

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 04 June 2007

CASE NO.: 2007-STA-00031

In the Matter of:

NICK THOMPSON,

Complainant,

vs.

INLAND NORTHWEST DAIRIES, LLC,

Respondent.

RECOMMENDED DECISION AND ORDER DISMISSING CASE AND VACATING TRIAL

By pre-hearing order issued May 11, 2007, the hearing in this case was set to go forward on June 11, 2007 in Spokane, Washington. The May 11 Pre-hearing Order ordered Complainant to serve and file with me by May 21, 2007 a pre-hearing statement of position, which shall briefly set forth the issues involved in the proceeding, the remedy requested, and a list of names and addresses of each witness the party expects to call and a summary of the testimony the witness is expected to furnish.

The May 11 Pre-hearing Order also contained an order to show case requiring that no later than Friday, May 25, 2007, Complainant shall file with this Office and serve on all other parties, a memorandum of points and authorities, including affidavits and other documentary evidence, in support of his legal position as to why this matter should not be dismissed due to the failure to state a *prima facie* case. Complainant's legal briefing was to include allegations as to at least one specific protected activity and Respondent's knowledge of Complainant's protected activity(ies) in connection with his refusal to operate a commercial motor vehicle on February 4, 2007 sufficient to support a *prima facie* case.

On May 24, 2007, I received an *ex parte* communication telefax from Complainant stating that he was withdrawing his appeal in this matter.

On May 29, 2007, this Office telefaxed a copy of Complainant's request for withdrawal of his appeal to Respondent's counsel Paul Fogerty, Esq., who stated that Respondent did not oppose the withdrawal of Complainant's appeal.

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 May 11 pre-hearing 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).

I find that Complainant has failed to comply with my May 11 pre-hearing order requiring Complainant to serve and file a pre-hearing statement of position, witness list and exchange exhibits. My May 11 order also specifically informed him in bold print that if he failed to comply with my pre-hearing order his could subject him to sanctions including entry of a default judgment against him.

Since Complainant has requested withdrawal of his appeal of the Occupational Safety and Health Administration's ("OSHA's") April 5, 2007 denial of Complainant's claims against Respondent and Complainant has not complied with my May 11 pre-hearing order and has not submitted his pre-hearing statement of position, witness list or exchanged exhibits in advance of the June 11, 2007 trial in this matter, his complaint is be dismissed for lack of prosecution

RECOMMENDED ORDER

IT IS RECOMMENDED that the complaint filed by Nick Thompson under the provisions of Section 405 of the Surface and Transportation Assistance Act, 49 U.S.C. § 31105 be **DISMISSED** with prejudice.

IT IS FURTHER ORDERED that the trial set in this case for June 11, 2007 in Spokane, Washington is **VACATED**.

A

GERALD M. ETCHINGHAM
Administrative Law Judge

San Francisco, California