



In the Matter of:

ROBERT HOWARD,

ARB CASE NO. 06-012

COMPLAINANT,

ALJ CASE NO. 2005-STA-33

v.

DATE: February 28, 2007

COOL EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER OF DISMISSAL

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA).¹ On January 14, 2005, Robert Howard filed a complaint with the Secretary of Labor alleging that Cool Express, Inc. violated section 31105 by firing him from his job as a commercial truck driver after he engaged in activity that STAA protects. STAA section 31105 provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules.

After investigating Howard's complaint, the Occupational Safety and Health Administration (OSHA) found that Cool Express, Inc. did not violate the STAA. Howard objected to OSHA's findings and requested a hearing before a Labor Department Administrative Law Judge (ALJ).

After a formal hearing on the record, the ALJ issued a Recommended Decision and Order (R. D. & O.) recommending that Howard's complaint be dismissed because Howard failed to prove by a preponderance of the evidence all the essential elements of a STAA whistleblower claim, viz., "that he engaged in protected activity, that his employer

¹ 49 U.S.C.A. § 31105 (West 2007), and implementing regulations, 29 C.F.R. Part 1978 (2006).

was aware of the protected activity, that the employer discharged, disciplined, or discriminated against him, and that there is a causal connection between the protected activity and the adverse action.” *Bergman v. Schneider Nat’l*, ARB No. 03-155, ALJ No. 2004-STA-19, slip op. at 2 (Apr. 29, 2005). The ALJ found that a preponderance of the evidence indicated that Cool Express hired Howard for one assignment, that Howard completed the assignment, that Cool Express paid him and that Cool Express was under no obligation to hire Howard again.

The Administrative Review Board “shall issue the final decision and order based on the record and the decision and order of the administrative law judge” in cases arising under section 31105.² Accordingly, on December 5, 2005, the Board issued a Notice of Review and Briefing Schedule permitting the parties to submit briefs in support of or in opposition to the ALJ’s order. Neither party responded to the notice.

Under the STAA, the ARB is bound by the ALJ’s findings of fact 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). 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 2005). Therefore, we review the ALJ’s conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991); *Monde v. Roadway Express, Inc.*, ARB No. 02-071, ALJ Nos. 01-STA-22, 01-STA-29, slip op. at 2 (ARB Oct. 31, 2003).

Having reviewed the record, we find that substantial evidence on the record as a whole supports the ALJ’s finding of fact that Cool Express hired Howard for one assignment and was not obligated to hire him again. The ALJ’s ruling of law – that Howard’s failure to prove that Cool Express took an adverse action against him requires dismissal of the complaint – is correct as a matter of law. *Bergman*, slip op. at 2.

Therefore, we accept the ALJ’s recommendation and **DISMISS** Howard’s complaint.

SO ORDERED.

DAVID G. DYE
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

² 29 C.F.R. § 1978.109(c).