



**In the Matter of:**

**JOHN LYNINGER,**

**ARB CASE NO. 02-113**

**COMPLAINANT,**

**ALJ CASE NO. 01-STA-38**

**v.**

**DATE: February 19, 2004**

**CASAZZA TRUCKING COMPANY,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

***John Lyninger, pro se, Sun Valley, Nevada***

***For the Respondent:***

***John Griffin, Esq., Allison, MacKenzie, Russell, Pavlakis, Wright & Fagan, Ltd., Carson City, Nevada***

### **FINAL DECISION AND ORDER**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified, 49 U.S.C.A. § 31105 (West 1997). Complainant John Lyninger alleges that Respondent Casazza Trucking Company violated the STAA when it discharged him in retaliation for complaining about the safety of Casazza's vehicles. A Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) in which he concluded that Lyninger did not establish by a preponderance of the evidence that he was discharged in retaliation for his safety complaints. Lyninger has requested review of this R. D. & O.

The Secretary of Labor's jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C) has been delegated to the Administrative Review Board (ARB or Board). See Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). See also 29 C.F.R. § 1978.109(c)(2002). When reviewing STAA cases the ARB is bound by

the ALJ's factual findings if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. United States Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Env'tl. Servs., Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)). In reviewing the ALJ's conclusions of law, the Board, as the designee of the Secretary, acts with "all the powers [the Secretary] would have in making the initial decision . . . ." 5 U.S.C.A. § 557(b) (West 1996). Therefore, the Board reviews the ALJ's conclusions of law de novo. *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

We have reviewed the record and find that the ALJ's factual findings are supported by substantial evidence on the record as a whole and are therefore conclusive. 29 C.F.R. § 1978.109(c)(3). The record also supports the ALJ's thorough, well-reasoned legal conclusions. Accordingly, we adopt the findings of fact and conclusions of law in the attached ALJ's Recommended Decision and Order and deny Lyninger's complaint.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**