

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

BRUCE RIBBLE :
(D/B/A PERFECTO CLEANERS), :
Petitioner, :

To review under Section 101 of the Labor Law: :
An Order to Comply with Article 6 and an Order :
to Comply under Article 19 of the Labor Law, :
dated April 7, 2006 :

- against - :

THE COMMISSIONER OF LABOR, :
Respondent. :

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DOCKET NO. PR-06-038
PR-06-039

RESOLUTION OF DECISION

WHEREAS:

The above proceeding was commenced by the filing of a Petition for review with the New York State Industrial Board of Appeals (Board) pursuant to Labor Law Section 101 and Part 66 of the Board's Rules of Procedure and Practice (Rules) (12 NYCRR 66) on June 9, 2006 and postmarked June 6, 2006. Upon notice to the parties, a hearing was held in Buffalo, New York on March 1, 2007 before Mark S. Perla, Member of the Board and designated hearing officer in this case. The Board issued its Resolution of Decision (decision) on December 19, 2007 affirming the Commissioner's Orders to Comply under review except for Count IV of the first Order to Comply which imposed a fine of \$1,000.00 for a violation of Labor Law § 195(6) for failing to notify an employee in writing, within five working days of her termination date, of the date that her employment was terminated and the date that her benefits were cancelled and would end.

On January 3, 2008, the Commissioner of Labor (Commissioner) filed an Application for Reconsideration of the Board's decision removing Count IV and the \$1,000.00 fine from the

Commissioner's Order. The Commissioner argues that the Board impermissibly shifted the burden of proof away from Petitioner when it found that Count IV was invalid. The Commissioner argues that the Board's finding that this part of the Order is invalid and/or unreasonable was incorrect because the Petitioner failed to submit any evidence in this matter and the Petitioner has the burden of proving that the Order is invalid and/or unreasonable. Petitioner has not filed a response to this application.

In its decision the Board stated, at 6:

“Count IV of the first Order also imposes the maximum \$1,000 fine for ‘failing to notify a terminated employee of such termination...within 5 days of such termination.’ This violation involved the period in or around August 21, 2005 and concerns the claimant. In considering the validity of this count the Board notes that there is no evidence in the record that the claimant was receiving any benefits. Based upon the facts of this case we find that Count IV is not valid and reasonable.”

The Board is mindful of the respective burdens of proof of the parties. However, once a hearing is held and evidence is submitted, the Board will not ignore the evidence before it. The order for payment of unpaid wages was based entirely on the claimant's certified complaint, as required under Labor Law § 196-a where an employer has failed to keep adequate records. The complaint provides that the claimant quit her job after one week and she was not paid. There was no claim for benefits and the fact that claimant quit indicates that she was aware of her termination date. Under these circumstances, the Board reiterates its finding that under these facts the imposition of a civil penalty under § 195(6) is unreasonable.

In *Hugo v. A & A Maintenance Enterprise, Inc.*, (269 AD2d 357; 702 NYS2d 387 [2d Dept 2000]) the court reviewed the legislative history of § 195(6) and stated that it “indicates that [§ 195(6)] was enacted to ensure continued insurance coverage and benefits for employees and/or to minimize the impact of an unexpected termination of employment on an employee's benefits (*see* Mem of State Dept of Labor, 1989 McKinney's Session Laws of NY, at 2191-2192). Neither purpose is advanced in a case where an employee quits after one week and has no benefits.

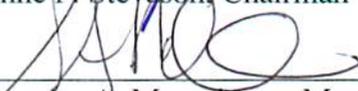
The Board grants reconsideration to the extent that it amends its decision to substitute the following paragraph for the one quoted above from page 6.

“Count IV of the first Order also imposes the maximum \$1,000 fine for ‘failing to notify a terminated employee of such termination...within 5 days of such termination.’ This violation involved the period in or around August 21, 2005 and concerns the claimant. In considering the validity of this count the Board notes that the complaint provides that the employee quit her employment and thus was aware of her termination date and did not claim any entitlement to benefits. Based upon the facts of this case we find that Count IV is not valid and reasonable.”

In all other aspects the Resolution of Decision remains the same.



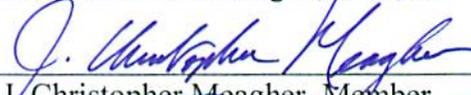
Anne P. Stevason, Chairman*



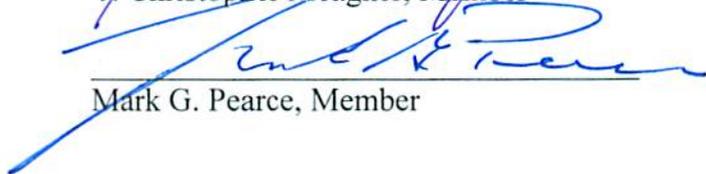
Gregory A. Monteleone, Member



Susan Sullivan-Bisceglia, Member



J. Christopher Meagher, Member



Mark G. Pearce, Member

Dated and signed in the Office of the
Industrial Board of Appeals, at New
York, New York, on February 27, 2008.

Filed in the Office of the Industrial
Board of Appeals, at Albany, New
York, on February 29, 2008.