

U.S. Department of Labor

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002



(202) 693-7300  
(202) 693-7365 (FAX)

Date Issued: November 7, 2001  
Case Number: 2001-JSA-00001

In the Matter of:

TROY JACKSON,  
Complainant

v.

MAINE DEPARTMENT OF LABOR,  
Respondent

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Case Number: 2001-JSA-00002

In the Matter of:

TROY JACKSON,  
Complainant

v.

BLANCHET LOGGING and LUMBER, INC., et al.,  
Respondents

### ORDER OF DISMISSAL

This case arises under the Job Service Complaint System, Wagner-Peyser Act of 1933 (JSA), as amended, 29 U.S.C. § 49 et seq.; 38 U.S.C. Chapters 41 and 42; and 20 C.F.R. Part 658.

On March 31, 1999, Troy Jackson (Complainant) filed Complaints against Blanchet Logging and Lumber, Inc., Blondin Enterprises, Inc., Robinson Lumber, Inc., Maibec Lumber, E.J. Carrier, Inc., and J.D. Irving (Respondents) with the State Hearing Officer of the Maine Department of Labor (Maine). Complainant alleges that Respondents were "paying bonded workers to run their own equipment."

In addition, Complainant filed two complaints against Maine on June 8, 1999, and July 27, 1999, alleging that Maine “failed to establish prevailing rates for mechanical harvesting equipment” and “was guilty of price fixing when establishing minimum wages rates,” respectively. Maine argues that it is the United States Department of Labor’s responsibility to establish “minimum compensation rates for mechanical harvesting equipment.”

On January 19, 2000, Maine dismissed the above-mentioned complaints stating lack of jurisdiction because they “failed to meet the requirement of Section 580.400” of the JSA. As to the complaints against Maine, on January 12, 2000, Maine issued a Decision and Order dismissing the complaints for lack of jurisdiction.

Complainant appealed Maine’s decisions to Regional Administrator of the Employment & Training Administration, United States Department of Labor, (RA). On January 5, 2001, RA issued a Notice of Determination affirming the January 19, 2000, decision to dismiss the complaints against Respondents for lack of jurisdiction. Furthermore, on January 29, 2001, RA found that (1) Maine was correct in the “Decision and Order to dismiss for lack of jurisdiction, (2) the regulations do not require RA to establish compensation rates for ‘tools and machinery,’ and (3) ETA (Employment and Training Administration) acted within its authority when establishing prevailing wage rates that are consistent with the State’s prevailing wage survey.”

Subsequently, Complainant appealed the RA’s decisions of January 5, 2001, and January 29, 2001, to the Office of Administrative Law Judges (Office). On May 23, 2001, this Office issued a Notice of Docketing and Prehearing Order instructing the parties to submit legal arguments herein. On April 3, 2001, Respondent J.D. Irving/Van Buren Madawaska Corporation filed a Motion to Dismiss or Deny Complainant’s Appeal. In accordance with 20 C.F.R. § 658.416, this Respondent argues that Complainant’s appeal is untimely and that it should be dismissed. On June 21, 2001, Respondents Robinson Lumber, Inc., Blondin Enterprises, Inc., Blanchet Logging and Lumber, Inc. (Materiaux Blanchet), Maibec Lumber, and E.J. Carrier, Inc., filed a Motion to Dismiss or in the Alternative Deny the Complainant’s Appeal. These Respondents concur with the arguments in Respondent J.D. Irving’s Motion. On June 22, 2001, Maine also filed a Motion to Dismiss or Deny Complainant’s Appeal. Citing 20 C.F.R. § 658.401(a)(2), Maine argues that the appeal is untimely and should be dismissed. In addition, on June 28, 2001, RA filed a Motion to Dismiss or Deny Complainant’s Appeal. RA argues that the JSA regulations govern “employer-related” and “agency-related” complaints and that Complainant’s case failed to establish the basis for the appeal and that this matter should be dismissed or denied. All of the Respondents asserted that this case can be decided without a hearing. By letter dated July 20, 2001, Complainant was notified that Motions to Dismiss have been filed and he was afforded an opportunity to respond.

The regulations at 20 C.F.R. § 658.425(a)(3) provides the Administrative Law Judge with authority to “rule that reasonable cause exists to believe that the appeal has been abandoned.” Additionally, the regulations at 29 C.F.R. § 18.6(d)(2)(v) provide that:

If a party or an officer or agent of a party fails to comply with a subpoena or with an order, . . . or any other order of the administrative law judge, the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may . . . [r]ule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

To date, Complainant has not filed a response to the Motions to Dismiss and the Notice of Docketing. Since the filing of the appeal, Complainant has not communicated with this Office.

After considering the facts herein and Complainant’s failure to participate in this proceeding, the Motions to Dismiss or Deny Complainant’s Appeal are hereby GRANTED and Complainant’s appeal is DISMISSED.

SO ORDERED,

THOMAS M. BURKE  
Associate Chief Judge

Washington, D.C.

TMB/jsp