



Issue Date: 20 August 2007

Case No.: 2005-STA-00047

In the Matter of:

CECIL H. FLETCHER,
Complainant,

v.

MORRISTOWN DRIVING SERVICE,
Respondent.

RECOMMENDED DECISION AND ORDER DISMISSING COMPLAINANT'S CASE

This proceeding involves a Complaint under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982 (the Act), as amended, 49 U.S.C. Section 31105 (formerly 49 U.S.C. Section 2305), and its implementing regulations found at 29 C.F.R. Part 1978. Section 31105 of the Act provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when the operation would be a violation of these rules.

Procedural History

On June 24, 2005, Mr. Fletcher filed a Complaint under the Act with the Occupational Safety and Health Administration (OSHA), alleging a reprisal in retaliation for an accident in which he was involved. Mr. Fletcher alleged that he was unable to obtain future trucking jobs because someone at Morrystown Driving Service reported to D.A.C., which is a “clearing house for drivers,” that he was terminated from Morrystown Driving Service for safety reasons.

OSHA found that, “based on the information [Mr. Fletcher] provided, [the] Complaint does not meet a prima facie allegation. Therefore, the case is being opened at [the Complainant’s] request and dismissed for lack of merit because there was no actionable protected activity.”

Mr. Fletcher appealed OSHA’s findings and requested that his case be heard by an administrative law judge.

During a pre-hearing conference call, the Respondent agreed to alter the D.A.C. Employment Report. The Claimant agreed that, if an adjustment was made, he would attempt to seek employment.

An adjustment was made, which changed the Complainant’s reason for termination from “unsatisfactory safety performance” to “company terminated lease.” The Complainant then found employment.

On January 23, 2007, the undersigned issued an Order to Show Cause Why this Case Should Not Be Dismissed. The Complainant was given until February 12, 2007 to answer this Order.

No response was received by Mr. Fletcher by February 12, 2007. On February 27, 2007, this office contacted Mr. Fletcher to ascertain the status of this case.

During this conversation, the Complainant said that he could not pursue the case for a variety of personal and medical reasons. The Complainant told this office that he did not have an attorney. The Complainant was told that he had the option of representing himself, if he wished. He was also told that he could attempt to find an attorney by looking in his local phone book or by contacting the Lawyer Referral Service in Tennessee. The Complainant further stated that he could not proceed with this claim because he was about to undergo a medical procedure. He was informed that the undersigned would work around this. However, he stated that he still did not want to pursue the claim. He was then informed that a dismissal of his claim would not be temporary, since after a certain amount of time has elapsed a claim can no longer be filed due to the statute of limitations. He said that he understood the consequences of dismissal, but he still wanted the claim to be dismissed.

Mr. Fletcher was then given an opportunity to either answer the Order to Show Cause or to send in written documentation of his desire to dismiss the case. This office never received any written correspondence from Mr. Fletcher. The Complainant was contacted again on March 20, 2007. Once more, he verbalized that he had no intention of currently pursuing this case.

It is therefore **ORDERED** that the Complainant's Pending Complaint under the Surface Transportation Act is **DISMISSED**.

A

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/kbe
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, 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.