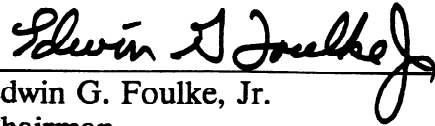


Accordingly, the Commission vacates the Chief Administrative Law Judge's order dated April 22, 1993. The Commission remands this case to the Chief Administrative Law Judge with instructions to develop an evidentiary record through affidavit(s) or other appropriate proceedings to allow Mannkraft to offer proof of the circumstances alleged in Koines' letter.



Edwin G. Foulke, Jr.
Chairman



Velma Montoya
Commissioner

Dated: September 28, 1993

NOTICE OF REMAND ORDER

The attached Remand Order by the Occupational Safety and Health Review Commission was issued and served on the following on September 28, 1993.

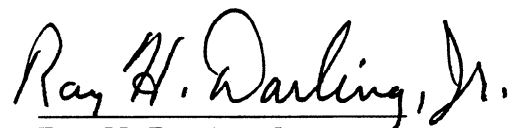
Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, USDOL
200 Constitution Ave., N.W. Room S4004
Washington, D.C. 20210

Patricia Rodenhausen, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
201 Varick St., Room 707
New York, NY 10014

William Koines, Operations Manager
Mannkraft Corrugated Packaging & Displays
1000 U. S. Highway 1
Newark, N. J. 07114

Irving Sommer
Administrative Law Judge
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, Suite 990
Washington, D.C. 20036-3419

FOR THE COMMISSION



Ray H. Darling, Jr.
Executive Secretary



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1825 K STREET NW
4TH FLOOR
WASHINGTON, DC 20006-1246

FAX:
COM (202) 634-4008
FTS (202) 634-4008

SECRETARY OF LABOR
Complainant,
v.
MANNKRAFT CORPORATION
Respondent.

OSHRC DOCKET
NO. 93-0304

NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on April 23, 1993. The decision of the Judge will become a final order of the Commission on May 24, 1993 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before May 13, 1993 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1825 K St. N.W., Room 401
Washington, D.C. 20006-1246

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 634-7950.

FOR THE COMMISSION

Ray H. Darling, Jr.
Executive Secretary

Date: April 23, 1993

DOCKET NO. 93-0304

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

Patricia Rodenhause, Esq.
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201 Varick, Room 707
New York, NY 10014

William Koines, Operations Manager
Mannkraft Corporation
1000 U.S. Highway 1
Newark, NJ 07114

Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 417/A
1825 K Street, N.W.
Washington, DC 20006 1246

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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 1825 K STREET N.W.
 4TH FLOOR
 WASHINGTON DC 20006-1246

FAX:
 COM (202) 634-4008
 FTS 634-4008

SECRETARY OF LABOR,

Complainant,

v.

MANNKRAFT CORPORATION,

Respondent.

Docket No. 93-0304

ORDER

By motion dated March 9, 1993, the Secretary moves to dismiss the Respondent's notice of contest as not being timely filed under Section 10 of the Act. The Respondent did not reply to the motion.

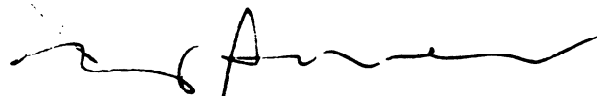
The record demonstrates that a citation was issued to the Respondent on November 24, 1992, and was received on November 25, 1992. Under Section 10(a) of the Act, 29 U.S.C. 659(a), an employer must notify the Secretary that it intends to contest the citation or proposed penalty within fifteen (15) working days of its receipt. The Respondent had until December 17, 1992 to file its notice of contest, but did not do so, sending a letter dated December 21, 1992 and received on December 22.

It is clear that the Respondent did not file a timely notice of contest. The citation plainly state(s) the requirement to file a notice of contest within the prescribed time period. *Roy Kay, Inc.*, 13 BNA OSHC at 2022, 1987-90 CCH OSHD par. 28,406 (No. 88-1748, 1989). The letter accompanying the citation states unequivocally that, "Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of the citation." "If (the employer) had carefully read even portions of the written instructions stated and reiterated on the face of the ---citations, he

would have known how to proceed--." *Keefe Earth Boring Co., Inc.*, 14 BNA OSHC 2187,2192 (No. 88-2521, 1991).

There is no evidence that his failure to file a timely notice was caused by "the Secretary's deception or failure to follow proper procedures." *Atlantic Marine, Inc. v. OSAHRC & Dunlop*, 524 F2d 476(5th Cir., 1975), nor is there any evidence that the Respondent is entitled to any relief under Rule 60(b) of the Federal Rules of Procedure.

Accordingly, the Secretary's motion to dismiss is granted. IT IS FURTHER ORDERED that the citation, penalty and abatement date is AFFIRMED as issued.



IRVING SOMMER
Judge

DATED: **APR 22 1993**
Washington, D.C.