

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 31 October 2013

DATE:
CASE NO: 2013-AIR-00019

In the Matter of

RICHARD RODRIQUEZ,
Complainant,

v.

FEDEX EXPRESS,
Respondent.

DISMISSAL

On March 18, 2013, Richard Rodriguez filed a complaint with the Secretary of Labor alleging that he was terminated by FedEx Express in violation of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121. On July 19, 2013, the Occupational Safety and Health Administration (“OSHA”) issued its finding that Mr. Rodriguez’s termination was not in violation of the Act. Included in this letter was notice that Mr. Rodriguez had 30 days from receipt of OSHA’s findings to file objections and request a hearing before an Administrative Law Judge.

On August 30, 2013, Mr. Rodriguez sent a letter to the Chief Administrative Law Judge appealing the dismissal of the complaint. Mr. Rodriguez appears before me without counsel. In a telephone conference on September 20, 2013, with Mr. Rodriguez and Gary F. Centrich, counsel for FedEx, Mr. Centrich raised the question whether Mr. Rodriguez’s request for review by the Office of Administrative Law Judges was timely filed. I instructed Mr. Rodriguez that no later than September 30, 2013, he was to send to Mr. Centrich a copy of the letter with attachments that he sent to the Chief Administrative Law Judge seeking review of OSHA’s decision. I further instructed Mr. Rodriguez to send to me and Mr. Centrich evidence, such as certified mail receipts and a copy of the envelope containing the OSHA determination, demonstrating a timely filing.

On September 25, 2013, Mr. Rodriguez sent me a letter explaining the personal difficulties he had that hindered his effort to file in a timely manner. “I assure you that I have not deliberately exceeded the 30 day time line and simply did the best I could with the time and the conditions that I have subjected myself and my family to, for doing the right thing.” On

October 22, 2013, I received a letter from Mr. Centrich indicating that FedEx had yet to receive anything from Mr. Rodriquez.

While I am not unsympathetic to Mr. Rodriquez's plight, I cannot allow the case to continue without some information from Mr. Rodriquez demonstrating he filed his request for review in a timely manner. Therefore, I grant FedEx Express' request to dismiss the case. Case No. 2013 AIR 00019 is hereby **DISMISSED** with prejudice.

SO ORDERED.

STEPHEN M. REILLY
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1979.110(a). In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov. Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(a).

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: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) 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.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points

and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).