

U.S. Department of Labor

Office of Administrative Law Judges
11870 Merchants Walk - Suite 204
Newport News, VA 23606

(757) 591-5140
(757) 591-5150 (FAX)



Issue Date: 10 August 2007

Case No.: **2006-STA-00018**

In the matter of

ALBERT TRAMMELL,

Complainant,

v.

NEW PRIME, INC.,

Respondent.

RECOMMENDED DECISION AND ORDER
GRANTING SUMMARY DECISION

This case arises under § 405 of the Surface Transportation Assistance Act of 1982 ("the Act or STAA"), as amended, 49 U.S.C. § 31105 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 January 12, 2007 the Complainant filed a complaint under the Act and alleged that he was fired by the Respondent after he reported falsification of records. He also reported being struck by an employee.

On January 17, 2007 the Regional Administrator of OSHA informed the Complainant that the complaint had been denied as it was not timely filed.

The Complainant filed a timely appeal with the Office of Administrative Law Judges, and the case was referred to the undersigned administrative law judge.

During subsequent development of the case the Respondent reported:

Please find enclosed a printout from New Prime confirming Albert Trammell's inclusive dates of employment with New Prime being 12/29/00 through 12/03/03. I have also enclosed a Driver Incident Report confirming 03/16/01 as the date of the incident described in Mr. Trammell's Complaint in this matter. Please be advised that Mr. Trammell filed a worker's compensation claim as a result of this incident and did not actually return to work with New Prime

following this incident. At the conclusion of the worker's compensation action, Mr. Trammell was formally terminated on 12/03/03.

The Respondent has submitted defenses which include an allegation that the petition of the Complainant is barred by the applicable time limitations as mandated by 49 U.S.C.A. 31105(b).

The STAA, § 31105, sets forth the following statute of limitations for filing a complaint:

- (b) Filing Complaints and Procedures.—(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred.

The regulations at 29 C.F.R. § 1978.102 provide:

Filing a discrimination complaint:

- (d) Time for filing. . . . an employee who believes that he has been discriminated again[st] in violation of [the STAA] “. . . may, within one hundred and eighty days after such alleged violation occurs,” file or have filed by any person on the employee's behalf a complaint with the Secretary.

It is mandatory that the undersigned find that the complaint was timely filed before any consideration can be given to the merits of the case.

There is a concept of “equitable tolling” of time limits. This would involve circumstances which hindered a complainant from filing a complaint within the prescribed time limits.

On May 14, 2007 the undersigned issued an order to show cause why the complaint should not be dismissed as being untimely filed.

Thereafter the Complainant submitted a copy of a November 2001 letter from the U.S. Department of Transportation to the Respondent. This stated that:

A safety compliance review was conducted at your offices in Springfield, MO on September 18, 2001. The purpose of this review was to determine your compliance with the Federal Motor Carrier Safety Regulations (FMCSR), the Federal Hazardous Materials Regulations (HMR) and the Federal Motor Carrier Commercial regulations (FMCCR).

As a result of this review, violations were discovered. This letter constitutes a Notice of Claim by the United States Department of Transportation,

Federal Motor Carrier Safety Administration (FMCSA) AGAINST Prime Inc for the amount of \$190,560.

The undersigned notes that there is no mention of the Complainant in this letter.

The Complainant has also sent a copy of a letter to the "Department of Labor" that was allegedly dated December 11, 2001. There is no address as to whom or where this letter was sent.

On January 30, 2002 the Director of Compliance Programs for OSHA wrote to the Complainant and stated:

We are in receipt of your letter informing us of your assault by another truck driver with Prime, Incorporated. While the Occupational Safety and Health Administration is responsible for ensuring a healthy and safe working environment, and enforcing Section 31105 of the Surface Transportation Act, we have no jurisdiction in situations such as yours.

Please be aware that reporting violations such as falsifying Driver's Logs and driving over hours are the responsibility of the Federal Motor Carrier Safety Administration within the Department of Transportation. Accordingly, we are forwarding your letter to them. They may be reached at:

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
Georgia Division
Atlanta Federal Center . . .

In addition, as you have already filed a charge with your local Law Enforcement Agency, they are the appropriate party for processing assault cases. We regret that we cannot be of further assistance. Thank you for your interest in occupational safety and health.

The Complainant has made numerous requests for subpoenas. An Administrative Law Judge is granted the authority to issue subpoenas in certain types of cases. There is no specific authority to grant subpoenas in STAA cases.

The requests for subpoenas pertaining to government agencies were general in nature such as "OSHA" and "Department of Labor" for records in 2001. There were also requests for telephone records relating to numbers which did not belong to the Complainant. These requests were denied.

29 C.F.R. § 18.41 pertaining to summary decision states:

(a) *No genuine issue of material fact.*

(1) Where no genuine issue of a material fact is found to have been raised, the administrative law judge may issue a decision to become final as provided by the statute or regulations under which the matter is to be heard. Any final decision issued as a summary decision shall conform to the requirements for all final decisions.

(2) An initial decision and a final decision made under this paragraph shall include a statement of:

(i) Findings of fact and conclusions of law, and the reasons therefore, on all issues presented; and

(ii) Any terms and conditions of the rule or order.

(3) A copy of any initial decision and final decision under this paragraph shall be served on each party.

(b) *Hearings on issue of fact.* Where a genuine question of material fact is raised, the administrative law judge shall, and in any other case may, set the case for an evidentiary hearing.

I find that, the STAA complaint that Complainant filed with OSHA on January 12, 2007 is barred by the 180-day statute of limitations (unless the running of the statute of limitations was tolled). The STAA and its regulations require the filing of a complaint within 180 days after the violation or discrimination occurred on March 16, 2001 when the Complainant last worked at the job site.

The Complainant has not provided credible evidence that he filed a complaint with OSHA within the applicable time period. Moreover, there is no compelling reason to apply the concept of “equitable tolling” of time limits in this case.

Based on the foregoing, the complaint herein is untimely and must be dismissed.

ORDER

The complaint of Albert Trammell is dismissed.

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RICHARD K. MALAMPHY
Administrative Law Judge

NOTICE OF REVIEW: The administrative Law judge’s Recommended Decision and Order, Dismissing the Complaint along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution

Avenue, N.W., Washington DC 20210. *See* 20 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c. (35, 67 Fed. Reg. 64272 (2002)).