

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 30 January 2008

CASE NO. 2007-STA-00040

In the Matter of:

PHILIP M. FOSTER,
Complainant,

vs.

TALYN EXPRESS, INC.,
Respondent.

Recommended Order of Dismissal

This matter is before me on a request Philip M. Foster, the Complainant, made for a hearing before the Office of Administrative Law Judges ("OALJ") under the employee protection provision of the Surface Transportation Assistance Act of 1982 ("Act" or "STAA"), 49 U.S.C. § 31105 and 29 C.F.R. § 1978.105. The Complainant objected to findings the Regional Administrator of the Department of Labor's Occupational Safety and Health Administration ("OSHA") issued on June 22, 2007 that dismissed a complaint he filed on August 14, 2006. His complaint alleged that the Respondent violated § 405 of the STAA when it terminated him after less than four months of employment. Section 405 of the STAA protects employees who engage in activity protected under the Act from discrimination. The hearing was continued after the Complainant alleged he had not received notice of it, although he agreed it had been correctly addressed.

An Order to Show Cause was issued on September 25, 2007 that required the Complainant to show cause why this matter should not be dismissed as moot for the reasons the order explained. No party has responded to that order. I treat this silence as a withdrawal of the Complainant's request for hearing, which has the effect of reinstating the Secretary's dismissal of the complaint. 29 C.F.R. § 1978.111(c).

So Ordered.

A

William Dorsey
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order of Dismissal Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Suite S-52220, 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 Order of Dismissal, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order 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.