



In the Matter of:

CLARENCE SCOTT,

ARB CASE NO. 01-065

COMPLAINANT,

ALJ CASE NO. 98-STA-8

v.

DATE: May 29, 2003

ROADWAY EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Philip L. Harmon, Esq., *Worthington, Ohio*

For the Respondent:

Barbara J. Leukart, Esq., Johanna Fabrizio Parker, Esq., *Jones, Day, Reavis & Pogue, Cleveland, Ohio*

ORDER DENYING MOTION TO ENFORCE

Clarence Scott, a truck driver, complained that Respondent Roadway Express, Inc. violated the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105 (2000). On July 28, 1999, the Administrative Review Board issued a Final Decision and Order (D. & O.) affirming the Administrative Law Judge's holding that Roadway had not disciplined Scott in retaliation for making safety complaints and had not terminated his employment because he refused to drive while ill. However, the ARB also affirmed the ALJ's ruling that Roadway violated the STAA when it issued disciplinary warnings to him for refusing to drive while sick. Accordingly, Roadway was required to "[p]ost copies of the Notice of Findings (Appendix A), attached to this Final Decision and Order, for 60 consecutive days in conspicuous places in and about its Akron facility so that drivers may read it."¹

¹ The Notice of Findings states: "Roadway's Akron facility has issued letters of warning to drivers who take one or more sick day(s) because their ability or alertness to drive is so impaired, or so likely to become impaired through fatigue, illness, or any other cause, as to make it unsafe for the

Roadway appealed the Board's ruling to the United States Court of Appeals for the Sixth Circuit, which held that Scott's claim that the warning letters violated STAA had become moot, because Scott was not then employed by Roadway and because the letters had expired after nine months and could no longer be used against him. *Roadway Express, Inc. v. Administrative Review Board*, No. 99-4156, 2001 WL 259158, at 13 (6th Cir. March 7, 2001). Nevertheless, because Roadway had been found in violation of the STAA, Scott was still entitled to attorney's fees. *Id.* at 3. The Circuit decision did not vacate or otherwise address the order requiring posting of the notice that the sick leave policy violated the STAA.

Before us now is Scott's June 11, 2001 Motion to Enforce Final Decision and Order of Administrative Review Board, with respect to the posting order. The Complainant's counsel states that, "[o]n information and belief, Roadway has never complied with [ARB Final Order issued on July 28, 1999] nor obtained any lawful right to ignore it." Through counsel, Scott requests that the ARB now take enforcement action.

When a party fails to comply with an order of the Board, the STAA requires the Secretary of Labor to seek enforcement of the order. Under 49 U.S.C. § 31105(d), "If a person fails to comply with an order issued under subsection (b) of this section, the Secretary shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred." Pursuant to 29 C.F.R. § 1978.113, "Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to occur." *See Martin v. Yellow Freight, Inc.*, 983 F.2d 1201 (2d Cir. 1993).

The Administrative Review Board is authorized "to act for the Secretary of Labor in review or on appeal of" decisions rendered by ALJs pursuant to the STAA and its implementing regulations. This authority "includ[es], but [is] not limited to, the issuance of final agency decisions." Sec'y's Ord. No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). The Board has interpreted this delegation as including authority to order violators of the STAA to post notices of employee rights. *See, e.g., Michaud v. BSP Transport, Inc.*, 95-STA-29 (ARB Oct. 9, 1997); *Park v. McLean Transportation Services, Inc.*, 91-STA-47 (Sec'y June 15, 1992). However, the Secretary has not delegated to the Board her authority to enforce such orders.

Accordingly, if Scott has reason to believe that Roadway has not complied with the posting requirement, he may apply to the Assistant Secretary for Occupational Safety and Health for enforcement of the Board's order. *See* Sec'y Ord. 5-2002 (Oct. 10, 2002) 4.a.(1)(h). We will

drivers to begin or continue to operate the motor vehicle, but who have no personal vacation days, sick leave, or annual leave days available and do not qualify for family medical leave. This policy violated the Surface Transportation Assistance Act in this matter. The Surface Transportation Assistance Act does not preclude Roadway Express, Inc. from establishing mechanisms for assuring that a claimed illness is legitimate or serious enough to warrant a protected refusal to drive." D. & O., Appendix A.

also serve a copy of this decision on the Assistant Secretary.

Scott's Motion to Enforce Final Decision and Order of Administrative Review Board is therefore **DENIED**.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge