



In the Matter of:

STEVEN C. WALLACE,

ARB CASE NO. 04-098

COMPLAINANT,

ALJ CASE NO. 2002-STA-40

v.

DATE: August 30, 2005

R. & L. CARRIERS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Dennis R. Thompson, Esq., *Thompson Law Offices, Akron, Ohio*

For the Respondent:

David L. Barth, Esq., *Cors & Bassett, LLC, Cincinnati, Ohio*

FINAL DECISION AND ORDER

This case arose when the Complainant, Steven C. Wallace, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, R & L Carriers terminated his employment in violation of the Surface Transportation Assistance Act's whistleblower protection provision.¹ Upon investigation,² the OSHA Area Director concluded that R & L had not violated the STAA. Wallace filed a timely request for a hearing before a Labor Department Administrative Law Judge (ALJ).³

¹ 49 U.S.C.A. § 31105 (West 1997) (STAA).

² 29 C.F.R. § 1978.103 (2004).

³ 29 C.F.R. § 1978.105(a).

The parties requested the ALJ to continue the hearing while the parties litigated a civil case in state court. R & L's counsel subsequently informed the ALJ that the state court had dismissed the civil action and that R & L intended to file a motion for summary judgment with the ALJ. After R & L filed the motion, Wallace's counsel notified the ALJ that he wished to withdraw his request for a hearing to pursue possible remaining avenues of recovery at the state court level.

The ALJ treated Wallace's notification as a request to withdraw his objections to the Area Director's findings.⁴ The STAA's implementing regulations permit a party to withdraw objections to the Secretary's preliminary findings or preliminary order prior to the date on which the findings or order become final.⁵ If a party withdraws the objections pursuant to this regulation, "[t]he judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn."⁶ Accordingly, the ALJ granted Wallace's withdrawal of his request for a hearing, reinstated the Area Director's finding that R & L's termination of Wallace's employment did not violate the STAA's whistleblower protection provision and denied his complaint.⁷

The ALJ's R. D. & O. is subject to the STAA's automatic review provisions.⁸ The Secretary of Labor has delegated her jurisdiction to decide this matter to the Administrative Review Board.⁹ By Order dated May 11, 2004, the Board notified the parties of their right to file a brief opposing or supporting the ALJ's R. D. & O.¹⁰ R & L

⁴ [Recommended] Decision and Order Dismissing Request for Hearing (R. D. & O.) at 2.

⁵ 29 C.F.R. § 1978.111(c).

⁶ *Id.*

⁷ R. D. & O. at 2.

⁸ 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1). *Accord Sabin v. Yellow Freight Sys. Inc.*, ARB No. 04-032, ALJ No. 03-STA-5, slip op. at 6 (ARB July 29, 2005); *Elliott v. Chris Truck Line*, ARB No. 04-132, ALJ No. 02-STA-43, slip op. at 2 (ARB Jan. 28, 2005); *Hardy v. Envtl. Restoration, Inc.*, ARB No. 05-019, ALJ No. 04-STA-020, slip op. at 2 (ARB Jan. 11, 2005); *Ass't Sec'y and Boyd v. Palmentere Cartage Serv. Inc.*, ARB No. 04-135, ALJ No. 03-STA-40, slip op. at 1 (ARB Oct. 27, 2004).

⁹ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64272 (Oct. 17, 2002); 29 C.F.R. § 24.8(a)(2004).

¹⁰ See 29 C.F.R. § 1978.109(a).

responded that it did not intend to file a brief since Wallace had voluntarily dismissed his request for a hearing. Wallace did not respond to the Board's order.

The Board is required to issue a final decision and order based on the record and the ALJ's R. D. & O.¹¹ Accordingly, the Board has reviewed the record and the R. D. & O. Finding the R. D. & O. to be supported by substantial evidence and in accordance with law,¹² we **APPROVE** Wallace's withdrawal of objections and **AFFIRM** the ALJ's R. D. & O.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

¹¹ 29 C.F.R. § 1978.109(c)(1).

¹² We review the ALJ's findings of fact under the substantial evidence standard. 29 C.F.R. § 1978.109(c)(3). In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . ." 5 U.S.C.A. § 557(b) (West 1996). Therefore, the Board reviews the ALJ's legal conclusions de novo. See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).