



In the Matter of:

ROGER H. MONROE,

ARB CASE NO. 00-060

COMPLAINANT,

ALJ CASE NO. 99-STA-20

v.

DATE: March 8, 2001

CLIMAX MANUFACTURING COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

Roger H. Monroe, *pro se*, Bridgeport, New York

For the Respondent:

Paul Sansoucy, Esq., *Bond, Schoeneck & Kling, LLP, Syracuse, New York*

FINAL DECISION AND ORDER

This case arises under the whistleblower protection provision of the Surface Transportation Assistance Act of 1982 (“STAA”) as amended. 49 U.S.C.A. §31105 (1997). Section 31105 protects trucking employee “whistleblowers” by forbidding discharge, discipline, or other forms of discrimination by the employer in response to an employee’s complaining about or refusing to operate motor vehicles that do not meet the applicable safety standards.” *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 258, 107 S.Ct. 1740, 1746 (1987).

We deny the complaint.

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary’s Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

Roger Monroe filed a complaint with the Department of Labor alleging that his employer, Climax Manufacturing Company (“Climax”) fired him in retaliation for his complaints about truck conditions that he believed to be in violation of law. The whistleblower provision of STAA prohibits a trucking employer from taking adverse action against an employee because the employee:

has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding.

49 U.S.C.A. §31105(a)(1)(A).

The Department of Labor investigated Monroe’s complaint and concluded that Monroe had made safety complaints and that his complaints were protected activity within the meaning of §31105(a)(1)(A). However, the investigators also concluded that Climax fired Monroe solely for unrelated business reasons -- his refusal to drive for reasons not related to truck safety. Monroe testified that he refused an assignment because he wanted to be in town in order to attend a co-worker’s grievance hearing.

Monroe invoked his right to a hearing pursuant to 29 C.F.R. §1978.105(a) (2000). A hearing was held, and on May 31, 2000, the Administrative Law Judge issued his Recommended Decision and Order.

The ALJ recommended that the complaint be dismissed because “the evidence presented provides no causal link between the safety complaints filed by the Complainant and his eventual termination.” *Monroe v. Climax Mfg. Co.*, ALJ No. 1999-STA-20, electronic slip op. at 3 (May 31, 2000).

Our jurisdiction in this case arises from 29 C.F.R. §1978.109(c), which directs this Board to issue the final decision and order in every section 31105 case. Our standard of review on findings of fact under the Whistleblower Protection provision of STAA is one of substantial evidence. 29 C.F.R. §1978.109(c)(3). Based on the entire record and the findings and reasoning of the ALJ, we find that substantial evidence in the record as a whole supports the ALJ’s finding that Monroe’s protected activity did not influence Climax’s decision to fire him.

We review ALJ conclusions of law under STAA *de novo*. 5 U.S.C.A. §557(b) (1996). Monroe asserts that the ALJ did not allow him adequate time to secure the attendance of witnesses and production of documents that Monroe had subpoenaed for the hearing. We have reviewed the record carefully. We find no indication whatsoever that any document or witness that Monroe considered relevant to his claim of retaliatory motive was in reality unavailable to him. Accordingly, this objection presents no basis in law for rejecting the ALJ’s recommended disposition.^{2/}

^{2/} Monroe raises other issues on appeal which we do not address because they depend upon interpretations of the evidentiary record that the record cannot support.

ACCORDINGLY, we adopt the ALJ's recommended decision as our own and append it hereto. The complaint is dismissed.

SO ORDERED.

CYNTHIA L. ATTWOOD
Member

RICHARD A. BEVERLY
Alternate Member