



UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:
U. S. DEPARTMENT OF LABOR,

Complainant,

v.

TOMMY KIMBRO,

Respondent.

Dated: August 31, 1993
Case No. 93-TAE-0001

DECISION AND ORDER

This matter comes on for consideration of an administrative determination of the Secretary of Labor issued on August 12, 1991, under the H-2A provisions of the Immigration and Nationality Act of 1952, as amended by the Immigration Reform and Control Act of 1986 found at 8 U.S.C. §§1101(a)(15)(H)(ii)(a), 1184(c), and 1186, hereinafter "the Act," and Regulations at 20 C.F.R. Part 655.90, et seq., and 29 C.F.R. Part 501, and the parties having submitted agreements and consents in disposition hereof as contained in Consent Findings concurrently adopted, incorporated herein, and made a part hereof, and it appearing that all requirements of Regulation 29 C.F.R. 501.40 have been complied with, now, therefore, in accordance with such Consent Findings, it is

ORDERED that imposition of civil money penalty, as modified by the Secretary, in the amount of \$1,100.00 hereby is affirmed, payment of which shall be in accordance with the terms and conditions set forth in said Consent Findings; and withdrawal of respondent's request for hearing is approved. It is

FURTHER ORDERED that in accordance with Regulation 29 C.F.R. 501.40, this constitutes the FINAL ORDER of the Secretary.

This 10th day of September, 1993.

DAVID A. CLARKE, JR.
Administrative Law Judge

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of: * Dated: August 11, 1993
U. S. DEPARTMENT OF LABOR, * Case No. 93-TAE-0001
*
Complainant, *
*
v. *
*
TOMMY KIMBRO, *
*
Respondent. *
*

CONSENT FINDINGS

The parties hereby stipulate, agree and consent to entry of findings as follows:

1. This action arises under the H-2A provisions of Immigration and Nationality Act of 1952, as amended by the Immigration Reform and Control Act of 1986 [8 U.S.C. §§1101(a)(15)(H)(ii)(a), 1184(c), and 1186], hereinafter "the Act," and Regulations at 20 C.F.R. Part 655.90, et seq., and 29 C.F.R. Part 501, for final administrative determination assessment of civil money penalties under the Act.

2. Upon written notice issued of violations and Act. August 12, 1991, pursuant to §1186(g)(2) of the Act and Regulation 29 C.F.R. 501.19, the Administrator of the Wage and Hour Division, United States Department of Labor, assessed a civil money penalty against respondent for alleged violations of the Act and applicable regulations.

3. Pursuant to 29 C.F.R. 501.37(a) and 29 C.F.R. 18.15(e), the Administrator amends the assessment and written notice of administrative determination as follows:

a. Item 1, regarding failure to provide a copy of the contract, is amended by reducing the civil money penalty to \$125;

b. Item 2, regarding failure to provide a wage statement, is amended by reducing the civil money penalty to \$275; and

c. Item 3, regarding failure to provide safe transportation, is amended by reducing the civil money penalty to \$700.

4. Respondent, without admitting or denying the violations alleged by the Secretary of Labor, represents that he presently is in compliance with all applicable provisions of the Act and pertinent Regulations thereunder, and will continue to comply therewith in the future.

5. Respondent waives any further procedural steps before an Administrative Law Judge and waives any right to challenge or contest the validity of the findings and order entered into in accordance with this agreement.

6. The total amount of the reduced civil money penalty of \$1,100.00 is to be paid in installments as follows:

a. Each installment is to be in the form of a cashier's or certified check or money order made payable to "Wage and Hour - Labor."

b. The first installment in the amount of \$300.00 has been paid.

c. The second installment \$300.00 shall be paid no later than September 30, 1993.

d. The third installment in the amount of 30, 1993. in the amount of \$300.00 shall be paid no later than October 30, 1993.

e. The fourth installment in the amount of \$200.00 shall be paid no later than November 30, 1993.

f. The second, third and fourth installments shall be mailed to Wage and Hour Division, U.S. Department of Labor, Room 662, 1375 Peachtree Street, N.E., Atlanta, Georgia 30367.

g. Should respondent fail to make any such payments as scheduled, the entire unpaid balance shall become due and payable, together with such court costs as may be incurred to collect such amounts.

7. The Administrator shall forward this agreement and other appropriate information disclosed in the investigation, to the Regional Administrator Administration, United States for the Employment and Training Department of Labor, in accordance with 29 C.F.R. 501.21.

8. This settlement shall not be a bar to the taking of other action authorized by the H-2A provisions of the Act, 29 C.F.R. 501.16 or 20 C.F.R. Part 655. Nothing contained herein shall be construed to preclude a finding of violation by, or to absolve respondent from any sanctions applied by, the Employment and Training Administration under 20 C.F.R. 655.110.

9. Respondent specifically reserves, however, the right afforded by 20 C.F.R. 655.110(a) to request either an expedited administrative review or a de novo hearing before an Administrative Law Judge within seven calendar days of the date of any notice from the Employment and Training Administration that such sanctions are to be imposed.

10. The parties agree that:

(a) The final order disposing of this proceeding shall have the same force and effect as an order made after full hearing;

(b) The entire record on which such final order shall be based shall consist solely of the notice of administrative determination, as amended, and these agreements and consents; and

(c) Each party shall bear its own costs, fees and expenses as were incurred by it in connection with any stage of these proceedings.

TOMMY KIMBRO
Date: Aug. 17, 1993

THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

WILLIAM H. BERGER
Deputy Regional Solicitor

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SOL Case No. 92-15143