



In the Matter of:

BEVERLY C. CALHOUN,

ARB CASE NO. 03-080

COMPLAINANT,

ALJ CASE NO. 00-STA-16

v.

DATE: April 29, 2004

UNITED PARCEL SERVICE,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, Esq., *Truckers Justice Center, Eagan, Minnesota*

For the Respondent:

Brian D. Edwards, Esq., *Alston & Bird, Charlotte, North Carolina*

FINAL DECISION AND ORDER

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA) of 1982, as amended, 49 U.S.C.A. § 31105 (West 1997). Beverly Calhoun filed a complaint alleging that United Parcel Service (UPS) retaliated against him for engaging in safety activities protected by the STAA. After investigation, the Occupational Safety and Health Administration (OSHA) determined on December 9, 1999, that Calhoun's complaint had no merit. Calhoun objected and requested a hearing pursuant to 29 C.F.R. § 1978.106 (2003).

Prior to the hearing, the parties agreed to suspend the proceedings in this case pending the outcome of Calhoun's appeal to the Administrative Review Board (ARB) in another complaint he had filed, ALJ No. 99-STA-7. The parties stipulated that the ARB's decision in that case would dispose of the above-captioned case. By order dated August 30, 2000, the Office of Administrative Law Judges (OALJ) placed the above case on the suspension docket pending resolution of Calhoun's appeal to the ARB.

On November 27, 2002, the ARB issued a final decision and order dismissing Calhoun's complaint in No. 99-STA-7. *Calhoun v. United Parcel Serv.*, ARB No. 00-026, ALJ No. 99-STA-7 (ARB Nov. 27, 2002). By order dated February 28, 2003, the Administrative Law Judge (ALJ) removed the case from the suspension docket and allowed the parties ten days to notify the OALJ whether they still agreed that the ARB's decision and order in the 1999 case, ARB No. 00-026, disposed of the above-captioned case.

Neither party replied to the order. Accordingly, the ALJ concluded that the parties' prior agreement was still valid and that the ARB's dismissal of No. 99-STA-7 also disposed of the above matter. Therefore, he dismissed Calhoun's complaint.

Pursuant to 29 C.F.R. § 1978.109(a)-(c) (2003), the ALJ forwarded the case to the Board to issue a final decision and order based on the record and the ALJ's Order. *See 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 ARB issued a Notice of Review and Briefing Schedule, informing the parties that they were permitted to file briefs in support of or in opposition to the ALJ's Order. 29 C.F.R. § 1978.109(c)(2). Neither party did so.

The parties have had ample opportunity to inform the ALJ if they wished to continue the proceedings in this case. Inasmuch as neither party has responded to either the ALJ's Order or the ARB's briefing notice, we find that their prior agreement—that disposition of No. 99-STA-7 would also dispose of this case—is still effective.

Accordingly, we **AFFIRM** the ALJ's March 27, 2003 Order Dismissing Complaint and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge