

THOMAS J. BURNS D/B/A T.J. FERRO TRUCKING

Docket No. PR 09-361/ PR 10-013

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

THOMAS J. BURNS D/B/A T.J. FERRO TRUCKING,

Petitioner,

To Review Under Section 101 of the Labor Law: An
Order Under Article 4 of the Labor Law, dated October
2, 2009,

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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DOCKET NOs.
PR 09-361 and PR 10-013
RESOLUTION OF DECISION

APPEARANCES

Thomas J. Burns, *pro se*.

Maria L. Colavito, Counsel, NYS Department of Labor, Larissa Wasyl of Counsel, for
Respondent, Commissioner of Labor.

WHEREAS:

This proceeding was commenced when Petitioner filed a petition with the Industrial Board of Appeals (Board) on December 3, 2009, seeking review of an order that Respondent Commissioner of Labor (Commissioner) issued on October 2, 2009.

The petition and a subsequent amended petition were served on Respondent on January 28, 2010. The Commissioner moved on February 17, 2010 to dismiss the petition as untimely. The Petitioner's response to the Commissioner's motion alleged that his original petition was timely filed and attached as proof a certified mail return receipt signed by the Board's Deputy Counsel on December 7, 2009.

Labor Law § 101 (1) states 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 order sought to be reviewed was issued on October 2, 2009, and therefore, a petition for review would be timely if mailed to the Board no later than December 1, 2009 (Board Rules 65.5 [d] [12 NYCRR 65.5 (d)]). The petition in this proceeding was postmarked December 3, 2009. The petition was therefore untimely, and the Petitioner, has offered no sufficient grounds for excusing such untimely filing. Accordingly, the petition must be dismissed.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

The Commissioner of Labor’s motion to dismiss the petition for review is granted in its entirety, and the petition for review be, and the same hereby is, dismissed.


Anne P. Stevason, Chairman


J. Christopher Meagher, Member


Jean Grumet, Member


LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
April 21, 2010.