



In the Matter of:

JAMES F. NEWPORT,

ARB CASE NO. 10-005

COMPLAINANT,

ALJ CASE NO. 2009-ERA-004

v.

DATE: February 24, 2010

**SIEMENS GENERATION SERVICE
COMPANY and MICHAEL McCORMICK,
PRESIDENT,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

James F. Newport, *pro se*, Blue Springs, Missouri

For the Respondent:

James G. Brown, Esq., *Ford & Harrison, L.L.P.*, Orlando, Florida

FINAL DECISION & ORDER DISMISSING APPEAL

BACKGROUND

James Newport filed a complaint with the Department of Labor's Occupational Safety and Health Administration alleging that the Respondents, Siemens Generation Services (SGS) and its president, Michael McCormick, retaliated against him in violation of the employee protection provisions of the Energy Reorganization Act.¹ The Administrative Review Board must determine whether to dismiss Newport's petition for review since he failed to file an initial brief with the Board in support of his petition.

¹ 42 U.S.C.A. § 5851 (West 2003 & Supp. 2008).

Because Newport has failed to timely file his opening brief and to demonstrate good cause for his failure to do so, we conclude that his petition for review should be dismissed.

A Labor Department Administrative Law Judge (ALJ) found that the Respondents satisfied their burden of demonstrating that there was no issue of material fact regarding whether they had terminated Newport's employment due to protected activity.² Accordingly, the ALJ granted the Respondents' Motion for Summary Decision and dismissed McCormick as a party. The ALJ subsequently denied Newport's motion for FRCP rehearing and reconsideration.³

Newport petitioned the Administrative Review Board for review of the ALJ's decisions.⁴ On October 20, 2009, the Board issued an Order Establishing Briefing Schedule in this case. The terms of the Board's order required Newport to file an opening brief, not to exceed thirty double-spaced typed pages, on or before November 12, 2009. The Board further cautioned the Complainant, "If a party fails to file a brief that complies with the requirement of this briefing order, the Board may refuse to accept the brief, and if the brief is an initial brief, the Board may dismiss the appeal." Nevertheless, Newport failed to timely file his brief.

Because Newport failed to timely file his opening brief, we ordered him to show cause no later than December 29, 2009, why we should not dismiss his petition for review because he has failed to prosecute his appeal in accordance with the Board's briefing order. The Board warned Newport that if the Board did not receive his response to this order on or before December 29, 2009, the Board may dismiss the appeal without further notice to the parties. Newport did not timely file his response as ordered. The Board did not receive Newport's response until January 4, 2010. The show cause order also permitted the Respondents to file a reply to Newport's response and suspended the briefing schedule pending the Board's ruling on the Order to Show Cause.

DISCUSSION

The Board's authority to effectively manage its docket, including authority to require compliance with Board briefing orders, is necessary to "achieve orderly and expeditious disposition of cases."⁵ This Board has authority to issue sanctions, including

² *Newport v. Siemens Generation Serv. Com.*, ALJ No. 2009-ERA-004 (Sept. 9, 2009) (R .D. & O.).

³ *Newport v. Siemens Generation Serv. Com.*, ALJ No. 2009-ERA-004 (Oct. 2, 2009) (R .D. & O. (Recon.)).

⁴ *See* 29 C.F.R. § 24.110(a)(2009).

⁵ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

dismissal, for a party's failure to comply with the Board's orders and briefing requirements.⁶ As an initial matter we note that Newport failed to timely file his response to the Show Cause Order even after the Board cautioned him that if the Board failed to **receive** his response by December 29, 2009, it could dismiss his appeal without further notice. Nevertheless, because dismissal of an appeal is a serious sanction, we will consider his response to determine whether he has demonstrated good cause to excuse his failure to timely file his opening brief.

In response to the Board's Order to Show Cause, Newport avers that

ARB should not dismiss this appeal [sic] he has been and is wrongfully forced into a "*multiplicity of suits*" by a corrupt DOL and the ARB needs to "*prevent manifest injustice*" and correct clear errors of law. . . . The Complainant should be ***excused*** from meeting these ARB BRIEFING timelines because he has been **attacked by the DOL**, and the Respondent and DOL has [sic] "unclean hands" in that Respondent and its co-conspirators have attacked Complainant in his home, work and education to obstruct Complainant's access to these proceedings.^[7]

Newport further stated that he had been falsely arrested or had been required to defend against false arrests three times during the period he was required to prepare this appeal and that he had only been permitted to work twenty hours from May 5, 2009, to December 29, 2009.⁸ Newport continued:

Further, complainant has been advancing other litigation ***against the United States Department of Labor*** for its corrupt Fascist political oppression of him. Really the US, and the Department of Labor being the worse agency of the bunch, has been long been oppressively treating

⁶ *Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-007 (ARB Mar. 19, 2003). See also *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-102, ALJ No. 2004-AIR-006 (ARB Dec. 30, 2004, Reissued Jan. 5, 2005), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *Powers v. Pinnacle Airlines, Inc.*, ARB No. 04-035, ALJ No. 2003-AIR-012 (ARB Sept. 28, 2004), *aff'd sub nom. Powers v. U.S. Dep't of Labor, et al.*, Nos. 04-4441/05-3266 (6th Cir. Jan. 26, 2006); *cf.* Fed. R. App. P. 31(c) (allowing dismissal as sanction for failure to file a conforming brief); Fed R. App. P. 41(b) (permitting courts to dismiss a complaint for failure to comply with court orders).

⁷ Complainant's Showing of Cause Why ARB Should Not Dismiss Appeal and Request for an Evidentiary Hearing (Clmt.'s Resp.)at 1-2 (citation omitted).

⁸ *Id.* at 2.

complainant like *Hitler's* Germany treated the Jews after the 1933 Race Laws were passed but before the Final Solution was ordered. This is an “extraordinary circumstances” Energy Reorganization Act case where the complainant has long been a victim of an [sic] *vicious criminal hate group* vendetta with ties to organized crime, that has stalked Complainant for years, using *inter alia* threats of violence and bodily harm, harassment, and economic coercion to intimidate Complainant and obstruct his access to the courts and destroy the integrity of these administrative proceedings.^[9]

The Respondents have replied to Newport’s response arguing that his appeal should be dismissed. First, they contend that “Complainant’s response is based on specious and defamatory allegations against the Department of Labor, . . . unions, and SGS.”¹⁰ They aver that the Newport’s “unsupported theory that the DOL, the unions, and SGS conspired against him is unrelated to the facts involved in this matter, is not responsive to the ARB’s Order to Show Cause, and does not show why complainant’s appeal should not be dismissed.”¹¹

The Respondents also assert that Newport failed to provide any facts to support his position that he did not have time to file an opening brief on or before November 12, 2009. The Respondents point out that Newport refers to three “false arrests” as excusing his noncompliance, but the first alleged “false arrest” occurred on August 24, 2009, which was well before the ARB’s October 20, 2009 briefing order and Newport fails to allege any facts as to how the alleged false arrests for trespassing on November 2, and 3, 2009, precluded him from timely filing his brief or requesting an extension of time to file the brief. The Respondents also note the fact that Newport’s own response establishes that he had time to prepare and file the brief because he admits that he only worked fifty-five hours during 2009.

Newport is an experienced litigator before the Board.¹² Furthermore, the Board has previously impressed on Newport the importance of complying with the Board’s briefing orders and has sanctioned him for failing to comply with its instructions. In

⁹ *Id.*

¹⁰ Respondents’ Reply to Complainant’s Response to Order to Show Cause as to the Dismissal of his Appeal for Failure to Prosecute (Resp. Rep.) at 2.

¹¹ *Id.* at 3.

¹² See *Newport v. Florida Power & Light*, ARB No. 06-110, ALJ No. 2005-ERA-024 (ARB Feb. 29, 2008).

Newport v. Florida Power & Light,¹³ the Board accepted a non-conforming brief when Newport demonstrated a good faith attempt to comply with the Board's briefing requirements, but refused to accept new evidence proffered by Newport after the Board explained the procedure for submitting such evidence and Newport failed to comply with the Board's instructions. In this case we agree with the Respondents that Newport has failed to demonstrate good cause for failing to timely file his opening brief. Newport's failure to even request an enlargement of time to file the brief after the Board warned him that a failure to timely file the brief could lead to dismissal of his appeal evidences his failure to make a good faith effort to comply with the Board's briefing order. Further, Newport has failed to demonstrate how any of the alleged circumstances upon which he relies specifically precluded him from either timely filing his brief or at the very least filing a motion requesting an enlargement of time to do so.

CONCLUSION

The Board cautioned Newport about the consequences of failing to comply with the Board's briefing order by filing a timely brief. Nonetheless Newport failed to timely prosecute his appeal by filing an opening brief in accordance with the Board's briefing order. Accordingly, we **DISMISS** Newport's appeal.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹³ ARB No. 06-110, ALJ No. 2005-ERA-024 (ARB Oct. 20, 2008).