



**In the Matter of:**

**FRED E. ALIFF,**

**ARB CASE NO. 08-024**

**COMPLAINANT,**

**ALJ CASE NO. 2000-STA-009**

**v.**

**DATE: February 29, 2008**

**ANR ADVANCE TRANSPORTATION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Fred E. Aliff, *pro se*, Sheffield Lake Ohio**

### **FINAL DECISION AND DISMISSAL ORDER**

Fred Aliff complained that ANR Advance Transportation violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified,<sup>1</sup> and its implementing regulations,<sup>2</sup> when it discharged and discriminated against him. After an investigation, the Occupational Safety and Health Administration (OSHA) found that Aliff's filing was outside the 180-day period

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2008). Section 405 of the STAA 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. Congress has amended the STAA since Aliff filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). It is not necessary for us to determine whether the amendments are applicable to this case because even if the amendments were applicable, they would not affect our decision since they are not applicable to the issues presented for our review.

<sup>2</sup> 29 C.F.R. Part 1978 (2007).

proscribed by regulations and dismissed his complaint.<sup>3</sup> Aliff objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup>

On February 2, 1999, ANR filed a Chapter 7 Bankruptcy in the United States Bankruptcy Court for the Eastern District of Wisconsin. The ALJ issued an Order Staying Proceeding. After several years of bankruptcy proceedings, the Bankruptcy Court issued an Order Discharging Trustee and Closing Case on June 19, 2007. On November 7, 2007, the ALJ issued an Order to Show Cause in 2000-STA-009, ordering Aliff to demonstrate in writing a reason to continue the complaint or else the case would be dismissed. On November 13, 2007, Aliff submitted a letter to the ALJ in which he stated that there was no reason to keep the case open because the ANR had restored his job and his benefits.

On November 28, 2007, the ALJ issued a Recommended Order Approving Withdrawal of Objections and Dismissing Claim (R. O.). The ALJ forwarded the file and his recommended decision to the Administrative Review Board for review and to issue a final agency decision pursuant to the STAA's automatic review provisions.<sup>5</sup> The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.<sup>6</sup> When reviewing STAA cases, the Board is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.<sup>7</sup> In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ."<sup>8</sup> Therefore, the Board reviews the ALJ's legal conclusions de novo.<sup>9</sup>

The Board issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs with the Board in support of or in opposition to the ALJ's

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<sup>3</sup> See 29 C.F.R. § 1978.102.

<sup>4</sup> See 29 C.F.R. § 1978.105.

<sup>5</sup> See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

<sup>6</sup> Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

<sup>7</sup> 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

<sup>8</sup> 5 U.S.C.A. § 557(b) (West 1996).

<sup>9</sup> See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

recommended order within thirty days of the date on which the ALJ issued it.<sup>10</sup> Aliff responded to the Board's notice stating that he did not wish to pursue his complaint any further and that no additional correspondence was necessary in regard to this appeal.

The STAA and its regulations do not specifically provide for withdrawal of a complaint once the case has been referred to an administrative law judge for hearing, but, the STAA's implementing regulations do provide:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.<sup>[11]</sup>

Given the title of the ALJ's R. O., it appears that the ALJ construed Aliff's response to the Show Cause Order as a withdrawal of objections to the Secretary's preliminary findings pursuant to 29 C.F.R. § 1978.111(c). Aliff has not objected to the ALJ's decision to treat his assertion that there was no reason to keep his claim open as a request to withdraw his objections to the Secretary's preliminary findings and we know of no reason to reject the ALJ's recommended decision, given that Aliff has been reinstated to his position and his benefits have been restored. Accordingly, we **GRANT** the request to withdraw the objections to the Secretary's preliminary findings and **AFFIRM** those findings denying Aliff's complaint as provided in 29 C.F.R. § 1978.111(c).

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>10</sup> See 29 C.F.R. § 1978.109(a).

<sup>11</sup> 29 C.F.R. § 1978.111(c).