
SECRETARY OF LABOR,
Complainant,

v.

JACKSONVILLE SHIPYARDS, INC.,
Respondent.

OSHRC Docket No. 92-0888

ORDER

Before: WEISBERG, Chairman; MONTROYA and GUTTMAN, Commissioners.

BY THE COMMISSION:

This case is before the Commission on remand from the United States Court of Appeals for the Eleventh Circuit. *Reich v. O.S.H.R.C. (Jacksonville Shipyards, Inc.)*, 102 F.3d 1200 (11th Cir. 1997). In its decision, the court vacated an order in which Commission Administrative Law Judge John H. Frye, III, had dismissed this case for the second time on the ground of mootness.¹ The court held that this proceeding is not moot because the

¹In *Jacksonville Shipyards, Inc.*, 16 BNA OSHC 2053, 2055, 1993-95 CCH OSHD ¶ 30,539, p. 42,229 (No. 92-0888, 1994), a Commission majority, with Chairman Weisberg dissenting, held that an employer-initiated contest proceeding is rendered moot “where the employer has effectively corrected the alleged violations by terminating its employees and where there is no reasonable likelihood that the employer will resume the employment relationship.” It remanded this case to Judge Frye for a determination of whether changes in Jacksonville Shipyards’ status and operations since the entry of the judge’s initial dismissal order had

(continued...)

Secretary of Labor continues to seek the assessment of civil penalties for Jacksonville Shipyards' alleged past violations of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678 ("the Act"). *See* 102 F.3d at 1202.

The effect of the court's decision was to reinstate the four contested citations, alleging serious, willful, repeated, and other than serious violations of the Act, respectively, and the corresponding proposed penalties, which total \$692,000. Since a hearing has not yet been held on the merits of these alleged violations and penalty proposals, we remand this case to Judge Frye for further proceedings consistent with the court's decision. Given the age of this case, we order those proceedings to be expedited. *See* 29 C.F.R. § 2200.103.

/s/ _____
Stuart E. Weisberg
Chairman

/s/ _____
Velma Montoya
Commissioner

/s/ _____
Daniel Guttman
Commissioner

Dated: March 21, 1997

¹(...continued)

rendered the case moot. 16 BNA OSHC at 2055, 1993-95 CCH OSHD at p. 42,230. On remand, Judge Frye found, on the basis of supplemental evidence, that Jacksonville Shipyards no longer had any employees. He therefore dismissed the case for the second time, on the ground that it had become moot under the Commission's test, *supra*.