



In the Matter of:

HUMBERTO R. CASTILLO,
COMPLAINANT,

ARB CASE NO. 11-046
ALJ CASE NO. 2010-NTS-002

v.

DATE: July 28, 2011

BAYSIDE ENGINEERING, INC.,
RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Paul M. Igasaki, *Chief Administrative Appeals Judge* and Joanne Royce, *Administrative Appeals Judge*

FINAL DECISION AND ORDER DISMISSING APPEAL

BACKGROUND

The Respondent, Bayside Engineering, employed the Complainant, Humberto Castillo, as an electrical engineer from April to October 2008.¹ On October 27, 2008, Bayside terminated Castillo's employment, and on December 10, 2010, Castillo filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging retaliation under the employee protection provisions of the National Transit Systems Security Act (NTSSA).² OSHA dismissed Castillo's complaint as untimely.

Castillo requested a hearing before a Department of Labor Administrative Law Judge (ALJ). On April 11, 2011, the ALJ issued a Decision and Order Dismissing the

¹ *Castillo v. Bayside Eng'g, Inc.*, 2011-NTS-002, slip op. at 1 (ALJ Apr. 15, 2011)(D. & O.).

² 6 U.S.C.A. § 1142 (Thomson/West Supp. 2011).

Complaint on the grounds that Castillo had not timely filed it.³ Castillo filed a timely appeal with the Administrative Review Board.⁴ In response, on April 27, 2011, the Administrative Review Board issued a Notice of Appeal and Order Establishing Briefing Schedule. The terms of the Board's order required the Complainant to file an opening brief, not to exceed thirty (30) double-spaced typed pages, on or before May 23, 2011. The Board further cautioned Castillo, "If the Complainant fails to file the initial brief on time, the Board may dismiss the Complainant's appeal."

Castillo did not file a brief in compliance with the Board's order. On May 20, 2011, the United States Postal Service returned the Board's Notice of Appeal and Order Establishing Briefing to the Board with the indication that it was unclaimed and it could not be forwarded. On June 6, 2011, the Board received a fax from Castillo requesting the status of his petition for review and indicating that he had not received any documents from the Board since he submitted his petition. This fax contained no contact information. The Board's Notice of Appeal and Order Establishing Briefing was correctly addressed to the address Castillo provided on his petition for review. Castillo filed no subsequent updated contact information with the Board.

Accordingly, we ordered Castillo to show cause no later than July 19, 2011, why the Board should not dismiss his petition for review because he failed to prosecute his appeal in accordance with the Board's briefing order. The Board warned Castillo, "If the Board does not **receive** [your] response to this show cause order **on or before** July 19, 2011, the Board may dismiss the appeal without further notice." The Board further stated, "If [you intend] to continue to prosecute [your] appeal before the Board, [you] must attach a copy of [your] opening briefing as described in the Board's April 27th Notice of Appeal and Briefing Order with [your] response to the Order to Show Cause."⁵

The United States Postal Service's website indicates that the Show Cause Order was delivered on June 18, 2011. Nevertheless, Castillo failed to file a brief as ordered or to proffer any explanation for his failure to timely file his brief.

DISCUSSION

The Board's authority to effectively manage its affairs, including the authority to require parties to comply with Board briefing orders, is necessary to "achieve orderly and

³ On April 15, 2011, the ALJ issued an Errata Order because the initial decision cited "the incorrect service type."

⁴ The Secretary of Labor has delegated her authority to decide this matter to the ARB. *See* Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

⁵ A copy of April 27th Notice of Appeal and Briefing Order was attached to the Show Cause Order.

expeditious disposition of cases.”⁶ This Board has authority to issue sanctions, including dismissal, for a party’s failure to comply with the Board’s orders and briefing requirements.⁷

Considering that Castillo is proceeding in this appeal without representation by counsel, this Board is willing to extend to him a degree of latitude in complying with the Board’s procedural requirements. This latitude, however, is not without bounds. The Board notified Castillo of his obligation to file an opening brief and warned him that if he failed to do so, the Board could dismiss his appeal. Nevertheless Castillo failed to file an opening brief as ordered. The Board then gave Castillo the opportunity to file the brief and explain why he had failed to timely file it, but he provided no brief and no explanation whatsoever.

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 Castillo’s petition for review as a brief and requiring the Respondents to reply only to those arguments set forth in the petition, dismissal would be required. It would serve no purpose to require the Respondents to respond to the points raised in the petition for review because the petition fails to proffer any argument in rebuttal to the ALJ’s conclusion that he failed to timely file his OSHA complaint and that he established no grounds for tolling the limitations period.

Accordingly, we **DISMISS** Castillo’s appeal because he has failed to file a timely brief in support of his petition for review and has failed to demonstrate any cause, much less good cause, for his failure to do so.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

⁶ *Link v. Wabash*, 370 U.S. 626, 630-31 (1962).

⁷ *See Blodgett v. TVEC*, ARB No. 03-043, ALJ No. 2003-CAA-7 (ARB Mar. 19, 2003) (dismissing complaint for failure to comply with briefing order); *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).