Thryv* remains valid precedent notwithstanding the United States Court of Appeals for the Fifth Circuit's vacatur of certain paragraphs of the Board's order, including the provision containing the Board's clarified make-whole remedy. See *Thryv, Inc. v. NLRB*, 102 F.4th 727, 748 (5th Cir. 2024). Since *Airgas*, two additional Courts of Appeals have reviewed the Board's *Thryv* remedy. In *International Union of Operating Engineers, Stationary Engineers, Local 39 v. NLRB*, \_\_\_ F.4th \_\_\_, 2025 WL 251692, at \*12–16 (9th Cir. Jan. 21, 2025), the United States Court of Appeals for the Ninth Circuit enforced the Board's clarified make-whole remedy as a permissible exercise of the Board's discretion designed to vindicate public rights. In *NLRB v. Starbucks Corp.*, \_\_\_ F.4th \_\_\_, 2024 WL 5231549, at \*9–12 (3d Cir. Dec. 27, 2024), the United States Court of Appeals for the Third Circuit vacated the portion of the Board's order containing the Board's clarified make-whole remedy.

We note that the Board's decision in *Thryv* providing for this clarified make-whole remedy remains valid Board precedent under the Board's long-established policy of nonacquiescence to adverse appellate court decisions. See *Airgas*, supra; *Sunbelt Rentals, Inc.*, 372 NLRB No. 24, slip op. at 17 fn. 40 (2022); *D. L. Baker, Inc.*, 351 NLRB 515, 529 fn. 42 (2007). As an administrative agency charged by Congress with the uniform and effective administration of a national labor policy, the Board is not bound to acquiesce to the views of a Federal circuit court that conflict with those of the Board, even in cases arising in that circuit (which could be reviewed elsewhere on appeal). See *D. L. Baker*, 351 NLRB at 529 fn. 42. Pursuant to the Board's nonacquiescence policy, the Board

respectfully regards an adverse circuit court decision as only "the law of that particular case." Id. Thus, as a result of the Third Circuit's decision in *Starbucks*, the respondent in *that* case no longer has a legal obligation to take the remedial action identified in the portion of the Board's order that the Third Circuit vacated. However, in the absence of the Board specifically acquiescing to the Third Circuit's decision in *Starbucks* or overruling its own decision in *Thryv*, the Board's decision in *Thryv* remains controlling precedent, and the Board can and will rely on it as such in future Board decisions, including in our decision today.

Unlike his colleagues, Chairman Kaplan would not order the extraordinary make-whole remedy ordered by the Board in *Thryv*. To begin, for the reasons set forth in his partial dissent in *Thryv*, he does not believe that remedy is either appropriate or within the Board's remedial authority. He notes that the Third Circuit recently reached the same conclusion, finding that the *Thryv* remedy is beyond the scope of the Board's statutory remedial authority. *NLRB v. Starbucks Corp.*, 2024 WL 5231549 at \*9–12 (3d Cir. Dec. 27, 2024). But see *International Union of Operating Engineers, Stationary Engineers, Local 39 v. NLRB*, \_\_\_ F.4th \_\_\_, 2025 WL 251692, at \*12–16 (9th Cir. Jan. 21, 2025) (enforcing *Thryv* remedy). Chairman Kaplan further notes that his colleagues err in relying on the *Thryv* decision as support for the remedy being ordered in this matter because the provision in the Board's Order in *Thryv* containing that remedy was vacated by the Fifth Circuit. *Thryv, Inc. v. NLRB*, 102 F.4th 727, 748 (5th Cir. 2024). Accordingly, the novel make-whole remedy ordered in *Thryv* is not extant precedent. See *Airgas USA*, 373 NLRB No. 102, slip op. at 19–20 (Member Kaplan, dissenting).

*Packaging—Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021).

The Respondent shall also be required to remove from its files any reference to the unlawful discharge of Edwards and to notify him in writing that this has been done and that the discharge will not be used against him in any way.<sup>4</sup>

### ORDER

The National Labor Relations Board orders that the Respondent, Tri-State Rigging LLC, Bowling Green, Kentucky, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Discharging employees for engaging in concerted activities with other employees for the purpose of mutual aid and protection by discussing wages.

(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 Zachery Edwards full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Zachery Edwards whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms, suffered as a result of his unlawful discharge in the manner set forth in the remedy section of this decision.

(c) Compensate Zachery Edwards for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 10, 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 year(s).

(d) File with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Zachery Edwards'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 discharge of Zachery Edwards, and within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him 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 facility in Bowling Green, Kentucky copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, 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. Reasonable steps shall be taken by the Respondent 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 February 21, 2024.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 10 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. January 27, 2025

Marvin E. Kaplan

Chairman

<sup>4</sup> The General Counsel, in her complaint, additionally requests that we order the Respondent to draft and send a letter of apology to Edwards and electronically distribute, via text message, the Notice to Employees. We deny the General Counsel's additional requests because she has not shown that the additional measures are needed to remedy the effects of the Respondent's unfair labor practices. See, e.g., *Titan Health, LLC d/b/a Tweedleaf*, 372 NLRB No. 96, slip op. at 3 fn. 2 (2023); *Environmental Contractors, Inc.*, 366 NLRB No. 41, slip op. at 4 fn. 6 (2018); *Guy Brewer 43 Inc. d/b/a Checkers*, 363 NLRB No. 173, slip op. at 2 fn. 2 (2016).

<sup>5</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notice must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the

notice must be posted within 14 days after the facility reopens and a substantial complement of employees has returned to work. If, while closed or not staffed by a substantial complement of employees due to the pandemic, the Respondent is communicating with its employees by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." 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."

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David M. Prouty, Member

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Gwynne A. Wilcox, 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 discharge you for engaging in concerted activities with other employees for the purpose of mutual aid and protection by discussing wages.

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 the Board's Order, offer Zachery Edwards full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges he previously enjoyed.

WE WILL make Zachery Edwards whole for any loss of earnings and other benefits resulting from the unlawful

discharge, less any net interim earnings, plus interest, and WE WILL also make him whole for any other direct or foreseeable pecuniary harms suffered as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Zachery Edwards for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 10, 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 year(s).

WE WILL file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed by a agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Zachery Edwards's corresponding W-2 form(s) reflecting his backpay award.

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

TRI-STATE RIGGING LLC

The Board's decision can be found at <https://www.nlr.gov/case/10-CA-344807> 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

