



In the Matter of

CELESTINO TREJO

Complainant

DATE ISSUED: AUGUST 13, 1992

CASE NO: 92-TAE-4

v.

SNAKE RIVER FARMERS ASSOC.

Respondent

and

STATE OF IDAHO DEPARTMENT OF  
EMPLOYMENT

Party-in-Interest

and

U.S. DEPARTMENT OF LABOR :

Party-in-Interest

**DECISION AND ORDER - AWARDING LOST WAGES**

This case involves the failure of the Respondent, Snake River Farmers Association ("SRFA") to hire a qualified and available U.S. worker, Mr. Celestino Trejo, as an irrigator, in violation of provisions governing temporary alien agricultural labor certification for the employment of H-2A workers. 20 C.F.R. Part 655, Subpart B, particularly section 655.103(c). The Idaho Department of Employment, by its Appeals Examiner's November 26, 1991 Decision after a hearing, found that the SRFA was in violation, and ordered that it be decertified from use of the State Job Service, and that the SRFA pay Trejo \$1,066.20 in lost wages (pursuant to 20 C.F.R. § 655.102(b)(6)) (AF 33).

In accordance with the procedures in 20 C.F.R. §§ 658.417 and .418, hearings are held by the State hearing officials and the State's decision may be appealed to the Regional Administrator ("RA") of the U.S. Department of Labor ("DOL"). The SRFA did appeal, and therefore, this case is before the U.S. DOL at its instigation. The RA, on April 1, 1992, affirmed the State's finding that the SRFA was in violation for wrongfully rejecting Trejo, but also modified the State's finding by determining that Trejo was not entitled to compensation for lost wages. This modification was based on the RA's view of the formula for determining lost wages and offset by Trejo's alternative earnings under section 655.102(b)(6) (AF 2-3).

Pursuant to 20 C.F.R. § 658.421(f), on April 20, 1992, Trejo requested a hearing before a U.S. DOL Administrative Law Judge, seeking reinstatement of the award of lost wages (AF 1). That brought the case before me. Since the RA's decision, the SRFA has failed to participate in this case. It did not respond to my initial Order of May 28, 1992, issued pursuant to 20 C.F.R. § 656.424(b), inter alia ordering the parties to submit legal arguments and supporting documentation on the merits of the case by June 19, 1992 (extended by my June 19, 1992 Order to July 6, 1992, at the unopposed request of Trejo). Finally, the SRFA has failed even to respond to my July 17, 1992 "Order for Respondent to Show Cause" within ten days why the award of lost wages to the Complainant Trejo should not be reinstated due to the SRFA's default in this case.

The Solicitor of the U.S. DOL, on behalf of the RA, has responded to my show cause order. Its July 27, 1992 response argues that I have no authority to enter a default judgment against a party who chooses not to participate in the appeal of the RA's decision. While at least conceding that ". . . it may have been prudent for SRFA to participate in support of the [RA's] decision to modify the [State] Hearing Examiner's method of calculating lost wages. . . ", the Solicitor argues that it was reasonable for SRFA to rely on the RA's defense of his decision (RA's Response, at p. 3 n.1).

I conclude that at least in the circumstances of this case, where the remedy sought is the payment by the SRFA of a monetary penalty to the Complainant, the SRFA is a necessary party. To be sure, having elected not to appeal the RA's affirmance of the de-certification, the SRFA's decision not to participate further in a process where it has only a thousand dollars at stake may be highly rational. However, that is the SRFA's choice, and the consequence of that choice is that it has waived any defenses it might have to the Complainant's action before me seeking reinstatement of the award of lost wages. This is an adversary hearing process, not a mandated review of the soundness of the RA's decision.<sup>1</sup>

There is no regulatory provision which exempts proceedings. under 20 C.F.R. Parts 655 and 658 from the Rules of Practice at 20 C.F.R. Part 18. Those rules include the general authority of the administrative law judge to have all powers necessary to the conduct of fair and impartial hearings. Section 18.29. Moreover, pursuant to section 18.39(b), a default decision under section 18.5(b) may be entered against any party failing, without good cause, to appear at a hearing. Under section 18.5(b), the SRFA in this case failed to answer the Complainant's request for hearing. Moreover, the SRFA's failure to respond to my Orders of May 28 and June 19, 1992, and final failure to respond to my July 17, 1992 Order that it show cause why I should not enter a default judgment, constitute defaults for which I may, and hereby do, rule that a decision be rendered against the non-complying party, pursuant to section 18.6(d)(2)(v).

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<sup>1</sup> 20 C.F.R. § 658.418(c) provides support for my finding that the SRFA is a necessary party. It provides that the decision of the State hearing official include a notice to the "parties" of the right to appeal to the RA, but that such parties not include ". . . the Regional Administrator, the Solicitor of Labor, or entities serving in an amicus capacity."

Clearly, this default judgment against the SRFA does not touch on whether the RA is correct that no lost wages would have been due to Trejo if the SRFA had participated in this case.

### **ORDER**

The Snake River Farmers Association shall pay to Celestino Trejo \$1,066.20, plus any applicable statutory interest computed from the date of the November 1991 award by the State of Idaho.<sup>2</sup>

Pursuant to 20 C.F.R. § 658.425(c), this Decision and Order constitutes the final decision of the U.S. Secretary of Labor.

LAWRENCE BRENNER  
Administrative Law Judge

LB/pah

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<sup>2</sup> In his July 6, 1992 brief before me (at p. 3), Trejo mistakenly asks for reinstatement of \$1,235.70 due to him. This apparently relates back to the amount Trejo claimed in his brief before the State Appeals Examiner (AF 47-48). When adjusting for a mathematical error in that brief, the amount claimed before the State actually was \$1,145.70, reducing the difference between the State's and Trejo's result to \$79.50. (\$5,135.70 claimed lost, less \$3,990.00 earned elsewhere, equals \$1,145.70). In any event, no reason has been advanced by Trejo on this appeal to modify the State's calculated award.