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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

7-24-74

WENDELL H. FORD  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

H. L. STOWERS  
CHAIRMAN

MERLE H. STANTON  
MEMBER

CHARLES B. UPTON  
MEMBER

KOSHRC # 52

JAMES R. YOCUM, COMMISSIONER  
DEPARTMENT OF LABOR

COMPLAINANT

vs.

WENTE CONSTRUCTION COMPANY

RESPONDENT

REVIEW COMMISSION  
DECISION

Before STOWERS, Chairman, UPTON and STANTON,  
Commissioners.

CHAIRMAN STOWERS:

Notice of Contest by the respondent in this matter was received by the Department of Labor on July 3, 1974, at 3:22 p.m., the letter of contest being dated July 2, 1974. In this notice, respondent contested a citation for a serious violation of 29 CFR 1926.500 (d) (1) and (e) (1) (iii) (as adopted by OSH 12-2), following an inspection by the Department of Labor compliance officer on May 21, 1974. Notice of this citation, together with notice of proposed penalties in the amount of \$500 was sent to respondent by the Kentucky Department of Labor on June 6, 1974, by Certified Mail, copy of the receipt being filed by the Department. No date is shown as to the receipt of this citation and penalty notice by the employer.

KRS 338.141 provides in part:

"If within fifteen (15) working days from receipt of the citation an employer ... fails to notify the commissioner that he intends to contest the citation, then the

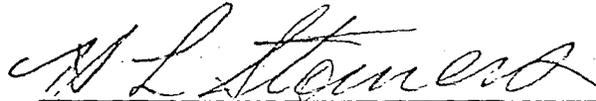
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citation shall be deemed a final order of the review commission and not be subject to review by any court or agency."

Allowing first-class mail mailing time of three days from June 6, 1974, the respondent's notice of contest, even by its own date of July 2, 1974, was too late.

It is therefore the order of this Commission that since the employer failed to file its notice of contest within fifteen working days, the citation and proposed penalties are final orders of this Commission and under KRS 338.141 are not reviewable by this Commission.

It is further ordered that this cause be and the same is hereby dismissed.



H. L. Stowers, Chairman

Concurring:

/s/ Charles B. Upton

Charles B. Upton, Commissioner

/s/ Merle H. Stanton

Merle H. Stanton, Commissioner