

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :
 :
RONALD M. DELEVAN AND SUSQUEHANNA :
LOCOMOTIVE & RAILCAR REPAIR SERVICES :
INC., :
 :
Petitioners, : DOCKET NO. PR 13-016
 :
To Review Under Section 101 of the Labor Law: :
Two Orders to Comply with Article 6 and an Order :
Under Article 19 of the Labor Law, all dated :
October 4, 2012, :
 :
- against - :
 :
THE COMMISSIONER OF LABOR, :
 :
Respondent. :
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RESOLUTION OF DECISION

APPEARANCES

Ronald M. Delevan, petitioner pro se, and for Susquehanna Locomotive & Railcar Repair Services Inc.

Pico Ben-Amotz, Esq., General Counsel, NYS Department of Labor (Fredy H. Kaplan of counsel), for respondent.

WHEREAS:

1. The above proceeding was commenced by the filing of a petition for review pursuant to Labor Law § 101 and Part 66 of the Industrial Board of Appeals' Rules of Procedure and Practice (Rules) (12 NYCRR Part 66) on March 8, 2013 and amended on April 29, 2013; and
2. Respondent Commissioner of Labor filed an answer to the amended petition on October 30, 2013; and
3. On September 16, 2014, petitioners filed a motion to stay the proceedings pending the outcome of petitioner Delevan's chapter 13 petition of bankruptcy; and
4. On December 10, 2014, respondent opposed the motion; and
5. On January 20, 2015, then counsel to the Board Wendell P. Russell, Jr. denied petitioners' motion to stay proceedings; and

6. The Board agrees with Mr. Russell's determination; and
7. After multiple adjournments, upon notice by the Board to the parties dated July 20, 2015, a hearing was set for January 29, 2016; and
8. On January 27, 2016, the Board received a letter by facsimile from petitioners then counsel of record Mr. Gregory S. Lisi of Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, indicating that they had been relieved as counsel to petitioners and would not appear at the scheduled hearing of January 29, 2016 on their behalf; and
9. The Board immediately responded by facsimile asking Mr. Lisi to confirm that he had notified petitioners of the date of the hearing and their obligation to attend or the Board would find them in default and render a decision accordingly; and
10. Mr. Lisi did not respond to the Board's letter and request; and
11. Petitioners failed to attend or otherwise appear at the hearing; and
12. Pursuant to Labor Law § 103 and Board Rule 65.30, the burden of proof is on the petitioners to prove that the orders under review are not valid or reasonable; and
13. Pursuant to Board Rule 65.24, "the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Board and to request Board review pursuant to Rule 65.41," unless application for reinstatement is made within five days after the scheduled hearing; and
14. The petitioners have not made any application for reinstatement.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The petition for review be, and the same hereby is, dismissed in accordance with the Board's Rules.


Dated and signed by the Members
of the Industrial Board of Appeals
at New York, New York
on March 2, 2016.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Michael A. Arcuri, Member

6. The Board agrees with Mr. Russell's determination; and
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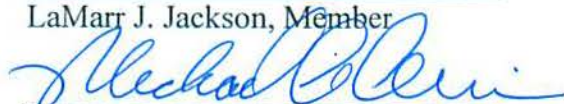
The petition for review be, and the same hereby is, dismissed in accordance with the Board's Rules.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

Dated and signed by the Members
of the Industrial Board of Appeals
at Albany, New York
on March 2, 2016.

LaMarr J. Jackson, Member



Michael A. Arcuri, Member