

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of:

FARHAT N. QURESHI AND BRITE LIMOUSINE
INTERNATIONAL INC.,

Petitioners,

DOCKET NO. PR 11-070

To Review Under Section 101 of the Labor Law: An
Order to Comply with Article 6 and and Order under
Article 19 of the Labor Law, both issued December 7,
2009,

INTERIM
RESOLUTION OF DECISION

- against -

THE COMMISSIONER OF LABOR,

Respondent.
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APPEARANCES

Farhat N. Qureshi, *pro se* petitioner and for Brite Limousine International Inc.

Pico Ben-Amotz, Acting Counsel, NYS Department of Labor (Larissa C. Bates of counsel),
for respondent.

WHEREAS:

This proceeding was commenced when the petitioners filed a petition with the Industrial Board of Appeals (Board) on March 4, 2011, in an envelope postmarked March 2, 2011. The petition was served on the respondent Commissioner of Labor (Commissioner) on March 17, 2011. In response, the Commissioner filed motion to dismiss the petition, pursuant to Board Rules of Procedure and Practice (Rules) 65.13 (d) (1) (iii) (12 NYCRR 65.13 [d] [1] [iii]).

Rule 65.13 (d) (1) (iii) states that “[w]ithin thirty (30) days after the receipt of a Petition, [the commissioner] may . . . move for an order dismissing the Petition where it appears that . . . the Petition fails to comply with the provisions of either Section 101 [of the Labor Law] or the board’s Rules.” The motion asserts that “Petitioners failed to comply with both statute and Board Rules by filing their petition with the Board more than sixty (60) days after the issuance of the Order at issue.”

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.”

Respondent argues that the petition must be dismissed because the orders sought to be reviewed were issued on December 7, 2009, and therefore any petition for review filed with the Board after February 5, 2010 would be untimely (Board Rules of Procedure and Practice 65.5 and 65.3 [a]; [12 NYCRR 65.5 and 65.3 (a)]). Since the petition was filed more than one year after the date that the orders were issued, the Board never acquired jurisdiction. Attached to the motion were the affidavits of service indicating that the individual Farhat N. Qureshi was served on December 7, 2009 via regular mail at 8 Avenue J, Ronkonkoma, New York, 11779; and that the corporation Brite Limousine International, Inc. was served in the same manner at 47-51 33rd Street, Long Island City, New York 11101.

In its petition and in its papers in opposition to the motion, petitioners allege that they did not have notice of the Orders until they received Notice of Judgment on October 25, 2010. Upon receipt of the Notice, petitioner requested a copy of the investigative file. However, a copy of the file, including the orders was not received until March 2011. Farhat Qureshi was out of the country from June 30, 2009 to May 25, 2010 and the Ronkonkoma address was an old address. Brite was also served at an old address in Long Island City and, in fact, the mail was returned to the respondent by the United States Postal Service. Therefore, petitioners were not properly served and could not comply with the sixty (60) day time line.

In reply the Commissioner argues that she has complied with her service obligations as set out in Labor Law § 33, which provides:

“Whenever the commissioner or board or any person affected by the provisions of this chapter is required to give notice in writing to any person, such notice may be given by mailing it in a letter addressed to such person at his last known place of business or by delivering it to him personally. Notice to a partnership may be given to any of the partners and notice to corporation may be given to any officer or agent thereof upon which summons may be served as provided by the civil practice laws and rules. Whenever an order or demand of the department is required to be served it shall be served in the manner hereinbefore provided for the service of a notice or by delivering it to any person of suitable age and discretion in charge of the premises affected by such order, or if no person is found in charge by affixing a copy thereof conspicuously upon the premises.”

Farhad Qureshi was served at her last known place of business, which was listed on the Department of State records for Brite Limousine International, Inc. The order addressed

to Qureshi and mailed to 8 Avenue J in Ronkonkoma was not returned by the post office and is listed as the principal executive office address of Brite Limousine and Qureshi. Therefore, respondent has complied with Labor Law § 33 with regard to Qureshi and the motion to dismiss the Qureshi's petition is granted.

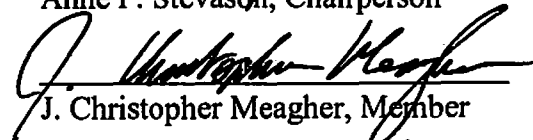
Respondent argues that Brite was also served at its last known place of business at 47-51 33rd Street in Long Island City. In support of this assertion, respondent attached correspondence that it received from Brite which listed this as its return address. The correspondence is dated January 16, 2008. However, the Department of State has 8 Avenue J in Ronkonkoma as its principal place of business and when the mail was returned from the address on 33rd Street, respondent was on notice that Brite no longer could be reached there. Although Qureshi was served at 8 Avenue J, she was served in her individual capacity and not as agent for Brite. Therefore, service on her did not constitute service on Brite.

In the absence of proper service on Brite, the limitations period did not begin to run, and Brite's petition is timely filed with the Board. We find that the petition filed with the Board here is timely with respect to Brite and that the Board's review proceedings have been commenced. (*cf. Matter of Paul Coppa and Ten's Cabaret, Inc.*, PR 08-072 [interim decision, March 25, 2009].)

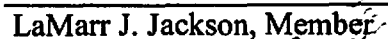
NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

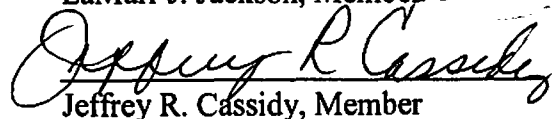
1. Respondent Commissioner of Labor's motion to dismiss the petition of Farhad Qureshi be, and hereby is, granted; and
2. Respondent Commissioner of Labor's motion to dismiss the petition of Brite Limousine International, Inc. be, and hereby is, denied; and
3. Respondent Commissioner of Labor be, and hereby is, required to answer the petition with respect to Brite, within 35 days of the service of this Interim Resolution of Decision upon her.


Anne P. Stevason, Chairperson


J. Christopher Meagher, Member


Jean Grumet, Member


LaMarr J. Jackson, Member


Jeffrey R. Cassidy, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
March 29, 2012.

