



In the Matter of:

JEFFREY MARK MITCHELL,

COMPLAINANT,

ARB CASE NO. 01-059

ALJ CASE NO. 00-STA-39

v.

DATE: September 28, 2001

LINK TRUCKING, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

David J. Holdsworth, Esq., *Sandy, Utah*

For the Respondent:

Cass C. Butler, Esq., *Callister, Nebeker, and McCullough, Salt Lake City, Utah*

FINAL DECISION AND ORDER

Complainant Jeffrey Mark Mitchell filed the instant complaint with the Labor Department's Occupational Safety and Health Administration ("OSHA")^{2/} alleging that Respondent Link Trucking, Inc., ("Link") took a number of actions against him and ultimately terminated his employment in violation of the employee protection provisions of the Surface Transportation Assistance Act ("STAA"), 49 U.S.C.A. §31005 (West 1997). OSHA investigated the matter and found no merit to the complaint. Mitchell objected to that determination, and the matter was referred to an Administrative Law Judge ("ALJ") for a hearing, pursuant to 29 C.F.R. §1978.105.

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

^{2/} OSHA is the agency within the Department charged with investigating complaints that an employer has violated the STAA's whistleblower protection provisions. 29 C.F.R. §1978.102(c) (2000).

The ALJ found that Mitchell engaged in various activities protected under the STAA. In addition, the ALJ found that Link took adverse action against Mitchell by terminating his employment. However, using a “dual motive” analysis, the ALJ concluded that Link’s actions were not motivated by retaliation for Mitchell’s protected activity and that Link, therefore, did not violate the employee protection provisions of the STAA. In a [Recommended] Decision and Order (RD&O), the ALJ recommended that Mitchell’s complaint be dismissed.

The ALJ’s decision is before the Administrative Review Board pursuant to the automatic review procedures under 29 C.F.R. §1978.109(c)(1). Under the STAA implementing regulations, the Board is bound by the factual findings of the ALJ if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. §1978.109(c)(3). The Board reviews the ALJ’s conclusions of law *de novo*. *Johnson v. Roadway Express, Inc.*, ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000) *citing Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

Pursuant to 29 C.F.R. §1978.109(c)(2), the Board invited both parties to file briefs in support of, or in opposition to, the ALJ’s recommended decision. Neither party elected to file briefs.

We have reviewed the record in this case and find the ALJ’s conclusion that Link did not violate the STAA to be supported fully by the record. We adopt the attached ALJ’s RD&O, noting only that when a fact finder affirmatively concludes that an adverse action is not motivated in any way by an unlawful motive, it is appropriate to find simply that the complainant has not proven his claim of discrimination and it is unnecessary to rely on a “dual motive” analysis. *See, e.g., Schulman v. Clean Harbors Env’tl. Servs., Inc.*, ARB No. 99-15, ALJ No. 98-STA-24 (ARB Oct. 18, 1999). Accordingly, Mitchell’s complaint is **DISMISSED**.

SO ORDERED.

PAUL GREENBERG
Chair

RICHARD A. BEVERLY
Alternate Member