



**In the Matter of:**

**ASSISTANT SECRETARY OF LABOR FOR  
OCCUPATIONAL SAFETY AND HEALTH,**

**PROSECUTING PARTY,**

**and**

**HARRY D. COTES,**

**COMPLAINANT,**

**v.**

**DOUBLE R TRUCKING, INC.,**

**RESPONDENT.**

**ARB CASE NO. 99-061**

**ALJ CASE NO. 98-STA-34**

**DATE: July 16, 1999**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

### **ORDER**

In a Final Decision and Order issued on this date, the Board has ordered Double R Trucking, Inc. ("Double R"), to pay back wages with interest to Harry D. Cotes ("Cotes"), an employee who Double R fired for engaging in activity protected under the Surface Transportation Assistance Act of 1982 ("STAA"), as amended, 49 U.S.C.A. §31105 (1997). Specifically, the Board has ordered Double R to pay Cotes back wages equivalent to the earnings he lost during the period April 15, 1998, to September 21, 1998, less interim earnings. We have also ordered payment of interest on the back wages.

The Board is unable to determine the exact amount of back wages owed to Cotes because the case record failed to set out the underlying data the Assistant Secretary used in his original calculation of the lost earnings.<sup>1/</sup> Without such underlying data, the Board cannot determine the total lost earnings for the period April 15, 1998, to September 21, 1998. Furthermore, without the correct

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<sup>1/</sup> The Assistant Secretary, in a short statement in his brief to the Board, represents that Cotes worked for Double R a weekly average of 36.3 hours of straight time and 8.1 hours of overtime. Brief of the Assistant Secretary at 15. However, the Board has been unable to verify these averages through independent calculations.

lost earnings figure, we cannot ascertain either the proper back pay amount or the amount of interest Double R must pay.

Accordingly, we order the parties to provide the Board with the amount of Cotes' lost earnings for the period April 15, 1998, to September 21, 1998. In addition, the parties shall provide the Board with the total amount of back pay, including interest, which Double R must pay to Cotes. When making these submissions, the parties shall also furnish the Board with an explanation of the underlying methodology used to arrive at these amounts, including all figures, calculations, and assumptions employed. The calculations of Cotes' lost earnings and back pay shall be based solely on materials in the record developed before the Administrative Law Judge.

This information shall be filed with the Board within 45 days of the date of this Order. The Board will issue a supplemental order on damages following its review of the submissions.

**FOR THE ADMINISTRATIVE REVIEW BOARD:**

**JANET R. DUNLOP**  
General Counsel