



In the Matter of:

A. J. Bruno Construction Corp.

ARB Case No. 96-103

and

(ALJ Case No. 90-DBA-080)

Alfred J. Bruno, President.

DATE: October 25, 1996

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

This matter is before the Administrative Review Board pursuant to the Davis-Bacon Act, as amended (DBA), 40 U.S.C. § 276a *et seq.* and the regulations at 29 C.F.R. Parts 5 and 7. The Administrator, Wage and Hour Division (Administrator), seeks review of a portion of the April 3, 1996 Decision and Order (D. O.) of the Administrative Law Judge (ALJ), who ordered the debarment of the Respondents from future federal contracts for three years, the payment of back wages to three individuals, and payment of \$1000 on a contract that Respondents entered into with a subcontractor. The Administrator seeks review of only that portion of the ALJ's D. and O. regarding payment to the subcontractor. For the reasons set forth below, the Administrator's Petition for Review is granted and the ALJ's D. and O. is reversed in part.

BACKGROUND

The General Services Administration (GSA) awarded Respondents A. J. Bruno Construction Corporation and Alfred J. Bruno (collectively, Bruno) a contract to secure a parking facility for the Drug Enforcement Administration. Performance began in 1987. Bruno entered into several subcontracts to perform the work on the contract, including one with C & H Construction Corporation (C & H) for \$9,500.

In 1989, Wage and Hour sent a charging letter to Bruno alleging that it had violated the DBA by failing to pay five employees the appropriate prevailing wage under the GSA contract and seeking debarment of Bruno for submitting falsified certified payroll records. The matter was referred to the ALJ for a hearing pursuant to 29 C.F.R. § 5.11(b) and 5.12(b).

The ALJ ordered debarment, found that Bruno owed back wages to three individuals, and ordered Bruno to pay \$1000 to C & H, the amount that the ALJ determined Bruno still owed C & H under its subcontract.

DISCUSSION

The Administrator argues that the ALJ exceeded his authority when he ordered Bruno to pay \$1000 to C & H. Bruno does not oppose the Administrator's position.

We agree with the Administrator that neither the regulations nor the Order of Reference gave the ALJ authority to order Bruno to pay C & H monies allegedly owed under their subcontract. The Administrator referred the matter to the ALJ for enforcement proceedings pursuant to 29 C.F.R. § 6.30. That provision authorizes the ALJ to decide issues arising under 29 C.F.R. § 5.11(b) (whether employees were underpaid) and under 29 C.F.R. § 5.12(b) (whether contractor should be debarred). *See, e.g., Donahue Favret Contractors, Inc.*, WAB Case No. 92-13 (April 30, 1993); *R. C. Foss & Son Inc.*, WAB Case No. 87-46 (Dec. 31, 1990); and *Williams Fence Co., Inc.*, WAB Case No. 87-23 (Aug. 17, 1987). The ALJ lacked authority to decide issues beyond the scope of the Order of Reference. *Donahue Favret*, slip op. at 3; *Foss*, slip op. at 9.

Our decision in this case comports with the tenet that disputes between subcontractors and prime contractors must be resolved outside the administrative forum. *See All Phase Elec. Co.*, WAB Case No. 85-18 (June 18, 1986) (claim for damages by subcontractor against prime not the proper subject of Department proceedings).

We find that the ALJ exceeded his authority. Accordingly, the ALJ's D.O. is reversed as it relates to the order to pay \$1000 to C & H.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member