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Third Circuit Court of Appeals Issues Opinion in Starbucks, Limiting National Labor Relations Board's Remedial Power

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On Friday, December 27, 2024, the Third Circuit Court of Appeals handed Starbucks a victory by vacating portions of an order issued by the National Labor Relations Board ("Board") on the grounds that the Board exceeded its authority under the National Labor Relations Act ("NLRA" or the "Act") by ordering Starbucks to compensate two baristas for any "direct and foreseeable pecuniary harms incurred as a result of the unlawful adverse action against them, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceeded interim earnings."

The Board's original order was a result of its finding that Starbucks committed unfair labor practices by illegally firing two workers in response to unionization efforts at two Philadelphia stores in 2019 and 2020. Starbucks challenged the ruling and the Board's order on the grounds that the Board exceeded its statutory authority under Section 10(c) of the Act by ordering a remedy that was neither backpay nor equitable in nature.

Section 10(c) of the NLRA authorizes the Board to order employers to "cease and desist from" unfair labor practices and to "take such affirmative action, including reinstatement of employees with or without back pay, as well as effectuate the policies" of the NLRA. Until 2022, courts and the Board alike understood Section 10(c) to limit the Board's ability to order monetary relief to instances of backpay. That all changed in 2022 as a result of the Board's decision in *Thryv*, which held that in all cases in which the Board's standard remedy would include an order for make-whole relief, it would also expressly order that the respondent compensate affected employees for all direct and foreseeable pecuniary harms suffered as a result of the respondent's unfair labor practice.

In *NLRB v. Starbucks Corp.*, the Third Circuit reasoned that contrary to the Board's order and its decision in *Thryv*, Congress did not "establish a general scheme authorizing the board to award full compensatory damages for injuries caused by wrongful conduct." The Court found that in this case, the Board's order requiring Starbucks to compensate the two baristas for any direct or foreseeable pecuniary harms resulting from the unfair labor practices resembled an order to pay compensatory damages, a remedy that far exceeds the Board's authority under the Act. Consequently, the Third Circuit vacated the remedies portion of the Board's order and remanded the case to the agency for further proceedings.

The Third Circuit's decision in *NLRB v. Starbucks Corp.* is the most recent example of federal courts' increased receptiveness to legal challenges to the Board's self-imposed expansion of power that became a hallmark of the Biden presidency. While the NLRB will likely continue to order

consequential damages moving forward, the Board will be unable to enforce those orders in the Third Circuit, which includes Pennsylvania, New Jersey, and Delaware.

For more information, contact an attorney in Benesch's Labor & Employment Practice Group.

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