



In the Matter of:

JAMES P. KRUML,

ARB CASE NO. 03-015

COMPLAINANT,

ALJ CASE NO. 02-STA-7

v.

DATE: February 25, 2004

PATRIOT EXPRESS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

BACKGROUND

James P. Kruml filed a complaint with the Department of Labor's Occupational, Safety and Health Administration (OSHA) alleging that his employer, Patriot Express, had terminated his employment in violation of the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C.A § 31105 (West 1997). The case was referred to an Administrative Law Judge (ALJ) for an administrative adjudication.

On December 3, 2001, the ALJ issued a Pre-Hearing Order advising the parties to respond within 20 days with agreeable hearing dates and an estimated number of days required for the hearing in this matter. When neither party responded, the ALJ wrote to the parties and requested them to contact his office with the requested information. The ALJ informed the parties that if he did not hear from them, he would issue an Order to Show Cause why this matter should not be dismissed.

Kruml responded to the ALJ with a suggested hearing date and "some additional information." Kruml stated, "Patriot Express, Inc. is no longer going by that name." Kruml stated that the company's new name was Liberty Transport and that he understood that there was a merger of the two companies and that Patriot Express "had tried to file bankruptcy."

The ALJ also received a letter from Steven J. Arwady, Agent for the assignee, D.C.A. Financial Group, Ltd. dated January 14, 2002. Arwady stated that Patriot Express, Inc. filed an assignment for the benefit of creditors on December 6, 2001, and that D.C.A. Financial Group, Ltd. was the assignee on the case. He indicated that under Illinois common law, D.C.A. was obligated to liquidate the assets of Patriot Express and to pay creditors according to their proper priority from the proceeds. He attached an affidavit of claim and consent to assignment in the name of James Kruml for \$769.50 (wage claim # 01-007497). He stated that upon liquidation of the assets, D.C.A. would pay the claims of secured creditors first and providing there were enough funds available, wage claims thereafter. He anticipated that the process would be completed within 60 days of the date of the letter.

The ALJ interpreted Arwady's letter as a motion for a 60-day continuance, which he granted. He also established a schedule for pre-hearing proceedings and a hearing on April 30 – May 1, 2002.

The ALJ issued a Notice of Hearing and then cancelled it on the ground that the automatic stay provisions of the Bankruptcy Act, 11 U.S.C. § 362(a)(1), were applicable and therefore the matter was stayed pending the final disposition of the bankruptcy proceeding.

On May 3, 2002, the ALJ issued an Order Canceling Hearing and Remanding to the Director. The ALJ remanded the case to the Area Director of the Department of Labor to determine the standing of Patriot Express and/or Liberty Transport to be named as the respondent in this case and the applicability or not of the Bankruptcy Act's automatic stay provisions.

In response to the ALJ's remand order, the Assistant Secretary for OSHA filed a motion for reconsideration. As grounds for the motion, the Assistant Secretary averred that there is no provision in the STAA or its interpretive regulations, which permits a remand to OSHA under the circumstances of this case to investigate matters not presented in the original complaint. The Assistant Secretary further stated that to the extent that Kruml objected to OSHA's determination that his complaint had no merit, he bears the burden of proceeding in a de novo hearing to convince the ALJ that a violation of the Act occurred for which liability can be established and that a remedy is available from a named party. Accordingly, the Assistant Secretary requested the ALJ to reconsider and rescind his remand order.

The ALJ granted the Secretary's motion, rescheduled the hearing for October 2-3, 2002, and ordered Kruml, Patriot Express and Liberty Transport to submit a statement to the ALJ addressing

the business status of both entities after the filing [sic] of the assignment for creditors under the laws of the State of Illinois, with the legal status of Liberty Mutual [sic] as successor to the former corporation known as Patriot

Express, to include supporting documents and a statement on the potential liability of either or both entities under the STAA, if any, finding of a violation of the STAA is found to be warranted on a de novo hearing by the undersigned or another Administrative Law Judge, postmarked on or before September 16, 2002.

In response, Arwady indicated that D.C.A. liquidated Patriot Express' assets and paid the first secured creditor, American National Bank of Chicago (ANB). The assets were sold to Liberty Transportation in Bensenville, Illinois. Liberty paid off the line of credit and some vehicle leases owed to ANB in the amount of \$925,000 leaving an outstanding balance owed to ANB of \$360,000. Accordingly, there were no funds available to distribute to the unsecured creditors, which were subordinate to ANB. Arwady also stated that to the best of his knowledge, Paul Rufolo is the sole shareholder of Liberty Transport and he was not a Patriot Express shareholder.

Kruml did not respond to the ALJ's order to submit a statement. Based on Arwady's statement, the ALJ concluded that

The matter of the sale of assets by Patriot Express to Liberty Transport, Inc., does not demonstrate an assumption of Patriot Express liabilities by Liberty Transport, Inc., in the Bill of Sale, and there is no evidence in the record that either the owners and/or operators of Liberty Transport, Inc. are the same as those of Patriot Express, or that there has been a continuation of labor policies of Patriot Express by Liberty Transport, Inc., it appears that there is no viable respondent against which the complainant, James Kruml, may proceed. These matters must be specifically addressed by the complainant before any determination of successorship liability may be made in this matter.

Accordingly, the ALJ ordered Kruml to

show cause on or before September 16, 2002, in a written statement of position with attached documentary evidence, that Patriot Express is a proper party in this case, and a viable entity against which complainant may proceed for recovery under the [STAA], or that Liberty Transport, Inc., is the successor to Patriot Express for purposes of such relief; [and] that D.C.A., as the Agent for Patriot Express in the Illinois proceeding submit copies of any and all court documents that demonstrate the final disposition of that proceeding with copies to complainant on or before

September 9, 2002, and that the hearing of October 2-3 is postponed, subject to further order of this court.

The ALJ also permitted the parties to submit responses to the statements of position on or before September 27, 2002.

D.C.A. responded to the ALJ's show cause order, but Kruml neither responded to the order, nor replied to D.C.A.'s response. Accordingly, by order dated October 30, 2002, the ALJ recommended that Kruml's complaint be dismissed "without prejudice, for the failure to comply with an order of the Administrative Law Judge and to prosecute his case."

ISSUE

Whether the ALJ properly dismissed Kruml's complaint for failure to comply with an order of the ALJ and to prosecute his case.

DISCUSSION

The Secretary of Labor has delegated to the Administrative Review Board the authority to issue final agency decisions under, inter alia, the STAA and the implementing regulations at 29 C.F.R. Part § 1978. Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 2002). This case is before the Board pursuant to the automatic review provisions found at 29 C.F.R. § 1978.109(a).¹ Pursuant to 29 C.F.R. § 1978.109(c)(1), the ARB is required to issue "a final decision and order based on the record and the decision and order of the administrative law judge."

The Board 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); *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1063 (5th Cir. 1991). However, the Board reviews questions of law de novo. See *Yellow Freight Systems, Inc. v. Reich*, 8 F.3d 980, 986 (4th Cir. 1993); *Roadway Express*, 929 F.2d at 1063.

Kruml did not file a brief in opposition to the ALJ's recommended dismissal of his case, although the Board informed him of his right to do so² in a Notice of Review and Briefing Schedule issued on November 6, 2002.

Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution. *Link v. Wabash R. R. Co.*, 370 U.S. 626, 630 (1962). This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* at

¹ This regulation provides, "The [ALJ's] decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee."

² 29 C.F.R. § 1978.109(c)(2)(2003).

630-631. Like the courts, the Department of Labor's Administrative Law Judges and this Board must necessarily manage their dockets in an effort to "achieve the orderly and expeditious disposition of cases." Thus, the Board will affirm an ALJ's recommended decision and order on the grounds of abandonment, where the facts dictate that a party has failed to prosecute his or her case. *Assistant Sec'y for OSH and Reichelderfer v. Bridge Transp., Inc.*, ARB No. 02-068, ALJ No. 2001-STA-041, slip op. at 3 (ARB Aug. 29, 2003); *Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-53, slip op. at 4 (ARB Mar. 15, 2002); *Curley v. Grand Rapids Iron & Metal Co.*, ARB No. 00-013, ALJ No. 99-STA-39, slip op. at 2 (ARB Feb. 9, 1999).

The ALJ's conclusion that Kruml has abandoned his case is supported by substantial evidence in the record and well-established legal precedent. Although the ALJ twice ordered Kruml to file position statements regarding the viability of Patriot Express or Liberty Transport as respondents in this case, Kruml has failed to respond. The ALJ's position that he would not proceed with the adjudication of the case until the proper parties were established is most reasonable.

That Kruml has chosen to abandon his case is further supported by his failure to take advantage of his opportunity before the Board to explain why the ALJ's finding that he abandoned its case should be reversed. Accordingly, the Board **AFFIRMS** the ALJ's Recommended Order of Dismissal and **DENIES** Kruml's complaint.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge