



IN THE MATTER OF:

RICARDO G. CASTRO,

ARB CASE NO. 13-072

COMPLAINANT,

ALJ CASE NO. 2012-ERA-006

v.

DATE: September 12, 2013

**SOUTHERN CALIFORNIA EDISON/
WILLIAMS GLOBAL SERVICES,
INCORPORATED,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Ricardo Castro, *pro se*, San Ysidro, California

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*

FINAL DECISION AND ORDER

On June 13, 2013, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Dismissing Complaint in this case arising under the whistleblower protection provisions of the Energy Reorganization Act of 1974.¹ After a full hearing,

¹ 42 U.S.C.A. § 5851 (West 2003 & Supp. 2012) (ERA). The ERA's implementing regulations are found at 29 C.F.R. Part 24 (2013).

the ALJ found that the Complainant, Ricardo Castro, failed to timely file his ERA complaint.²

The ALJ's D. & O. contained a "**NOTICE OF APPEAL RIGHTS.**" It informed the Complainant of the procedure for filing a Petition for Review of the ALJ's D. & O. with the Administrative Review Board.³ It also provided in pertinent part:

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages. With your supporting legal brief you may also submit an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.^[4]

Thus, the ALJ put Castro on notice of when his opening brief would be due.

Castro filed a timely Petition for Review with the Board on June 21, 2013.⁵ The Petition stated in its entirety:

I would like to appeal this decision because I feel that the judge did not consider all the facts in this case. I am requesting a review of my claim regarding the findings of

² *Castro v. Southern Cal. Edison/Williams Global Servs., Inc.*, ALJ. No. 2012-ERA-006, slip op. at 7-9 (June 13, 2013)(D. & O.). The ALJ found that Castro failed to file a timely complaint even though he was informed in writing that the Nuclear Regulatory Commission mediation in which he was participating would not stay the running of the limitations period for filing a discrimination complaint with the Department of Labor under 29 C.F.R. Part 24. D. & O. at 8-9. Because the case was fully tried, the ALJ also decided the merits of Castro's complaint, holding that Castro failed to establish that the Respondents retaliated against him because he engaged in protected activity. *Id.* at 10-14.

³ D. & O. at 14. The Secretary of Labor has delegated to the Administrative Review Board the authority to issue final agency decisions under the ERA. Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378-69380 (Nov. 16, 2012); 29 C.F.R. §§ 24.100(a), 24.110(a).

⁴ D. & O. at 14-15.

⁵ *See* 29 C.F.R. § 24.110(a).

my claim being filed untimely and that SCE and William Global did not violate my rights.^[6]

In response to Castro's Petition for Review, the Board issued a Notice of Appeal and Order Establishing Briefing Schedule on July 5, 2013. Under the terms of the Board's briefing schedule, Castro was to file his opening brief on or before July 22, 2013 (30 days after the date on which he filed his petition for review as provided in the ALJ's Notice of Appeal Rights). The Board cautioned Castro that if he failed to timely file his opening brief, the Board could dismiss his petition for review or impose other sanctions.

A Track and Confirm service provided by the United States Postal Service indicates that the Postal Service first left notice of its attempt to deliver the Board's Notice of Appeal (which was sent by certified mail) to Castro on July 8, 2013. July 8th is also noted on the copy of the envelope, in which the Board's order was sent, that Castro provided to the Board. A second notice was given on July 20th (also noted on the envelope), and the Notice was finally delivered on July 24, 2013.

Castro did not file an opening brief as ordered. 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."⁷ This Board has authority to issue sanctions, including dismissal, for a party's failure to comply with the Board's orders and briefing requirements.⁸ Accordingly, we ordered Castro to show cause no later than August 30, 2013, why we should not dismiss his appeal and suspended the briefing schedule.

In his response to the Show Cause Order, Castro averred:

Attached you will find a copy of the certified letter dated July 5, 2013. Unfortunately, the mail man did not deliver on that date nor did he leave any notifications of such letter to be picked up by addressee. A notification was left inside our mailbox on Saturday, July 20, 2013, the weekend we were out of town. Upon my return, July 24, 2013, I found notification and went to the post office to pick up the certified letter.^[9]

⁶ Petition for Review dated June 21, 2013.

⁷ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁸ *Jessen v. BNSF Railway Co.*, ARB No. 12-107, ALJ No. 2010-FRS-022 (ARB July 26, 2013). See also *Ellison v. Washington Demilitarization Co.*, ARB No. 08-119, ALJ No. 2005-CAA-009 (ARB Mar. 16, 2009), *aff'd sub nom. Ellison v. U.S. Dep't of Labor*, 09-13054 (11th Cir. June 17, 2010).

⁹ Response to Order to Show Cause dated August 26, 2013.

Castro's version of the facts surrounding the attempted delivery of the Board's Notice is not consistent with the USPS Track and Confirm notification. But even giving Castro the benefit of the doubt, there is no question that the ALJ's D. & O. put him on notice on June 13, 2013, that his opening brief would be due 30 days after he filed his petition for review, yet he made no attempt to contact the Board to determine whether the Board had accepted his petition between June 21, 2013, when he filed it and July 22, 2013, when his brief was due. Further even after he retrieved the Board's Notice and learned that he had missed the filing deadline and that the Board might dismiss his appeal because he had failed to timely file his brief, he did not contact the Board or file a brief. The Board did not hear from Castro until August 26, 2013, in reply to the Board's Order to Show Cause. Thus Castro has failed to demonstrate due diligence in an attempt to timely file his brief in accordance with the Board's briefing order.

The Board recognizes that dismissal of an appeal for failure to file a timely brief is a very serious sanction and one not to be taken lightly. But even if the Board considered the lesser sanction of construing Castro's petition for review as a brief and requiring the Respondent to reply only to those arguments set forth in the petition, dismissal would be required.¹⁰ Castro's petition, as quoted above, fails to specifically identify any error in fact or law that the ALJ allegedly committed. At most, Castro's petition argues that the ALJ wrongly decided his complaint, but with no specific errors of fact or law to support the assertion, there is nothing to which the Respondent is required to reply.

Accordingly because Castro failed to timely file his brief and failed to demonstrate due diligence once he learned that he had missed the filing date, we **DISMISS** his complaint.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

¹⁰ *Santoro v. Tekni-Plex, Inc.*, ARB No. 11-052, ALJ No. 2010-SOX-046, slip op. at 3 (ARB Aug. 5, 2011). Pursuant to 29 C.F.R. § 24.110(a), "The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections will ordinarily be deemed waived."