



In the Matter of:

KENNETH BACHMEIER,
COMPLAINANT,

v.

TOMBSTONE PIZZA,
d/b/a KRAFT PIZZA COMPANY,

RESPONDENT.

ARB Case No. 97-029

ALJ Case No. 96-STA-33

DATE: February 18, 1997

BEFORE: THE ADMINISTRATIVE REVIEW BOARD¹

FINAL DECISION AND ORDER OF DISMISSAL

Complainant Kenneth Bachmeier (Bachmeier), appearing *pro se*, appealed the Recommended Order of Dismissal (R. O. D.) issued by the Administrative Law Judge (ALJ) on November 25, 1996. The ALJ recommended the dismissal of Bachmeier's complaint pursuant to an Order to Show Cause, issued on September 17, 1996, which directed Complainant to show why the matter should not be dismissed for failure to file a timely complaint under the employee protection provision of the Surface Transportation Assistance Act (STAA or Act), 49 U.S.C. § 31105 (West 1996). For the reasons set forth below, we affirm the ALJ's Recommended Order of Dismissal.

BACKGROUND

Bachmeier was employed by the Respondent (Kraft) from July 8, 1991 to March 5, 1994,² as a Route Driver Sales Representative. The Complainant alleges that Kraft terminated

¹ On April 17, 1996, Secretary's Order 2-96 was signed delegating jurisdiction to issue final agency decisions under this statute and the pertinent regulations to the Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996). The Order contains a comprehensive list of the statutes, executive order and regulations under which the Board now issues final agency decisions.

² Bachmeier's complaint filed with OSHA on June 26, 1996, indicated that he was terminated on March 4, 1995, but the actual date of termination was March 4, 1994. Bachmeier (continued...)

him because of his objections to the company's orders to drive in excess of permissible hours under the STAA. Kraft responds that Complainant was terminated because of poor work performance.

Bachmeier filed a complaint with the Seattle office of the Occupational Safety and Health Administration (OSHA) on June 26, 1996, alleging that he had been terminated by Kraft in March, 1995,(sic) for engaging in protected activity. On July 17, 1996, the OSHA Acting Regional Administrator determined that the complaint had not been timely filed within 180 days of the adverse action, even if the erroneous 1995 date was used, as required by the Act.

Bachmeier requested a hearing before the Office of Administrative Law Judges (OALJ). On September 17, 1996, the presiding ALJ issued a show cause Order pertaining specifically to the issue of Bachmeier's late filing of his complaint and since no good cause was shown, consequently issued the Recommended Order of Dismissal.

DISCUSSION

Although an untimely filing of a complaint under the employee protection provisions of the environmental protection statutes can be subject to equitable modification under certain circumstances, *see School District of City of Allentown v. Marshall*, 657 F.2d 16, 19-20 (3rd Cir. 1981) (case involving the Toxic Substances Control Act); *Rose v. Dole*, 945 F.2d 1331, 1335 (6th Cir. 1991) (case involving the Energy Reorganization Act), the Complainant has failed to show the existence of any of such circumstances. Bachmeier's complaint was filed approximately 28 months after he was actually terminated by Kraft.

We agree with the ALJ that there is no evidence of a continuing violation or of extenuating circumstances sufficient to equitably toll the filing period, and therefore the complaint should be dismissed. The complaint **IS DISMISSED**.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member

²(...continued)

letter to the Board, dated Jan. 2, 1997; Kraft letter to OALJ, dated Sept. 26, 1996.