



In the Matter of:

**CHARLES PERRY MARTIN,
COMPLAINANT,**

ARB CASE NO. 05-040

ALJ CASE NO. 2003-STA-9

v.

DATE: May 31, 2007

**UNITED PARCEL SERVICE,
RESPONDENT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, Esq., *Truckers Justice Center*, Burnsville, Minnesota

For the Respondent:

**Baruch A. Fellner, Esq., *Gibson, Dunn & Crutcher LLP*, Washington, D.C.
Taggart Hansen, Esq., *Gibson, Dunn & Crutcher LLP*, Denver, Colorado**

FINAL DECISION AND ORDER

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified, 49 U.S.C.A. § 31105 (West 2006). Charles Perry Martin filed a complaint alleging that his former employer, United Parcel Service (UPS), violated the STAA by issuing him warning letters and terminating his employment. After a hearing on the complaint, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) in which she concluded that UPS did not violate the STAA. We concur and deny the complaint.

BACKGROUND

UPS hired Martin in September 1986. He became a tractor-trailer or “feeder” driver in April 1993. In June 2001, he was assigned to bid number GA-01, a route or “run” that required him to drive between Knoxville, Tennessee and Atlanta, Georgia.¹ UPS required Martin to depart from Knoxville at 5:30 p.m. Monday through Friday with a tractor and two trailers. Upon delivery of those trailers in Atlanta, Martin would “turn around” and pick up two different trailers and return to Knoxville. The loads on the return trip to Knoxville were considered “hot loads” because their delivery was time-sensitive. These loads were due in Knoxville by 3:45 a.m. to be included in a “pre-load operation” scheduled for 4:00 a.m.²

Feeder driver schedules are coordinated to deliver loads to UPS facilities at specific times to be processed and sorted. The pre-load operation is disrupted if a feeder driver is late. When a driver is late delivering a load, UPS not only suffers production losses, but also must pay overtime to employees engaged in the operation.³ UPS therefore requires its drivers to call into dispatch if they believe they will be late delivering a load.⁴

In addition to delivering their loads on time, UPS requires its drivers, pursuant to the Collective Bargaining Agreement (CBA) between UPS and the Teamsters Union, to take and record one hour of break or “meal” time during their runs.⁵ UPS expected Martin to take a portion of his meal during his “turnaround” time at the Atlanta hub.⁶ UPS managers testified that all stops taken by feeder drivers must be recorded.⁷

¹ Complaint at 1; Respondent’s Brief at 3.

² Transcript (Tr.) 50-52, 189-90, 882; R. D. & O. at 2-5.

³ Tr. 844, 1143-44; R. D. & O. at 4-5.

⁴ Tr. 845-46, 896-97, 940-41, 981.

⁵ See Joint Exhibit (Ex. J-) 1 (“Article 54 – Meal Period - The employee shall be entitled to and required to take a lunch period of one (1) hour. Failure to take and properly record the required meal period may be cause for disciplinary action.”)

⁶ Tr. 87, 1001. Generally, drivers followed a “15-30-15” approach in which they took 15 minutes of meal on the drive to a hub, 30 minutes at the turnaround point, and another 15 minutes on the return trip to their point of origin. Tr. 87. UPS did not force Martin to adhere to this policy, but it required him to record his stops.

⁷ *Id.* at 921-922, 1120, 1142; R. D. & O. at 3-4. In practice, drivers who made short, unrecorded restroom stops (and did not purchase food) were not disciplined if those stops did not affect the drivers’ finish times. *Id.* at 31.

The CBA indicates that a driver may be fired immediately for certain specified acts, including “dishonesty.”⁸ Such acts are referred to as “cardinal sins.” However, UPS employed a progressive discipline policy for “non-cardinal sins” that required UPS to issue a warning letter to an employee prior to discharge, thereby allowing the employee to correct his or her behavior.⁹

Feeder drivers are required to log stops on UPS’s computer system through a console inside the feeder tractor.¹⁰ During his trips from Knoxville to Atlanta, Martin routinely stopped at the Golden Gallon truck stop in Carbondale, Georgia but did not record those stops on the computer system.¹¹ Between 1998 and 2001, UPS spoke to or warned Martin on numerous occasions for his violations of the contractual meal period policy by failing to record his stops or exceeding his meal period.¹²

In addition, Martin developed a pattern of arriving late for pre-load operations, jeopardizing not only the Knoxville operation but also operations at other UPS facilities.¹³ In response, James Brewer, Martin’s supervisor, conducted an “on the job supervisory” (OJS) ride with Martin on November 7, 2001. The purpose of an OJS ride is to assess and correct problem areas identified by the driver or supervisor.¹⁴ During this ride, Martin stated that he recorded his stops as meal time since he had to “[d]o it right by the books.”¹⁵ He was also reluctant to record any of his turnaround time in Atlanta as meal, but ultimately did so after Brewer’s insistence.¹⁶

⁸ See Ex. J-1 (CBA Article 52, Subsection A).

⁹ *Id.* (CBA Article 52, Subsections A and C); Tr. 701-02.

¹⁰ *Id.* at 37-38, 518, 744.

¹¹ R. D. & O. at 29-30.

¹² See, e.g., Ex. J-3-5, 13-15, 18-21, 25-29.

¹³ Tr. at 841-44.

¹⁴ *Id.* at 90, 885, 889.

¹⁵ *Id.* at 92.

¹⁶ *Id.* at 1003-04; R. D. & O. at 13; see, e.g., Ex. J-24 (“ALL DRIVERS MUST EXHAUST ALL OF THEIR MEAL PERIOD AT THEIR TURNAROUND POINT WHEN A DELAY OCCURS. YOU ARE ALLOWED TO SAVE 15 MINUTES FOR YOUR RETURN TRIP.”)(emphasis retained).

On the way to Atlanta on December 4, 2001, Martin took an 11-minute break at the Golden Gallon. He also spent 72 minutes at the Atlanta hub but did not record any meal period.¹⁷ Martin testified that on his return to Knoxville, he suffered stomach pains and needed to cease driving his vehicle. He exited the highway and stopped in Calhoun, Tennessee at 2:14 a.m. on December 5, 2001.¹⁸ Martin arrived back in Knoxville at least 90 minutes late, and he exceeded his contractual meal period by approximately 45 minutes.¹⁹

On December 7, 2001, Brewer asked Martin why he had been late returning on December 5. Martin testified that he told Brewer that he had become “sick and it would be unsafe for me to continue on, was the reason I went over.”²⁰ Martin also testified that he told Brewer that “they were in violation of 392.3 ... I was referring to the DOT handbook that states that for any reason, if you feel fatigued or sick, to pull over, if you feel fatigued or sick, to pull over, if you feel it wise, if your life or the lives around you are in danger.”²¹ Brewer told Martin that, because he exceeded his one hour meal time, UPS would be issuing him a Letter of Intent to Terminate.²²

¹⁷ Tr. 243, 245, 1019; Ex. J-37.

¹⁸ *Id.* at 98, 101.

¹⁹ *Id.* at 99, 248, 1017, 1020, 1022.

²⁰ *Id.* at 112.

²¹ *Id.* at 114. Martin was referring to the Department of Transportation regulation at 49 C.F.R. § 392.3 (2006):

No driver shall operate a commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver’s ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle. However, in a case of grave emergency where the hazard to occupants of the commercial motor vehicle or other users of the highway would be increased by compliance with this section, the driver may continue to operate the commercial motor vehicle to the nearest place at which that hazard is removed.

²² *Id.* at 113. The intent to terminate was reduced to a warning pursuant to the December 13, 2001 letter. *See infra.*

Martin then proceeded to conduct his run on December 7, 2001. On the way to Atlanta, he stopped at the Golden Gallon and did not record the stop.²³ He also stopped in Resaca, Georgia for 32 minutes and Calhoun, Tennessee for 51 minutes. Martin contends that he became sick during this run and needed to stop driving in order to sleep.²⁴ He arrived back in Knoxville 90 minutes late but had not called anyone at UPS to indicate that he would be late. He also exceeded his meal period by 23 minutes.²⁵ On December 12, 2001, Brewer confronted Martin regarding the December 7-8 run. Martin contends that he “told Brewer that [he] ... had become very sleepy while driving on December 8, 2001 and could not go any further.”²⁶ On December 13, 2001, UPS issued a warning letter to Martin for his failure to follow instructions regarding his meal periods.²⁷

On December 28, 2001, Martin began his run without informing anyone at UPS that he felt sick or fatigued. He stopped at the Golden Gallon for eight minutes without recording this stop. He arrived in Atlanta at 10:18 p.m. and departed one hour and seven minutes later without recording any meal time.²⁸ Martin then took two breaks totaling one hour and seven minutes on his return to Knoxville.²⁹ Martin testified that he made one of the two stops on the way back to Knoxville because of stomach illness, but did not recall recording both stops.³⁰ Martin arrived 60 minutes late in Knoxville on December 29, 2001.³¹

On January 4, 2002, Martin started his run at his usual time. He did not inform UPS that he felt sick or fatigued. He took his first meal break in Resaca, Georgia from 1:31 a.m. to 2:35 a.m., and a second meal break in Ringgold, Georgia from 3:11 a.m. to

²³ *Id.* at 249, 1028.

²⁴ *Id.* at 115-16.

²⁵ *Id.* at 115-16, 252, 1027.

²⁶ Complaint at 5.

²⁷ *See* Ex. J-39 (“On your report dates of December 4, and December 7, 2001, you again failed to follow the instructions that you have been given in relation to your meal period. Through prior training you have been instructed on all meal period policies and you have repeatedly been asked to comply with these policies. This notice is to ensure that you both understand and comply with these instructions in the future in order to avoid further disciplinary action up to and including discharge.”).

²⁸ Tr. 119-20, 255, 1034; R. D. & O. at 17.

²⁹ Tr. at 120-21.

³⁰ *Id.* at 121, 125.

³¹ *Id.* at 256; R. D. & O. at 17.

3:21 a.m.³² He also took a thirteen minute break in Carbondale that he did not log as a meal. In addition, he spent one hour and 46 minutes in Atlanta and did not log any of this time as a meal break. Martin returned to Knoxville one hour and 51 minutes later than his scheduled arrival time.³³

Martin met with members of UPS management on January 8, 2002, to discuss his meal period violations during the December 28-29, 2001 and January 4-5, 2002 runs. Martin testified that, at the meeting, he explained that he had problems staying awake during his runs.³⁴ Brewer told Martin that he would be receiving a “Letter of Intent to Terminate” for his failure to follow instructions regarding his meal periods. On January 9, 2002, UPS issued the letter.³⁵

Martin filed a grievance regarding his discharge³⁶ and continued working at UPS while the grievance was pending. UPS further investigated Martin’s failure to comply with UPS directives by observing him during his assignments.³⁷ Martin was observed on three occasions: (1) January 16, 2002, by Stipes and UPS Security Representative Allen Steele; (2) January 22, 2002, by Stipes and UPS Security Representative Frank Holdren; and (3) January 25, 2002, by Brewer and UPS Security Representative Jeff Rawlins. On each of these dates, the observers went to Carbondale and witnessed Martin stopping at the Golden Gallon for six to twelve minutes. Martin did not log any of these stops, nor

³² *Id.* at 127.

³³ *Id.* at 257-58, 1035; Ex. J-42.

³⁴ *Id.* at 127-29.

³⁵ *See* Ex. J-43 (“On January 8, 2002 a meeting was held to discuss your continuing failure to take your meal periods as instructed. Present at this meeting were Jim Brewer and Jeff Householder, UPS supervisors, Mike Selvidge, union steward, and you. A review of your record has revealed additional violations of the meal policy with the most recent occurrences being December 28, 2001 and January 4, 2002. Previous to this you were issued a final warning letter dated December 13, 2001 for failure to take your meal periods as instructed, and you were once again asked to comply with the meal period policy. Therefore, this letter will serve as an Intent to Discharge you from United Parcel Service.”).

³⁶ UPS explained why Martin’s discharge was considered an “intent” to discharge: “The Court asked why UPS would need to fire Martin twice, in effect, and the answer again is found in the structure of the progressive discipline policy under the Collective Bargaining Agreement. When UPS issues an intent-to-discharge letter, it is exactly that – a letter of UPS’s ‘intent’ to fire the employee – and if the employee brings a grievance, the employee stays on the job until the grievance process ends.” Respondent’s Post Trial Brief at 45.

³⁷ Ex. J-45-47; R. D. & O. at 20-21.

did he perform a required safety check of his vehicle. On two of these dates he also purchased food.³⁸

Martin met with UPS management on January 28, 2002. At the meeting, UPS informed Martin that his employment was being terminated, and he was escorted off of UPS's premises.³⁹ UPS issued Martin a "Discharge Notice Under Article 52 of Labor Agreement" on January 31, 2002.⁴⁰

Martin filed a second grievance protesting his termination for the violations observed on January 16, 22, and 25. Both grievances were heard by the Southern Region Area Parcel Grievance Committee (SRAPGC), which issues final rulings on grievances pursuant to the CBA.⁴¹ On May 24, 2002, the SRAPGC upheld Martin's discharge for failure to follow instructions regarding the contractual meal policy.⁴²

Martin filed his STAA complaint on June 4, 2002. In the complaint he alleges that he engaged in STAA-protected activity by: (1) ceasing to drive on December 5, 8, and 29, 2001, and January 5, 2002, due to fatigue and illness; (2) informing Brewer on December 12, 2001, that he had been unable to timely complete his route on December 5 and 8, 2001, due to fatigue and illness; and (3) informing Brewer on January 8, 2002, that he had been unable to timely complete his route on December 28, 2001, and January 5, 2002, due to fatigue and illness.⁴³ The Occupational Safety and Health Administration (OSHA) investigated Martin's complaint and issued a determination on November 4, 2002, finding no violation by UPS.

³⁸ *Id.*; Tr. 798-801, 906-11, 965.

³⁹ Tr. 132 ("At that point, they gave me a – they told me that I was being terminated for dishonesty. I think they used the phrase stealing time."); R. D. & O. at 23.

⁴⁰ *See* Ex. J-49 ("On January 28, 2002, a meeting was held to discuss your acts of dishonesty and falsifying your timecard. Present at this meeting were Bill Rutherford Labor Manager, Lindsay Stipes Feeder Manager, Allen Steele Security Supervisor, Eric Cottrell union steward and yourself. This is to advise you that you are being discharged from United Parcel Service effective January 28, 2002, for just cause, acts of dishonesty, falsifying your timecard which resulted in theft of paid time inclusive of the most recent occurrence on January 25, 2002.").

⁴¹ R. D. & O. at 23; Tr. 708-15.

⁴² Tr. 134-36; Ex. J-54-55; R. D. & O. at 23-24. The SRAPGC deadlocked on Martin's discharge for acts of dishonesty.

⁴³ Complaint at 2-7.

Martin objected to OSHA's determination and requested a hearing, which was held in Knoxville, Tennessee on April 2-4 and May 13-14, 2003. Following the hearing, the ALJ found that Martin "was disciplined and discharged for his consistent failure to follow instructions on how he should take and record his required meal period, and for acts of dishonesty occurring on January 16, 22, and 25, 2002."⁴⁴ The case is now before the ARB pursuant to the automatic review provisions of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1). The question we consider is whether substantial evidence in the record and the related legal analysis supports the ALJ's conclusion that UPS did not violate the STAA by terminating Martin's employment.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board (ARB or Board) her authority to issue final agency decisions under the STAA.⁴⁵ When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence on the record considered as a whole.⁴⁶ Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁴⁷

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 . . ."⁴⁸ Therefore, the Board reviews the ALJ's legal conclusions de novo.⁴⁹

DISCUSSION

The STAA provides that an employer may not "discharge," "discipline" or "discriminate" against an employee-operator of a commercial motor vehicle "regarding pay, terms, or privileges of employment" because the employee has engaged in certain

⁴⁴ R. D. & O. at 2.

⁴⁵ Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁴⁶ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

⁴⁷ *Clean Harbors Env'tl. Servs., Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

⁴⁸ 5 U.S.C.A. § 557(b) (West 1996).

⁴⁹ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

protected activities.⁵⁰ These protected activities include making a complaint “related to a violation of a commercial motor vehicle safety regulation, standard, or order.”⁵¹

To prevail on his claim, Martin must prove by a preponderance of the evidence that: (1) he engaged in protected activity; (2) UPS was aware of the protected activity; (3) UPS discharged, disciplined, or discriminated against him; and (4) the protected activity was the reason for the adverse action.⁵²

In STAA cases, the Board adopts the burdens of proof framework developed for pretext analysis under Title VII of the Civil Rights Act of 1964, as amended, and other discrimination laws, such as the Age Discrimination in Employment Act.⁵³ Under this burden-shifting framework, the complainant must first establish a prima facie case of discrimination. That is, the complainant must adduce evidence that he engaged in STAA-protected activity, that the respondent employer was aware of this activity, and that the employer took adverse action against the complainant because of the protected activity. Only if the complainant makes this prima facie showing does the burden of production shift to the employer to articulate a legitimate, non-discriminatory reason for the adverse action.

If the respondent carries this burden, the complainant then must prove by a preponderance of the evidence that the reasons offered by the respondent were not its true reasons but were a pretext for discrimination.⁵⁴ The ultimate burden of persuasion that the respondent intentionally discriminated because of the complainant’s protected activity remains at all times with the complainant.⁵⁵

⁵⁰ 49 U.S.C.A. § 31105(a)(1).

⁵¹ 49 U.S.C.A. § 31105(a)(1)(A).

⁵² *BSP Trans ,Inc.*, 160 F.3d at 45 (1st Cir. 1998); *Yellow Freight Sys. , Inc. v. Reich*, 27 F.3d 1133, 1138 (6th Cir. 1994); *Eash v. Roadway Express*, ARB No. 04-036, ALJ No. 1998-STA-28, slip op. at 5 (ARB Sept. 30, 2005); *Densieski v. La Corte Farm Equip.*, ARB No. 03-145, ALJ No. 2003-STA-30, slip op. at 4 (ARB Oct. 20, 2004).

⁵³ *Feltner v. Century Trucking, Ltd.*, ARB No. 03-118, ALJ Nos. 03-STA-1, 03-STA-2, slip op. at 4-5 (ARB Oct. 27, 2004); *Densienski*, slip op. at 4. See *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142-43 (2000); *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 513 (1993); *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Poll v. R.J. Vyhnalek Trucking*, ARB No. 99-110, ALJ No. 96-STA-35, slip op. at 5-6 (ARB June 28, 2002).

⁵⁴ *Calhoun v. United Parcel Serv.*, ARB No. 00-026, ALJ No. 99-STA-7, slip op. at 5 (ARB Nov. 27, 2002).

⁵⁵ *St. Mary’s Honor Ctr.*, 509 U.S. at 502; *Densieski*, slip op. at 4; *Gale v. Ocean Imaging & Ocean Res., Inc.*, ARB No. 98-143, ALJ No. 97-ERA-38, slip op. at 8 (ARB July 31, 2002); *Poll*, slip op. at 5.

Since UPS terminated Martin's employment, he certainly suffered adverse action. We also assume, without concluding,⁵⁶ that Martin engaged in STAA-protected activity. UPS articulated a legitimate, nondiscriminatory reason for firing Martin, i.e., his failure to adhere to the contractual meal policy. He repeatedly violated the CBA by failing to record his stops and taking more than one hour of meal period. Stipes testified that UPS decided to fire Martin only after verifying that he knew his stops were to be recorded and discovering that he continued to make unrecorded stops after his OJS ride on November 7, 2001.⁵⁷

Martin did not record his stops at the Golden Gallon, and he failed to take meal period time during his turnaround time in Atlanta.⁵⁸ His explanations for his failure to timely complete his runs on the dates indicated in the warning and discharge letters (i.e., that he was ill and/or fatigued) does not explain why he failed to adhere to the meal policy or properly log all of his stops. In fact, Martin "does not dispute that he knew that UPS had instructed him to 'log' all his stops on UPS's computer system."⁵⁹ There is substantial evidence in the record to support the ALJ's finding that Martin's "failure to log meal time ... did not stem from safety concerns,"⁶⁰ and her legal conclusion that UPS did not violate the STAA by terminating Martin's employment.

We reject Martin's contention that "[a]ssuming arguendo [he] was properly discharged for dishonesty, he is still entitled to relief under the STAA for the disciplinary letters issued on December 13, 2001 and January 9, 2002."⁶¹ The December 13, 2001

⁵⁶ See, e.g., *Erickson v. U.S. Envtl. Prot. Agency*, ARB No. 03-002, ALJ No. 1999-CAA-2, slip op. at 16 (ARB May 31, 2006) ("because Erickson's complaints fail on other grounds, we will assume without deciding that [she engaged in] protected activity."); *Trachman v. Orkin Exterminating Co., Inc.*, ARB No. 01-067, ALJ No. 2000-TSC-3, slip op. at 5 (ARB Apr. 25, 2003) ("For purposes of review we will assume, without deciding, that Trachman's complaints were protected under the whistleblower provisions....").

⁵⁷ Tr. 889-90. See also Tr. 1170 (Rutherford) ("The intent to discharge was presented for failure to follow instructions. It was failure to log all stops. It was failure to take meal at turnaround. And it was failure to just simply follow instructions. It did not center around one issue").

⁵⁸ R. D. & O. at 29-30; Tr. at 85-86; Ex. J-55.

⁵⁹ Complainant's Post-Hearing Reply Brief at 18. We reject Martin's argument at pages 18-20 of his brief that logging his personal stops through its computer system would have forced him to falsify his "record of duty status."

⁶⁰ R. D. & O. at 31.

⁶¹ Complainant's Brief at 25.

Warning Notice addresses Martin's "continuing failure to follow instructions regarding the taking of the contractual meal period."⁶² The January 9, 2002 Intent to Discharge Notice points to his "failure to take [his] meal periods as instructed" and "additional violations of the meal policy with the most recent occurrences being December 28, 2001 and January 4, 2002."⁶³ Again, Martin's contention that he was sick on certain dates does not explain his failure to follow UPS's policy regarding the recording of meal periods.⁶⁴

We also concur with the ALJ's finding that Martin was not treated differently than other UPS drivers.⁶⁵ The record indicates that other UPS employees who violated the meal policy were able to correct their behavior before it escalated to the point of discharge.⁶⁶ Wesley Trotterchaud, Business Agent for Teamsters Local 519, testified that he was not aware of any other driver with a disciplinary record similar to Martin's.⁶⁷ Martin agreed that he made 55 runs between October 1, 2001, and the date he was fired, but the only time he arrived on-time in Knoxville was November 7, 2001, the date of his OJS with Brewer.⁶⁸ Substantial evidence supports the ALJ's finding that UPS established a legitimate, nondiscriminatory reason for terminating Martin's employment and that Martin failed to prove that this reason was pretextual. Well established legal precedent and analysis supports the ALJ's conclusion that UPS did not discriminate against Martin in violation of the STAA.

CONCLUSION

We have reviewed the record and find that substantial evidence on the record as a whole supports the ALJ's factual findings and that they are therefore conclusive. 29

⁶² Ex. J-39.

⁶³ Ex. J-43.

⁶⁴ See, e.g., *Hardy v. Mail Contractors of America*, ARB No. 03-007, ALJ No. 2002-STA-22, slip op. at 3 (ARB Jan. 30, 2004)("Complainant was not engaged in protected activity when he refused to comply with the Respondent's clearly articulated policy concerning the logging of off-duty time.")

⁶⁵ R. D. & O. at 30-31.

⁶⁶ *Id.*; Tr. 892, 915-16.

⁶⁷ *Id.* at 727.

⁶⁸ *Id.* at 481.

C.F.R. § 1978.109(c)(3). The ALJ correctly applied the relevant law in a thorough, well-reasoned decision dismissing the complaint. Accordingly, we **DENY** Martin's complaint.

SO ORDERED.

DAVID G. DYE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge