

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

MILTON RIOS (T/A RIOS DELI CHAMBALAYA),

Petitioner,

To Review Under Section 101 of the Labor Law:

An Order to Comply with Article 19, and an Order Under
Article 5 and 19 of the Labor Law, both dated December
30, 2016,

DOCKET NO. PR 17-040

RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Milton Rios, petitioner pro se.

Pico Ben-Amotz, General Counsel, NYS Department of Labor, Albany (*Benjamin T. Garry* of counsel), for respondent.

WHEREAS:

This proceeding was commenced when petitioner filed a petition with the Industrial Board of Appeals (Board) on March 20, 2017 in an envelope post-marked March 17, 2017. The Board served the petition on respondent Commissioner of Labor on April 4, 2017. Respondent moved on April 26, 2017, to dismiss the petition as untimely because it was filed more than 60 days after the orders being appealed were issued. Petitioner responded on May 25, 2017. Respondent replied on June 5, 2017.


Labor Law § 101 (1) provides that:


“Except where otherwise prescribed by law, any person in interest or his duly authorized agent may petition the board for a review of the validity or reasonableness of any . . . order made by the commissioner . . . Such petition shall be filed with the board no later than sixty days after the issuance of such . . . order.”

The orders sought to be reviewed were issued on December 30, 2016, and therefore, any petition for review filed with the Board with a post-mark after February 28, 2017, is untimely (*id.*; Board Rules of Procedure and Practice [12 NYCRR] § 65.5 [d]). As the petition in this proceeding was post-marked after February 28, 2017, and in his May 25, 2017 response, petitioner makes no argument that service of the underlying orders was improper, the petition was untimely filed and must be dismissed.


NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

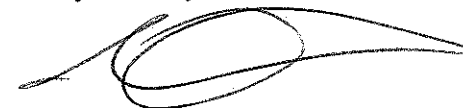
The Commissioner of Labor's motion to dismiss the petition for review is granted, and the petition for review is dismissed.



Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

Michael A. Arcuri, Member

Molly Doherty, Member

Gloribelle J. Perez, Member

Dated and signed by the Members
of the Industrial Board of Appeals
in New York, New York,
on June 14, 2017.

The orders sought to be reviewed were issued on December 30, 2016, and therefore, any petition for review filed with the Board with a post-mark after February 28, 2017, is untimely *ad*, Board Rules of Procedure and Practice (12 NYCRR) § 63.5 (d)(i). As the petition in this proceeding was post-marked after February 28, 2017, and in his May 23, 2017 response, petitioner makes no argument that service of the underlying orders was improper, the petition was untimely filed and must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor's motion to dismiss the petition for review is granted, and the petition for review is dismissed.

Vilda Vera Masuga, Chairperson

J. Christopher Mearcher, Member

Michael A. Arcuri, Member

Molly Doherty, Member

Glorielle J. Perez, Member

Dated and signed by a Member
of the Industrial Board of Appeals
in Utica, New York,
on June 14, 2017.