

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

March 8, 1995

JERRY SLONE, : DISCRIMINATION PROCEEDING
Complainant :
v. : Docket No. KENT 94-1041-D
: BARB CD 94-08
HICO TRANSPORT, INC. AND :
JAY CRASE, : Pine Branch Coal
Respondents : Sales Prep Plant # 1

DEFAULT DECISION

A default judgment is hereby issued in favor of Complainant Jerry Slone, due to the failure of Respondents to file an answer to the complaint and to respond to show cause orders issued by Chief Administrative Law Judge Merlin and the undersigned.

Mr. Slone filed a complaint with the Mine Safety and Health Administration (MSHA) on or about November 22, 1993, alleging that he had been discharged by Respondents in retaliation for activities protected by the Federal Mine Safety and Health Act, in violation of section 105(c) of the Act, 30 U.S.C. ' 815(c). On June 16, 1994, MSHA advised Complainant that it had concluded that a violation of section 105(c) had not occurred.

On July 20, 1994, Complainant commenced this action on his own by filing a complaint with the Commission. This action was filed pursuant to section 105(c)(3) of the Act which provides that if the Secretary of Labor determines that no violation of section 105(c) has occurred, the complainant shall have the right to file an action on his own behalf with the Commission.

The Commission's rules of procedure at 29 C.F.R. ' 2700.43 require that within 30 days after the service of a discrimination complaint, the respondent shall file an answer responding to each allegation of the complaint. Respondents in the instant case have not responded to the July 20, 1994, complaint.

On November 7, 1994, Commission Chief Administrative Law Judge Paul Merlin issued an Order To Respondent To Show Cause. In that order Respondents were ordered to file an answer within 30 days or show good reason, in writing, for their failure to do so. A Domestic Return Receipt form (PS Form 3811, or "green card") indicates that the show cause order was received by Respondent Jay Crase at his address in Hallie, Kentucky, on November 15, 1994. It appears that the show cause order may not have been served on Hunter McDonald III, who at one time was HICO Transport's Registered Agent for Service of Process, in Nashville, Tennessee.

On January 11, 1995, this matter was assigned to the undersigned for "appropriate proceedings." I issued another show cause order on January 13, 1995, essentially allowing Respondents another four weeks, until February 10, 1995, to comply with the November 7, 1994 show cause order. I specifically advised Respondents that failure to comply with my order would result in the entry of a default decision in favor of Complainant.

On February 10, 1995, I received a letter from one Bruce L. Washburn stating that he had been forward a copy of my January 13, 1995 order by Mr. Hunter McDonald, who was once, but apparently is no longer, associated with HICO Transport, Inc. Mr. Washburn's letter indicates that he had discussed the January 13 order with Mr. Crase, the owner of HICO Transport.

As the Commission did not have a return receipt from Mr. Crase for the January 13 order, the undersigned called him on February 22, 1995, to advise him that he must immediately file a substantive written response to the complaint, with a copy to Mr. Slone's counsel to avoid a default decision.

Since Mr. Crase has received actual notice of both the November 1994 show cause order and the January 13, 1995 show cause order and has not filed a timely response, I find him in default and enter judgment in favor of the Complainant.

Arthur J. Amchan
Administrative Law Judge

Distribution:

HICO Transport, Inc., c/o Bruce Washburn, c/o Hunter McDonald III, 1102 17th Avenue South, Suite 401, Nashville, TN 37212
(Certified Mail)

Jay Crase, HC 63, Box 1580, Hallie KY 41821 (Certified Mail)

Tony Oppegard, Esq., Mine Safety Project of the Appalachian Research & Defense Fund of Kentucky, Inc., 630 Maxwellton Court, Lexington, KY 40508 (Certified Mail)

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