



In the Matter of:

JAMES HOLMES,

ARB CASE NO. 05-112

COMPLAINANT,

ALJ CASE NO. 2005-STA-30

v.

DATE: April 28, 2006

ROADWAY EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

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

For the Respondent:

Kristin L. Parker, Esq., *Jones Day, Chicago, Illinois*

FINAL DECISION AND DISMISSAL ORDER

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 1997). On June 15, 2005, a Department of Labor Administrative Law Judge issued an Order of Dismissal. The Order was based on the Complainant's voluntary withdrawal of his objection to a finding of the Department of Labor's Occupational Safety and Health Administration that the Respondent did not suspend him from work for five days in violation of the Act. See 29 C.F.R. § 1978.111(c) (2005) (a complainant may file a written withdrawal with the ALJ at any time before the findings or order become final). Pursuant to 29 C.F.R. § 1978.109(a), the ALJ's decision and the record were forwarded to the Administrative Review Board for automatic review and to issue a final decision.

Pursuant to 29 C.F.R. § 1978.109(c)(2), the Board issued a Notice of Review and Briefing Schedule in which it notified the parties that they had had thirty days from the date of the ALJ's Recommended Order to file with the Board briefs in support of or in opposition to the Recommended Order. On July 14, 2005, counsel for the Respondent

informed the Board in writing that the Respondent would not be filing a brief in this matter. On July 20, 2005, the Board likewise received a letter from counsel for the Complainant stating that he would not be filing a brief in this matter.

Pursuant to 29 C.F.R. § 1978.109(c)(1), the Board is required to issue a final decision and order based on the record and the decision and order of the ALJ. Accordingly, the Board has reviewed the record and the ALJ's Recommended Order of Dismissal and determined that the recommended order should be approved and that the complaint should be and hereby is **DISMISSED**.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge