



In the Matter of:

OTIS CARMICHAEL,

ARB CASE NO. 02-081

COMPLAINANT,

ALJ CASE NO. 2000-STA-053

v.

DATE: August 23, 2007

**CONSOLIDATED FREIGHTWAYS,
CORPORATION OF DELAWARE, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER DISMISSING APPEAL

On May 24, 2002, a United States Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) in this case arising under the employee protection provisions of section 405 of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations.² In the R. D. & O., the ALJ recommended that “the Complainant, Otis J. Carmichael’s claim for reinstatement, back pay, and attorney fees be DENIED.”³ The case is now before the Administrative Review Board pursuant to the STAA’s automatic review provisions.⁴ According to the STAA’s implementing regulations, this Board issues the final decision and order in STAA cases.⁵

¹ 49 U.S.C.A. § 31105 (West 2007).

² 29 C.F.R. Part 1978 (2006).

³ R. D. & O. at 26.

⁴ See 49 U.S.C.A. § 31105(b)(2)(C), 29 C.F.R. § 1978.109(c)(1) (2006).

⁵ 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 00-STA-17 (ARB May 30, 2001). The Secretary of Labor has delegated to the Administrative Review Board her authority to issue final agency decisions under STAA. Secretary’s Order No. 1-2002 (Delegation of Authority and Responsibility to the

In October of 2002, the Board was notified that the Respondent, Consolidated Freightways, Corporation, had filed for bankruptcy. On January 8, 2004, the Board issued an Order Staying Proceedings in this case. In this Order the Board stated:

Since the U.S. Bankruptcy Court for the Central District of California has advised the Board that the automatic stay which issues in such cases is in effect, the case is currently outside the Board's purview. Rather than allowing it to languish on the Board's docket, we are reporting it as officially stayed. The case may be re-instituted following rescission of the stay.

Almost five years have passed since Consolidated Freightways filed for bankruptcy and more than three years have passed since we issued the Order Staying Proceedings, but we have received no further notice regarding the status of the bankruptcy proceedings from either party or any indication on the part of the Complainant, Otis Carmichael, of his intention to re-institute the case on the Board's docket.

Accordingly, on June 19, 2007, the Board issued an Order requiring the parties to show cause, if any, no later than July 11, 2007, why the Board should not dismiss this case on the grounds of abandonment.⁶ Additionally, the parties were cautioned, "Failure to timely respond to this order may result in the dismissal of this case without further order."⁷

Neither party responded to the Board's order. Accordingly, finding no reason to continue this case on the Board's docket given the parties' failure to respond to the Board's Order, we **DISMISS** Carmichael's appeal.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a)(2006).

⁶ See *Steffenhagen v. Securitas Sverige, AB*, ARB No. 04-034, ALJ No. 2004-CAA-003 (ARB May 20, 2004); *Vincent v. Laborers' International Union, Local 358*, ARB No. 02-066, ALJ No. 2000-CER-024 (ARB July 30, 2003).

⁷ Order to Show Cause at 2 (ARB June 19, 2007).