



In the Matter of:

ADRIAN R. SCOTT,

ARB CASE NO. 03-038

COMPLAINANT,

ALJ CASE NO. 02-STA-001

v.

DATE: July 30, 2004

J. B. HUNT TRANSPORT SERVICES, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Adrian R. Scott, pro se, Athens, Georgia

For the Respondent:

Andrew Marks, Esq., Littler Mendelson, New York, New York

FINAL DECISION AND ORDER

This case arises under Section 405 (employee protection provision) of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 1997) and the regulations set out at 29 C.F.R. Part 1978 (2003). Also, the Federal Motor Carrier Safety Regulations (FMCSR) are relevant to STAA actions such as this and appear at 49 C.F.R. Parts 392, 395, 396, and 397 (2001). Complainant Adrian Scott (Scott) alleged that his employer J. B. Hunt Transport Services (Hunt Transport) discriminated against him because he engaged in protected activity. The ALJ determined that Scott failed to show that he was discriminated against and dismissed the case. We affirm.

BACKGROUND

Scott's job as a long-distance truck driver for Hunt Transport lasted approximately six weeks: Scott was hired on October 28, 1999, and he left Hunt Transport's employ on December 10, 1999. R. D. & O. at 1. Scott alleged that, because

he complained about safety issues, he was harassed and ultimately fired or constructively discharged. *Id.* at 2.

On May 17, 2000, Scott filed a complaint alleging unlawful discrimination by his employer, and on August 31, 2001, the Deputy Regional Administrator for the Occupational Safety and Health Administration (OSHA) issued the agency's findings. *Id.* at 1-2. The OSHA Administrator dismissed Scott's complaint finding the allegations to be without merit. *Id.* at 1. Pursuant to 29 C.F.R. § 1978.105, Scott timely requested a hearing. *Id.* at 2. The ALJ conducted a four-day hearing in Cherry Hill, New Jersey, beginning on May 20, 2002. *Id.* at 2. On December 30, 2002, the ALJ issued an R. D. & O. dismissing Scott's case, and that decision is now before this Board.

JURISDICTION AND STANDARD OF REVIEW

This Board has jurisdiction to review the ALJ's recommended decision under 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1). *See* Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (delegating to the ARB the Secretary's authority to review cases arising under, inter alia, STAA).

Under STAA, the ARB is bound by the factual findings of the ALJ if they are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *Lyninger v. Casazza Trucking Co.*, ARB No. 02-113, ALJ No. 01-STA-38, slip op. at 2 (ARB Feb. 19, 2004). Substantial evidence 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 Envtl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *McDede v. Old Dominion Freight Line, Inc.*, ARB No. 03-107, ALJ No. 03-STA-12, slip op at 2 (ARB Feb. 27, 2004).

In reviewing the ALJ's conclusions of law, the ARB, 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, we review the ALJ's conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991); *Olson v. Hi-Valley Construction Co.*, ARB No. 03-049, ALJ No. 02-STA-12, slip op. at 2 (ARB May 28, 2004).

STATUTORY AND REGULATORY PROVISIONS

Section 405 of STAA prohibits employment discrimination against any employee for engaging in protected activity, including filing a complaint or beginning a proceeding "related to" a violation of a commercial motor vehicle safety regulation, standard, or order or testifying or intending to testify in such a proceeding. 49 U.S.C.A. § 31105(a)(1)(A). Protected activity also includes a refusal to operate a commercial motor vehicle because "(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health; or (ii) the employee has a

reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition. 49 U.S.C.A. § 31105(a)(1)(B).

DISCUSSION

To prevail on a claim under STAA, the complainant must prove by a preponderance of the evidence that he engaged in protected activity, that his employer was aware of the protected activity, that the employer discharged, disciplined, or otherwise took adverse action against him, and that there is a causal connection between the protected activity and the adverse action. *BSP Trans. Inc. v. United States Dep't of Labor*, 160 F.3d 38, 45 (1st Cir. 1998); *Yellow Freight Sys., Inc. v. Reich*, 27 F.3d 1133, 1138 (6th Cir. 1994); *Schwartz v. Young's Commercial Transfer, Inc.*, ARB No. 02-122, ALJ No. 01-STA-33, slip op. at 8-9 (Oct. 31, 2003).

Scott alleged that he engaged in protected activity when he complained about safety issues and when he refused to drive. R. D. & O. at 10. Because of his protected activity, Scott maintained that he was disciplined and was directly or constructively discharged in violation of the Act. *Id.* at 2. The ALJ determined that, although he failed to show that his refusal to drive was protected activity, Scott had shown that he engaged in protected activity when he, at various times, complained about mechanical problems with his truck and about his need for rest.¹ *Id.* at 12.

The ALJ also determined that, although Scott failed to show that he had been fired or constructively discharged, the disciplinary form written by Scott's supervisor, Tori Horner, constituted adverse action. *Id.* at 16-19. Scott nevertheless failed to make his case because the ALJ found that there was no causal connection between his protected activity and the written discipline he received from Horner, that is, Scott was not disciplined because of his protected activity. *Id.* at 19. Based on these findings, the ALJ dismissed Scott's complaint.

We have carefully reviewed the record and find the ALJ's factual findings to be conclusive because they are based on substantial evidence when considering the record as a whole. 29 C.F.R. § 1978.109(c)(3). The record also supports the ALJ's credibility determinations, particularly with regard to Mr. Scott. Finally, in his thorough, detailed, and well-reasoned decision, the ALJ applied the correct legal standard to his factual findings.

¹ It is not clear whether Scott's Complaint encompasses concerns regarding bedding or whether the particular bedding concerns he described at the hearing would constitute safety complaints. However, we need not address this because the ALJ found that there was no causal connection between any of Scott's protected activity and the adverse action.

CONCLUSION

For the foregoing reasons, we **ADOPT** the ALJ's decision, attach and incorporate the R. D. & O., and **DENY** Scott's complaint against Hunt Transport.

SO ORDERED.

JUDITH BOGGS
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge