

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TOM JONES,)
)
Charging Party,)
Appellant,) Case No. LA-CE-78-H
)
v.) PERB Decision No. 386-H
)
UNIVERSITY OF CALIFORNIA, RIVERSIDE,) June 14, 1984
)
Respondent.)
_____)

Appearances: Robert Austin, representing Tom Jones;
Claudia Gate, Attorney for the University of California,
Riverside.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION

TOVAR, Member: Tom Jones appeals¹ the decision of the Executive Director of the Public Employment Relations Board (PERB or Board) to reject, as untimely, his request for an extension of time to appeal a dismissal of an unfair practice charge filed against the University of California (University).

After a complete review of the record, we affirm the Executive Director's determination and dismiss the appeal consistent with the discussion below.

¹Mr. Jones' appeal is filed pursuant to PERB regulation 32360. The rules and regulations of the Board are codified at California Administrative Code, title 8, section 31001 et seq.

FACTS

In a letter dated November 23, 1982, Peter Haberfeld, PERB regional attorney in San Francisco, notified Tom Jones, the Charging Party (or Appellant), of his refusal to issue a complaint in the instant case and his dismissal of the charge. That letter explained that if Charging Party wished to appeal the dismissal, the appeal had to be filed with PERB on or before December 13, 1982. The letter also included an explanation of how one might obtain an extension of time to file an appeal.

In a letter dated December 10, 1982, Mr. Jones' representative, Robert Austin, requested that the Board grant an extension of time for Jones to file an appeal.

The Board did not receive Mr. Austin's letter until December 13, 1982.

On December 14, 1982, PERB's Executive Director rejected the request for an extension as untimely.

DISCUSSION

PERB regulation 32635 provides in part that a charging party may appeal the dismissal of a case to the Board itself within 20 days of the date of service of said dismissal.

In the alternative, a party has an opportunity to request an extension of time upon which to file an appeal. The Board may grant such an extension as long as the party complies with the requirements of PERB rule 32132(a) which states that:

A request for an extension must be filed at least three (3) calendar days before the

expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Emphasis added.)

In the instant case, the appeal of the regional attorney's decision to dismiss was due at PERB on or before December 13, 1982, and the request for an extension of time was due on or before December 10, 1982. PERB did not receive the request for an extension until December 13, 1982 - three days late. Hence the executive director's rejection.

However, the Board's regulations also provide that a late filing "may be excused," in the discretion of the Board, under extraordinary circumstances. A late filing which has been excused becomes a timely filing under these regulations. (PERB regulation section 32136.)

In Anaheim Union High School District (7/17/78) PERB Order Ad-42, the Board defined exactly what is meant by extraordinary circumstances: "out of the ordinary, remarkable, unpredictable situations or occurrences far exceeding the usual which prevent a timely filing." In that case, the Board sustained the Executive Assistant's rejection of exceptions to an administrative law judge's proposed decision where the appellant argued that it could reasonably assume that exceptions mailed on Friday in Santa Ana would arrive in Sacramento on Monday.

Appellant maintains that extraordinary circumstances exist in the instant case because he is a "victim of the holiday mails," and that the issues surrounding his appeal are too important to the Board² "to allow the operation of the U.S. mail to impede an equitable resolution." We do not find such an explanation for the delay to constitute "extraordinary circumstances." Mail delays are ordinary, commonly accepted occurrences and, therefore, will generally not serve to excuse a late filing. Anaheim Union High School District, supra.

It was unreasonable for Appellant to assume that the Board would receive his letter requesting an extension on the same day it was mailed from Southern California to Sacramento.

Charging Party had an opportunity to submit his documents in a timely manner had he complied with PERB regulation 32135 which specifies that:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last date set for filing or when sent by telegraph or certified United States mail postmarked not later than the last day set for filing and addressed to the proper PERB office.

²The original amended charge alleged a violation on HEERA subsections 3571(a), (b), (c) and (d) because the University allegedly refused to provide Charging Party with certain information he had requested which he felt he needed in order to effectively represent himself in binding arbitration proceedings. Charging Party filed the grievance in response to being laid off in what he claimed was a manner not in keeping with seniority.

However, Charging Party did not observe these provisions. Consequently, we find that Charging Party failed to demonstrate extraordinary circumstances which would excuse the untimely filing of his request for an extension of time.

ORDER

Tom Jones' appeal of the PERB Executive Director's rejection of his request for an extension of time is DENIED.

Chairperson Hesse and Member Jaeger joined in this Decision.