



Issue Date: 07 March 2006

IN THE MATTER OF:

JACK MARZIANO,
Claimant,

v.

Case No.: 2005-STA-64

KIDS BUS SERVICE, INC.,
Respondent.

RECOMMENDED DECISION AND ORDER OF DEFAULT JUDGMENT

This matter involves an appeal by Respondent, Kids Bus Service, Incorporated, from the August 31, 2005 determination of the Regional Administrator wherein Respondent was found in violation of the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (STAA) by firing Complainant, Jack Marziano, in retaliation for engaging in activity protected by the STAA. Respondent appealed and a hearing was scheduled for November 21 and 22, 2005 in New York City. The hearing was continued until January 31 and February 1, 2006 to allow the parties time to engage in settlement discussions.

By letter dated January 19, 2006, counsel for Respondent advised that Respondent would not appear at the January 31, 2006 and February 1, 2006 hearing and that Respondent “fully understands the potential impact of a default.” Counsel for Respondent stated that Respondent has ceased operations and is no longer in business, and that counsel has been advised that Respondent no longer has any assets.

Counsel for the Department of Labor by facsimile transmission received on January 24, 2006 requested that, in light of Respondent’s statement that Respondent will not appear at the hearing and understands the potential impact of a default, Respondent’s objections to the Secretary’s Findings and Order dated August 31, 2005 be stricken and those Findings and Order be adopted.

On January 24, 2006, an *Order Canceling Hearing and Requiring Respondent to Show Cause Why its Objections Should Not Be Stricken* was issued. Respondent was advised that a failure to respond by February 14, 2005 would result in its objections to the August 31, 2005 Secretary’s Findings and Order issued by the Regional Administrator being stricken and the Secretary’s Findings and Order being adopted. To date, Respondent has not responded. Accordingly,

RECOMMENDED ORDER

IT IS HEREBY ORDERED that Respondent's objections to the August 31, 2005 Secretary's Findings and Order are stricken and the August 31, 2005 Secretary's Findings and Order are adopted as the final Order of the Secretary.

A
Thomas M. Burke
Associate Chief Administrative Law Judge

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.

The relief ordered in the Recommended Decision and Order is stayed pending review by the Secretary. 29 C.F.R. § 1978.109(b).