



Issue Date: 11 February 2008

Case No.: 2006-STA-00017

In the Matter of:

ROBERT W. SCHWARZMUELLER,
Complainant,

v.

YELLOW TRANSPORTATION, INC.,
Respondent.

RECOMMENDED DECISION AND ORDER DISMISSING THE CASE

This case arises under § 405 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 2305, which provides for employee protection from discrimination because the employee engaged in protected activity pertaining to commercial motor vehicle safety and health matters. The implementing regulations are contained in 29 C.F.R., Part 1978.

On November 22, 2005, the Distribution Center Manager for the Respondent in Nashville, Tennessee informed the Complainant that he had been discharged.

ON December 21, 2005, the Complainant filed a complaint with OSHA. The complaint was investigated, and was denied. On March 14, 2006, the Complainant filed an appeal with Office of Administrative Law Judges. The case was referred to the undersigned Administrative Law Judge.

Subsequently, the Complainant moved to New York state, and he declared bankruptcy. There was a delay in the proceeding while the Complainant sought permission from the Bankruptcy Court to pursue the STAA case. The Complainant did secure permission to proceed.

On September 10, 2007, the undersigned Administrative Law Judge (ALJ) issued an order compelling the Complainant to appear for a deposition on or before October 31, 2007.

On September 28, 2007, the Respondent stated

Yesterday, when Yellow called Complainant to remind him of the deposition, he said that he was giving up. He said that because of issues in his ongoing bankruptcy and personal issues, he wanted to withdraw his objections to OSHA's findings against him. The undersigned offered to notify the Tribunal of this development. Mr. SchwarzmueLLer agreed.

Mr. SchwarzmueLLer also said that he did not intend to appear for his deposition.

In light of this communication, Yellow respectfully requests that this case be

dismissed.

Respondent indicated that he was aware that a law clerk from this office contacted the Complainant and confirmed the intention to withdraw.

On October 4, 2007, the undersigned ALJ issued an order to show cause why the complaint should not be dismissed.

This order set out the facts as expressed by the Respondent. The order stated

The applicable regulations prefer that a Complainant submit a written statement to the effect that he wishes to withdraw his complaint.

It should be pointed out that a non-response to this order will result in a dismissal of the complaint.

Therefore, it is ORDERED that the Complainant file a response as to his intentions on or before OCTOBER 22, 2007.

Non-response to this order will be taken as a request for a dismissal.

There has been no response from the Complainant since the October 4, 2007 order was issued.

Under 29 C.F.R. Section 24.6(e)(4)(B), the Administrative Law Judge may, at the request of either party or on his own motion, issue a recommended decision and order dismissing a claim upon the failure of the complainant to comply with a lawful order of the Administrative Law Judge. 29 C.F.R. Section 24.6(e)(4)(B). Furthermore, 29 C.F.R. § 18.6(d)(2)(v) also provides me authority to strike Complainant's notice of appeal and request for hearing and render a recommended decision against him and dismissing his case for failure to comply with my October 4, 2007 order.

This authority to dismiss a case also comes from my inherent power to control my docket and prevent undue delays in the disposition of pending cases. See Link v. Wabash Railroad Co., 370 U.S. 626 (1962). The Order directed Complainant to file a written statement explaining why there is not good cause for dismissing his complaint and his request for a hearing due to his abandonment of this matter. Finally, the Order explained that if Complainant failed to file this statement by October 22, 2007 the complaint and the request for a hearing shall be dismissed. Complainant, to date, has failed to file the required statement. Therefore, I find that Complainant's complaint and his request for a hearing should be dismissed due to abandonment.

ORDER

It is recommended that the complaint filed by Complainant be dismissed.

A

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/ccb
Newport News, Virginia

NOTICE OF REVIEW: The administrative law judge's Recommended Decision and Order, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Decision and Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.