



In the Matter of:

**TOTAL PROPERTY SERVICES
OF NEW ENGLAND, INC.**

ARB CASE NO. 97-008

(ALJ CASE NO. 94-DBA-56)

General contractor

and

DATE: January 20, 1998

**JAMES LAWSON, JOHN DAIGLE
and PETER DAIGLE**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

This case arises under the provisions of the Davis-Bacon Act (DBA), 40 U.S.C. §276a *et seq.* (1994), the Contract Work Hours and Safety Standards Act (CWHSSA), as amended, 40 U.S.C. §327 *et seq.* (1994), and the regulations at 29 C.F.R. Parts 5 and 6 (1997). On September 6, 1996, an Administrative Law Judge (ALJ) issued a Decision and Order (D. and O.) awarding back wages to several employees and debarment from federal contracts James Lawson, Peter Daigle, Total Property Services of New England, Inc. (TPS), and National Interior Contractors, Inc., including any firm in which Lawson and Daigle have a substantial interest for a period of three years. Peter Daigle filed a Petition for Review on September 12, 1996, asserting that he was not properly served with the charging letter. The other parties did not petition for review. The Board has reviewed the record as well as the submissions of the parties and now issues its final decision and order.

BACKGROUND

In 1990 and 1991 the Wage and Hour Division, Employment Standard Administration, conducted an investigation of the performance of TPS on four contracts it had with the federal government. On August 23, 1993, the Regional Administrator of the Wage and Hour Division sent John Daigle, James T. Lawson, Peter Daigle, and TPS a charging letter stating that he had reasonable cause to believe that they had violated the DBA, and that those violations constituted a disregard of their obligations under the DBA. ALJ Exhibit (ALJX) 1, Letter from Walter P. Parker to John Daigle, James T. Lawson, Peter Daigle, and Total Property Services of New England, Inc. The Regional Administrator, in accordance with the provisions of 29 C.F.R. §5.12(b)(1) (1997) offered the Respondents an opportunity to request a hearing before a Labor

Department ALJ. The notification was sent to the Respondents by Certified Mail, return receipt requested. ALJX 1.

On September 20, 1993, James Lawson, Peter Daigle and John Daigle signed and sent a response to the Regional Administrator, which stated in part, "we hereby certify and request that you forward our notice herein contain[ed] for hearing as prescribed under section 29 CFR subtitle 5.11(b) 2." ALJX 1, Letter from James Lawson, Peter Daigle, and John Daigle to Walter Parker. Thereafter the Regional Administrator issued an Order of Reference to the Office of Administrative Law Judges (OALJ), authorizing a hearing regarding DBA and CWHSSA violations. *Id.*, Order of Reference, dated July 1, 1994.

Although Peter Daigle signed the letter requesting a hearing, he did not respond to any documents sent to him by the ALJ, and did not appear, either as a party or a witness at the hearing that was held before the ALJ on April 8-11, 1996.¹ While the hearing was in progress the parties agreed to a settlement of all of the back wage claims except that involving Joseph DiMarzio. Respondents continued to contest DiMarzio's entitlement to back wages and to oppose debarment.

In his D. and O. the ALJ found that James Lawson, Peter Daigle, and the two companies paid many of their employees less than the prevailing wage, either by directly paying them a lower hourly rate, or by falsifying the number of hours they worked.² He also found that Respondents had falsified certified payrolls. D. and O. at 14-17. The ALJ affirmed the settlement of the back wage claims, and agreed with the Administrator that employee Joseph DiMarzio was due \$8,364.87 in back wages. The ALJ concluded that because Respondents' "prevailing wage, overtime, fringe benefit and record keeping violations constitute a disregard of their obligations under the Davis-Bacon Act . . . this Court should issue an order debarring" the Respondents "and any entity in which they have a substantial interest pursuant to 29 C.F.R. 5.12, including but not limited to a company identified in the record as National Interior Contractors, Inc." D. and O. at 17.

DISCUSSION

Peter Daigle asserts that he was not properly served in this case, and therefore cannot be debarred. Petition for Review on Behalf of Defendant Peter Daigle (Petition) at 2. In support of that assertion, Mr. Daigle attached an unsigned, undated affidavit, stating his home address, and that he did not receive "service of process for the action . . . either by hand, certified mail or regular mail in accordance with 29 C.F.R. 18.3(e)." *Id.*, Exhibit A. Mr. Daigle's claim is without merit.

¹ Lawson had listed Peter Daigle as a witness in his prehearing submission.

² With regard to John Daigle the ALJ found that "the Complainant acknowledges that there is insufficient evidence to implicate John Daigle in the Davis-Bacon violations. Accordingly, Complainant does not seek the debarment sanction against him." D. and O. at 14, n.12.

Section 5.12(b)(1) of C.F.R. Title 29 provides that:

[W]henever, as a result of an investigation conducted by [a] Federal agency or the Department of Labor, and where the Administrator [of the Wage and Hour Division] finds reasonable cause to believe that a contractor or subcontractor has . . . committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees . . . under Section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers . . . of the finding.

That section further provides that the contractor or any other party notified may within 30 days request a hearing as to whether debarment action should be taken. That request "shall set forth any findings which are in dispute and the reasons therefore, including any affirmative defenses to be raised."

The Wage and Hour Regional Administrator sent a charging letter to James Lawson, Peter Daigle, and John Daigle on August 23, 1993, at Total Property Services of New England, Inc., P.O. Box 41147, Providence RI 02904, by certified mail. A copy of the charging letter was also sent by certified mail to 21 Stillwater Drive, Cumberland, RI 02864. On September 19, 1993, James Lawson, Peter Daigle, and John Daigle, in a document which contained no return address for any of the Respondents, exercised their right to request a hearing from the Regional Administrator:

In response to your written notice we hereby certify and request that you forward our notice herein contain[ed] for hearing as prescribed under section 29 CFR subtitle 5.11(b)2.

Attached to this response is our responds [sic] that set forth those finding [sic] which are in dispute by the parties and the reason for that dispute.

To the extend [sic] that the notice by the Labor Department is time barred, this request doesn't waive or amend any rights the party would therefore have as its affirmative defense under the appropriate section of the code.

We thank you in advance for your anticipated cooperation in this matter.

ALJX 1, unnumbered p. 6. Peter Daigle, John Daigle, and James Lawson all signed the request as well as the attached statement of issues that the Respondents claimed were in dispute. *Id.* at unnumbered pp. 7-16. Nowhere did Mr. Daigle claim that he had not been properly served with the Regional Administrator's notice charging violations of the DBA.³

Although Peter Daigle did submit a request for a hearing in this matter, he did not participate further before the ALJ. He did not appear before the ALJ as a party, and he did not appear as a witness, although James Lawson had listed him as a witness in his prehearing submission. Mr. Daigle clearly had an opportunity to participate in the defense of this action. He chose not to at his peril.

³ Neither did Peter Daigle claim, as he now does in his unsigned affidavit, that he was not an officer of TPS. Petition, Ex. A.

We reject Peter Daigle's assertion that he cannot be debarred because he was not properly served with the Regional Administrator's charging notice.

ORDER

Peter Daigle's Petition for Review is denied. The ALJ's decision is affirmed. It is ordered that James Lawson, Peter Daigle, Total Property Services of New England, Inc., National Interior Contractors, Inc., and any firm in which the individuals named have a substantial interest, shall be debarred pursuant to Section 3(a) of the DBA and 29 C.F.R. §5.12(a)(2) for a period of three years and shall be ineligible to receive any contract or subcontract subject to any of the statutes listed in 29 C.F.R. §5.1 during that period.⁴

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

⁴ The ALJ determined that the Respondents should be debarred pursuant to the DBA. D. and O. at 16, 17-18. However, his order mistakenly refers to debarment under 29 C.F.R. § 5.12(a)(1) (which relates to debarment under the so-called Davis-Bacon Related Acts, or DBRA) instead of 29 C.F.R. § 5.12(a)(2) (which relates to debarment under the DBA). We clarify his order here.