



In the Matter of:

**Disputes concerning the payment of
prevailing wage rates by:**

ARB CASE NO. 99-117

**TRI-GEM'S BUILDERS, INC.,
Prime Contractor,**

ALJ CASE NO. 98-DBA-17

DATE: February 25, 2000

and

**Proposed debarment of labor
standards violations by:**

**TRI-GEM'S BUILDERS, INC.,
Prime Contractor,**

**GOTHRIE SHORT, JR.,
Vice President,**

and

**JASON GRIFFIN,
Vice President,**

**(with respect to laborers employed by
the Prime Contractor on Contract Nos.
DACA61-93-C-0056, F28609-94-C-0025
and F2866609-93-C-022 and with respect
to laborers employed by the Subcontractor
Smith Plumbing and Heating, Inc. on
Contract No. DAHA28-93-D-0002 and
Subcontractor Dynamic Developers, Inc.
on Contract No. F28609-96-C-0003).**

Appearances:

For the Petitioners:

Thomas M. Keeley-Cain, Esq., *Cherry Hill, New Jersey*

For the Respondent:

Lois R. Zuckerman, Esq., Paul L. Frieden, Esq., Steven J. Mandel, Esq.,
U.S. Department of Labor, Washington, D.C.

ORDER OF DISMISSAL

On July 14, 1999, an Administrative Law Judge (“ALJ”) issued a Summary Decision and Order (“ALJ D. & O.”) in this enforcement matter arising under the Davis-Bacon Act, as amended, 40 U.S.C. §276a *et seq.* The ALJ found against the three Respondents in the case: Tri-Gem’s Builders; Inc., Gothrie Short, Jr.; and Jason Griffin (collectively, “Tri-Gem’s”). The ALJ ordered the payment of back wages to employees and debarment.

On August 27, 1999, the Administrative Review Board (“ARB”) received from Tri-Gem’s a document titled “Exceptions to Summary Decision and Order of July 14, 1999 by Administrative Law Judge Daniel F. Sutton.” The Board noted an issue of timeliness, and on September 7, 1999, issued a Notice of Appeal and Order to Show Cause directing Tri-Gem’s to show cause why the appeal should not be dismissed for lack of a timely filing of an appeal of the ALJ decision. Upon finding that Tri-Gem’s reasonably relied upon the ALJ’s erroneous statement of the applicable review procedures, and that the Administrator did not establish that he was prejudiced by the late filing, we accepted Tri-Gem’s appeal and established a briefing schedule. Ord. Accept. App. and Estab. Br. Sched. (Nov. 22, 1999).

As provided by the briefing schedule, Tri-Gem’s petition for review was due on or before December 22, 1999. Tri-Gem’s failed to file the petition. The Administrator filed a motion to dismiss Tri-Gem’s appeal for failure to comply with the briefing schedule. On January 14, 2000, we issued an Order to Show Cause, in which we stated that if Tri-Gem’s intended to proceed with the appeal it should file a petition for review within ten days of the order and show cause why its appeal should not be dismissed for failure to timely file the petition. Tri-Gem’s failed to respond to the Board’s order.

Courts possess the “inherent power” to dismiss a case for lack of prosecution. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962). This power is “governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id.* at 630-631. *Accord Curley v. Grand Rapids Iron & Metal Co.*, ARB Case No. 00-013, Fin. Ord. of Dismiss. (Feb. 9, 2000). Like the courts, this Board necessarily must manage its docket in an effort to “achieve the orderly and

expeditious disposition of cases.” Thus, given Tri-Gem’s failure to submit a petition for review as ordered and refusal to respond to the Board’s Order to Show Cause, we find that Tri-Gem’s has failed to prosecute its case. Accordingly, we **GRANT** the Administrator’s motion and **DISMISS** Tri-Gem’s appeal.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member