



**In the Matter of:**

**GLENN RIPPLEY,**

**ARB CASE NO. 06-015**

**COMPLAINANT,**

**ALJ CASE NO. 2005-STA-58**

**v.**

**DATE: February 27, 2007**

**NATIONAL EQUIPMENT  
SERVICES, INC. (NES),**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER DISMISSING COMPLAINT**

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA).<sup>1</sup> On June 16, 2005, Glenn Rippley filed a complaint with the Secretary of Labor alleging that his employer, NES, violated STAA section 31105 when it laid him off in retaliation for engaging in protected activity under STAA. Section 31105 provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules.

After investigating Rippley's complaint, the Occupational Safety and Health Administration (OSHA) found that NES did not violate the STAA. Rippley objected to OSHA's findings and requested a hearing before a Labor Department Administrative Law Judge (ALJ).

The ALJ set a hearing for October 12, 2005. Rippley failed to appear on October 12. On October 14, 2005, the ALJ issued an Order to Show Cause why Rippley's complaint should not be dismissed due to his abandonment of the case. Rippley did not respond to the Show Cause order. On November 14, 2005, the ALJ issued an order recommending that Rippley's complaint be dismissed due to abandonment.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2007), and implementing regulations, 29 C.F.R. Part 1978 (2006).

The Administrative Review Board “shall issue the final decision and order based on the record and the decision and order of the administrative law judge” in cases arising under section 31105.<sup>2</sup>

On November 17, 2005, the Board issued a Notice of Review and Briefing Schedule permitting the parties to submit briefs in support of or in opposition to the ALJ’s order. Neither party responded to the briefing notice.

The rules of procedure applicable to STAA hearings provide for dismissal of a complaint based on abandonment:

A party shall be deemed to have abandoned a request for hearing if neither the party nor his or her representative appears at the time and place fixed for the hearing and either (a) prior to the time for hearing such party does not show good cause as to why neither he or she nor his or her representative can appear or (b) within ten (10) days after the mailing of a notice to him or her by the administrative law judge to show cause, such party does not show good cause for such failure to appear and fails to notify the administrative law judge prior to the time fixed for hearing that he or she cannot appear.

29 C.F.R. § 18.39(b).<sup>3</sup>

Dismissal as a sanction for failure to prosecute is a matter within the administrative law judge’s sound discretion.<sup>4</sup> Rippley failed to comply with procedural orders and neither appeared for nor explained his absence from the hearing. Having considered the record and the ALJ’s reasoning, we conclude that Rippley’s complaint should be dismissed because he abandoned his claim.

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<sup>2</sup> 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001).

<sup>3</sup> *Cf. Rose v. ATC Vancom, Inc.*, ARB No. 05-091, ALJ No. 2005-STA-014, slip op. at 3 (ARB Aug. 31, 2006).

<sup>4</sup> *Ferguson v. Bomac Lubricant Techs., Inc.*, ARB No. 04-057, ALJ No. 2002-STA-27 (ARB June 29, 2005).

Accordingly, the Board **ACCEPTS** the ALJ's Recommended Order and **DISMISSES** Rippley's complaint.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**DAVID G. DYE**  
**Administrative Appeals Judge**