

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES

2 SKYLINE, 10th FLOOR

5203 LEESBURG PIKE

FALLS CHURCH, VIRGINIA 22041

SEP 28 1984

LAYNE HAMILTON, : DISCRIMINATION PROCEEDING
*Complainant :
: Docket No. VA 83-46-D
v. :
: MSHA Case No. NORT CD-83-7
STONE MOUNTAIN TRUCKING :
COMPANY, INC., :
Respondent :

DEFAULT DECISION

Before: Judge Steffey

A prehearing order was issued on July 2, 1984, in the above-entitled proceeding. That order thoroughly explained to complainant the procedures which are used to handle discrimination cases which are filed with the Commission after a complainant has received a letter from the Mine Safety and Health Administration advising him that its investigation of the complaint filed with that agency has resulted in a finding that no violation of section 105(c)(1) of the Federal Mine Safety and Health Act of 1977 has occurred. The prehearing order provided that complainant would be given until August 1, 1984, to advise me as to whether he had obtained an attorney to represent him in this proceeding. The order explained that complainant is not required to obtain an attorney to represent him, but that if he decided to do so, that decision would have to be made by August 1, 1984, so that the attorney would have time to prepare for a hearing to be held in October or November 1984.

Additionally, counsel for respondent served complainant on June 5, 1984, with some interrogatories which complainant has failed to answer. The prehearing order of July 2 explained discovery procedures to complainant and stated that he would be required to answer the questions asked by respondent's counsel by August 15, 1984, regardless of whether he had decided to obtain an attorney to represent him in this proceeding. Counsel for respondent filed on July 2, 1984, a motion requesting that I issue a show-cause order to complainant requiring him to show cause, pursuant to 29 C.F.R. § 2700.63(a), why his complaint should not be dismissed for failure to reply to respondent's interrogatories. I explained on page 6 of the prehearing order that a show-cause order would be issued if complainant failed to answer the interrogatories and that the complaint would be dismissed if complainant failed to provide a satisfactory reply to the show-cause order.

'The dates of August 1 and August 15, 1984, passed without my receiving a reply from complainant as to whether he had obtained an attorney to represent him and without his submitting answers to respondent's interrogatories. Therefore, on September 5, 1984, a show-cause order was issued requiring complainant to explain in writing by September 24, 1984, why his complaint should not be dismissed for failure to provide the information requested in the prehearing order issued July 2, 1984. The return receipt in the official file shows that complainant received the show-cause order on September 11, 1984, but I have received no reply to the show-cause order. Consequently, pursuant to section 2700.63(a) of the Commission's rules of procedure, I find respondent to be in default and the complaint in this proceeding will be dismissed as hereinafter ordered.

Respondent's counsel filed on September 6, 1984, a motion requesting that the complaint be dismissed for failure of **complainant** to answer respondent's interrogatories by August 15, 1984, as required by the prehearing order of July 2, 1984. Inasmuch as the motion to dismiss is based upon the default provisions of section 2700.63(a), my finding of complainant in default and dismissing the complaint under section 2700.63(a) may be interpreted as granting respondent's motion to dismiss, as hereinafter provided.

WHEREFORE, it is ordered:

(A) The complaint filed in Docket No. VA 83-46-D is dismissed for the reason that complainant has been found to be in default for failure to reply to the show-cause order issued September 5, 1984, in this proceeding.

(B) Respondent's motion to dismiss filed September 6, 1984, is granted and all further proceedings in Docket No. VA 83-46-D are terminated.

Richard C. Steffey
Richard C. Steffey
Administrative Law Judge

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