



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3419

SECRETARY OF LABOR,

Complainant,

v.

TALASILA, INC.,

Respondent.

OSHRC Docket Nos. 93-1181, 93-1372,  
93-241<sup>1</sup>

***DECISION AND ORDER***

BEFORE: WEISBERG, Chairman; and MONTOYA, Commissioner.

BY THE COMMISSION:

This case is before the Commission on interlocutory appeal to determine whether Administrative Law Judge Louis LaVecchia abused his discretion by barring Respondent's representative from the hearing while allowing the Secretary to continue his examination of witnesses. For the reasons that follow, we find that the judge did abuse his discretion and we remand the matter for further proceedings.

---

<sup>1</sup>The Secretary moved to consolidate these three docket numbers and submitted an appropriate order to the judge for his signature. The official file contains no signed copy of any order consolidating these cases, so we order that OSHRC Docket Nos. 93-1181, 93-1372, and 94-241 be consolidated.

### *I. Background*

Pursuant to a complaint filed by an engineer with the City of Houston, Texas, an OSHA compliance officer inspected a worksite where Talasila, Inc. ("Talasila"), was building a new pump station for the city's sewer system. As a result of the inspection, Talasila was issued several citations, including two citations for violation of OSHA excavation standards. After the inspection, the same engineer requested a reinspection because, in his view, there was no improvement in Talasila's safety measures. As a result of the reinspection, Talasila was issued a citation alleging willful violations of the OSHA excavation standards. A third inspection resulted in additional citations and the posting of a notice of imminent danger that the company apparently ignored.

Throughout the proceedings Talasila was represented by M.R. Mikkilineni, a professional engineer and, apparently, a general partner of Talasila. A major part of the defense put forward by Mikkilineni involved the allegation that the complaints and subsequent citations were the result of a vendetta the City of Houston had waged against Talasila after the company complained about waste and inefficiencies at the project. To prove this allegation, Mikkilineni repeatedly attempted, during discovery, to obtain documents he expected would show that Talasila had been singled out for harassment. Many of these discovery requests were denied by the judge on the grounds that they were not relevant to whether Talasila violated the cited standards.

At the hearing, Mikkilineni repeatedly attempted to cross-examine the Secretary's witnesses regarding the alleged harassment. He also attempted to introduce exhibits bearing on harassment. The judge refused to allow many of these exhibits into evidence and upheld the Secretary's objections to entire lines of cross-examination. The transcript also reveals that, although the judge attempted to give Mikkilineni considerable leeway, the level of friction between the judge and Mikkilineni steadily increased as the hearing proceeded.

On the third day of the hearing, the judge barred Mikkilineni from representing Talasila. He declared that the evidence was totally against Talasila and that Mikkilineni's behavior was "somewhat obstructive." The judge also told Mikkilineni "[y]ou ask questions on cross-examination that are entirely irrelevant, and you are just wasting time, extending the hearing." The judge gave Mikkilineni an opportunity to stay in the hearing room as an observer. However, Talasila was not given an opportunity to obtain alternative representation and was therefore unable to either cross-examine the Secretary's witnesses or present witnesses in its own defense. After Mikkilineni chose to leave, the judge allowed the Secretary to present the direct testimony of two witnesses.

Judge LaVecchia later scheduled a second hearing to allow Talasila to present its defense, but he canceled it after receiving a letter from Mikkilineni which noted that the judge had not yet issued his decision. In an order canceling the second hearing, the judge interpreted this comment as a complaint that he had not issued a decision, and informed the parties that he was preparing his decision. Shortly after his receipt of the cancellation, Mikkilineni filed this interlocutory appeal,<sup>2</sup> which we granted before the judge issued a decision.

## II. Discussion

Many employers, like Talasila, elect to appear before the Commission represented by a company official who is not trained in the law or familiar with legal procedure and evidence. The Commission has recognized the difficulties faced by the *pro se* non-lawyer participating in our proceedings. *See, e.g., Sealtite Corp.*, 15 BNA OSHC 1130, 1991-93 CCH OSHD ¶ 29,398 (No. 88-1431, 1991); *Choice Electric Corp.*, 14 BNA OSHC 1899,

---

<sup>2</sup>We note that Talasila has apparently filed a collateral action in the United States District Court for the Southern District of Texas. We have not received any of the pleadings in that matter. However, from what we can gather from Talasila's various filings, the case involves the allegation that the company was being harassed by the Secretary of Labor.

1901, 1987-90 CCH OSHD ¶ 29,141, p. 38,942 (No. 88-1393, 1990); *Monroe & Sons, Inc.*, 4 BNA OSHC 2016, 2017, 1976-77 CCH OSHD ¶ 21,470, 25,773 (No. 6031, 1977). However, there are limits to how far the Commission can bend its procedures to accommodate an inexperienced representative and *pro se* litigants are not exempt from following Commission rules and procedures, *Imageries*, 15 BNA OSHC 1545, 1547, 1991-93 CCH OSHD ¶ 29,639, p. 40,131 (No. 90-378, 1992).

This record establishes that in his representation of Talasila, Mikkilineni tested those limits. Throughout the discovery process, Mikkilineni repeatedly attempted to obtain documents that the judge determined had no bearing on the merits of the citations. Mikkilineni took a similar course at the hearing in attempting to cross-examine the Secretary's witnesses and introduce photographs and documents on matters that the judge found were not relevant to the alleged violations.<sup>3</sup> As the judge noted, the delays caused by Mikkilineni's actions added at least a day to the hearing.

A judge has very broad discretion in imposing sanctions for noncompliance with Commission Rules of Procedure or the judge's orders. *See, e.g., Sealtite Corp.*, 15 BNA OSHC at 1134, 1991-93 CCH OSHD at p. 39,583. However, when a judge determines that a party or its representative should be excluded from a hearing, as Judge LaVecchia did here, Commission Rule 104(b), 29 C.F.R. § 104(b)<sup>4</sup>, requires that the judge state the cause for the

---

<sup>3</sup>Mikkilineni did not make an offer of proof with respect to the excluded evidence. Nor did the judge suggest that he do so in lieu of continuing to challenge the judge's ruling.

<sup>4</sup>§ 2200.104 Standards of conduct.

....  
 (b) *Misbehavior before a Judge-(1) Exclusion from a proceeding.* A Judge may exclude from participation in a proceeding any person, including a party or its representative, who engages in disruptive behavior, refuses to comply with orders or rules of procedure, continuously uses dilatory tactics, refuses to adhere to standards of orderly or ethical conduct, or fails to act in good faith. The cause for the exclusion shall be stated in writing, or may be stated in the

(continued...)

exclusion in writing or on the record and, if the person removed is the party's representative, the party must be given an opportunity to obtain another representative. Here, the judge's decision to continue the hearing without giving Talasila an opportunity to obtain alternative representation as required by the rule was an abuse of discretion. The judge also failed to state an adequate basis for the exclusion. His characterization of Mikkilineni's behavior as "somewhat disruptive," is not sufficient to establish adequate "cause" as required by Commission Rule 104(b). Moreover, by not allowing Talasila an opportunity to obtain other representation, the judge effectively precluded Talasila from cross-examining the Secretary's witnesses and presenting its own evidence. The judge thus also violated 5 U.S.C. § 556(d) of the Administrative Procedure Act, which gives a party the right

to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

We remand this case to the chief judge for reassignment to another judge. As a general rule, we are reluctant to reassign cases. In this case, however, we believe that reassignment would be the best course for all concerned. Further, because the judge failed to comply with Commission Rule 104 in excluding him, Mikkilineni is permitted to represent Talasila on remand. We caution Mikkilineni, however, that he or any other representative, will be expected to obey the judge's rulings and to comply with the

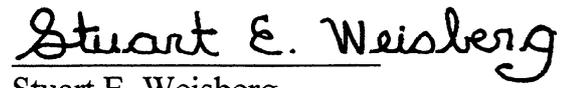
---

<sup>4</sup>(...continued)

record if the exclusion occurs during the course of the hearing. Where the person removed is a party's attorney or other representative, the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney or other representative.

Commission's rules<sup>5</sup> or the judge may, consistent with this decision and Commission Rule 104(b), properly exclude them from any further proceedings.

Accordingly, the matter is remanded to the Chief Judge with directions consistent with this decision.

  
Stuart E. Weisberg  
Chairman

  
Velma Montoya  
Commissioner

Dated: February 21, 1996

---

<sup>5</sup>The Commission does not reach the issue of whether the judge improperly denied Talasila's discovery requests. In Chairman Weisberg's view, it would be premature to determine whether the judge properly handled discovery until a decision is rendered on the merits. Commissioner Montoya, on the other hand, believes that judicial economy would best be served by resolving the discovery issue now. She notes that the discovery issues are central to the case and that if the judge's decision on the merits is reviewed by the Commission, it is likely that the outcome will largely be determined by the propriety of the judge's discovery orders.

The interlocutory appeal also raised the issue of whether to grant the Secretary's motion to amend the citation to name "Talasila, as opposed to 'Talasila, Inc.," as the correct employer. While a motion to amend the citation was made before Judge LaVecchia, the record does not indicate that it was ruled on. The Commission finds that the resolution of this issue is best left to the judge assigned to the case.



United States of America  
**OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**  
1120 20th Street, N.W., Ninth Floor  
Washington, DC 20036-3419

Office of  
Executive Secretary

Phone: (202) 606-5100  
Fax: (202) 606-5050

---

SECRETARY OF LABOR,

Complainant,

v.

TALASILA, INC.,

Respondent.

---

OSHR Docket Nos. 93-1181, 93-1372,  
93-241

***NOTICE OF REMAND ORDER***

The attached Order of Remand by the Occupational Safety and Health Review Commission was issued on February 21, 1996.

BY DIRECTION OF THE COMMISSION

Date: February 21, 1996

Ray H. Darling, Jr.  
Executive Secretary

93-1181, 93-1372 and 93-0241

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

James E. White, Esq.  
Regional Solicitor  
Office of the Solicitor, U.S. DOL  
Suite 501  
525 S. Griffin Street  
Dallas, TX 75202

M.R. Mikkilineni  
Talasila, Inc.  
P.O. Box 699  
Ingomar, PA 15127

Kenneth P. McKay, Esq.  
Law Offices of K. Patrick McKay  
3755 Library Road  
Pittsburgh, PA 15234-2266

Louis G. LaVecchia  
Administrative Law Judge  
Occupational Safety and Health  
Review Commission  
Federal Building, Room 7B11  
1100 Commerce Street  
Dallas, TX 75242-0791