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No Consequential Damages: Third Circuit Refuses to Recognize NLRB's Remedial Authority Beyond Reinstatement and Back Pay

On December 27, the U.S. Court of Appeals for the Third Circuit issued a significant decision in *NLRB v. Starbucks Corp.*, limiting the National Labor Relations Board's (NLRB or Board) authority to hold employers liable for consequential damages as a result of their violations of the National Labor Relations Act (NLRA). The Court affirmed the NLRB's findings that Starbucks violated the NLRA, but vacated the Board's order requiring Starbucks to compensate terminated employees for direct or foreseeable pecuniary harms beyond the traditional make-whole remedies of back pay and reinstatement. This decision marks a departure from the NLRB's expanded remedies adopted in its controversial *Thryv, Inc.* decision.

Background on *Thryv, Inc.*

In 2022, the NLRB in *Thryv, Inc.* dramatically expanded its remedial authority from previously awarding only reinstatement and back pay to also awarding compensation for "direct or foreseeable pecuniary harms" resulting from an employer's unfair labor practices. In that case, the Board ordered the employer to pay employees for financial damages such as increased transportation or child care costs, credit card debt, and out-of-pocket medical expenses. This decision was part of the NLRB's broader effort to effectuate the make-whole purposes of the NLRA, which was previously described in General Counsel Memo GC 21-06 in September 2021. In May 2024, on appeal in *Thryv, Inc. v. NLRB*, however, the U.S. Court of Appeals for the Fifth Circuit vacated the Board's decision, finding that the employer had not violated the NLRA when it laid off employees, but declined to address whether the NLRB had the authority to impose what the Fifth Circuit called "draconian" remedies, leaving the issue untouched until the Third Circuit addressed it in *NLRB v. Starbucks Corp*.

Starbucks Case Highlights

In the *Starbucks* case, the Third Circuit upheld the NLRB's findings that Starbucks violated the NLRA by unlawfully discharging two employees in retaliation for their organizing demonstrations, attending meetings with executives, and airing complaints about working conditions during 2019 and 2020 organizing drives at two Philadelphia stores. Notably, managers' internal communications clearly indicated hostility toward the employees' unionizing efforts.

The Third Circuit, however, rejected the NLRB's broad damages order. The order included not only reinstatement and back pay but also reasonable search-for-work and interim employment expenses, if any, regardless of whether those expenses exceeded interim earnings. The Court held that such remedies exceeded the NLRB's statutory authority under the NLRA and that Congress didn't "establish a general scheme authorizing the Board to award full compensatory damages for injuries caused by wrongful conduct." The Court emphasized that the NLRA confines the NLRB's authority to equitable relief and does not authorize compensatory damages resembling those awarded in tort or contract law.

The Court further ruled that the NLRB "cannot exceed what the employer unlawfully withheld" and remanded the remedies portion of the order to the Board for reconsideration.

Implications for Employers

The Third Circuit's *Starbucks* decision restricts the scope of the NLRB's remedial authority in Pennsylvania, New Jersey, Delaware and the Virgin Islands, effectively reinstating the law prior to the NLRB's decision in *Thryv, Inc.* Therefore, employers in these jurisdictions will not face enforcement actions relating to consequential damage awards that go beyond back pay and reinstatement.

Unfortunately for other employers, the decision is geographically limited, and the NLRB is likely to continue imposing such remedies in jurisdictions outside the Third Circuit, absent other courts following the Third Circuit's lead or a future NLRB with a Republican majority overturning *Thryv, Inc.* Employers operating in circuits that have not yet addressed this issue should continue to monitor developments and consult with counsel to assess the implications of this decision for pending or potential NLRB charges.

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