

STATE OF NEW YORK
INDUSTRIAL BOARD OF APPEALS

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In the Matter of the Petition of: :

ROY A. DEAN AND THE OFFICE, INC., :

Petitioners, :

To Review Under Section 101 of the Labor Law: :

DOCKET NO. PR 14-207

An Order To Comply With Article 19 of the Labor :

Law and an Order Under Article 19 of the Labor :

RESOLUTION OF DECISION

Law, both dated July 7, 2014, :

- against - :

THE COMMISSIONER OF LABOR, :

Respondent. :

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APPEARANCES

Hodgson Russ LLP (Jeffrey F. Swiatek of counsel), for petitioners.

Pico Ben-Amotz, General Counsel, NYS Department of Labor (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 September 12, 2014 in an envelope postmarked September 10, 2014. The petition was served on the respondent on October 1, 2014. The Commissioner moved on November 3, 2014 to dismiss the petition as untimely because it was filed more than 60 days after the orders were issued. The petitioners filed an opposition to the motion on December 30, 2014. Petitioners conceded that the petition was mailed five days after the 60 day statute of limitations had run, but argued the petition was timely because under the Civil Practice Law and Rules (CPLR), five days is added to time periods when papers are served by mail.

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 July 7, 2014, and therefore, any petition for review filed with the Board after September 5, 2014 would be untimely (*id.*; Board Rules of Procedure and Practice 65.5 [c] [12 NYCRR § 65.5 (c)]). A petition received after September 5, 2014, but post-marked on or before that date, would be considered filed on time (Board Rule 65.5 [c] [12 NYCRR § 65.5 (c)]). As the petition in this proceeding was filed and post-marked after September 5, 2014, it was untimely.

Petitioners argue that the petition was timely pursuant to CPLR 2103. However, in *Petition of Patrik Harmanic in Construction*, PR 09-256 (June 23, 2010) at 3-4, we found that:

“Petitioner’s reliance on CPLR 2103 (b) (2), or the ‘mailbox rule,’ is misplaced because the CPLR governs state court proceedings only. ‘The civil practice law and rules shall govern the procedure in civil judicial proceedings in all courts of the state and before all judges . . .’ (CPLR § 101). *See also In the Matter of the Petition of 238 Food Corp.*, PR 05-068 (April 23, 2008). The Board is a quasi-judicial administrative agency within the Executive Department and is governed by its own rules of procedure; the CPLR is not binding on the Board. Here, Rule 65.3 (c) governs and provides that ‘[w]here a period of time prescribed by these rules (*except in the case of Petitions required to commence a proceeding*) is measured from the service of a paper, and service is by mail, five . . . days shall be added to the prescribed period’ (emphasis added). Accordingly, Petitioner is not entitled to add five days for mailing to the requirement that his petition be filed within 60 days of the Orders’ issuance.”

Therefore, CPLR 2103 does not apply to proceedings before the Board, and the petition is untimely and must be dismissed.

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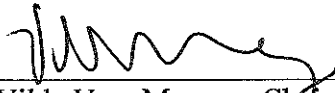
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NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

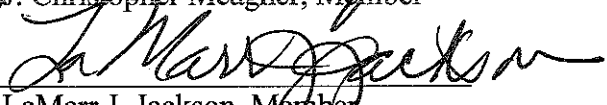
The Commissioner of Labor's motion to dismiss the petition for review is granted, and the petition for review be, and the same hereby is, dismissed.



Vilda Vera Mayuga, Chairperson



J. Christopher Meagher, Member



LaMarr J. Jackson, Member

Dated and signed in the Office
of the Industrial Board of Appeals
at New York, New York, on
March 11, 2015.

Michael A. Arcuri, Member

Frances P. Abriola, Member

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 be, and the same hereby is, dismissed.

Vilda Vera Mayuga, Chairperson

J. Christopher Meagher, Member

LaMarr J. Jackson, Member

Dated and signed by a Member
of the Industrial Board of Appeals
at Utica, New York, on
March 11, 2015.

Michael A. Arcuri, Member



Frances P. Abriola, Member