



In the Matter of:

WILLIAM BAUMAN,

ARB CASE NO. 01-016

COMPLAINANT,

ALJ CASE NO. 99-STA-45

v.

DATE: June 29, 2001

U.S. CARGO AND COURIER SERVICE,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

William Bauman, *Pro Se*, Cleveland, Ohio

FINAL DECISION AND ORDER

Complainant William Bauman filed the instant complaint with the Labor Department's Occupational Safety and Health Administration ("OSHA")^{2/} alleging that Respondent U.S. Cargo and Courier Service terminated him in violation of the employee protection provisions of the Surface Transportation Assistance Act ("STAA"), 49 U.S.C.A. §31005 (West 1997). After an investigation, OSHA determined that Bauman was not covered by the STAA and dismissed his complaint. Bauman 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 (2000). Respondent moved to dismiss the claim on the grounds that Bauman was not covered by the STAA.

At the hearing, Respondent's Vice-President of Risk Management and Human Services testified that the trucks driven by Bauman did not exceed ten thousand pounds. That testimony was supported by registration documents issued by the State of Ohio Bureau of Motor Vehicles showing

^{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 gross weight for each of the vehicles in question.. Bauman offered no contrary evidence or testimony. Inasmuch as the STAA generally covers commercial motor vehicles that are involved in transporting cargo if they have a gross vehicle rating or weight in excess of 10,001 pounds, the ALJ recommended that Respondent's motion to dismiss be granted.

JURISDICTION

The decision of the ALJ is before the Board pursuant to the automatic review procedures under 29 C.F.R. §1978.109(c)(1).

STANDARD OF REVIEW

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).

DISCUSSION

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. In response, Bauman filed a number of letters in which he alleges that Respondent's vehicles are unsafe. However, Bauman did not address the central issue raised by the ALJ in his recommended decision – *i.e.*, whether he is covered by the employee protection provisions of the STAA.

Neither the ALJ nor this Board may extend a statute's coverage beyond the limits established by Congress. The whistleblower protection provisions of the STAA only apply to "employees" as that term is defined by statute. 49 U.S.C.A. §31105. In relevant part, the statute defines "employee" as follows:

In this subchapter –

(2) "employee" means a driver of a *commercial motor vehicle* (including an independent contractor when personally operating a *commercial motor vehicle*), a mechanic, a freight handler, or an individual not an employer, who –

(A) directly affects commercial motor vehicle safety in the course of employment by a commercial motor carrier[.]

49 U.S.C.A. §31101 (West 1987) (emphasis supplied). The term "commercial motor vehicle" also is defined in the statute:

In this subchapter –

(1) “commercial motor vehicle” means . . . a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle –

(A) *has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;*

(B) is designed to transport more than 10 passengers including the driver; or

(C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title .

. . .

49 U.S.C.A. §31101 (West Supp. 2000) (emphasis supplied).

As a threshold matter in a discrimination case, the complainant has the burden of demonstrating membership in a protected class. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973) (Title VII); *Schneiker v. Fortis Ins. Co.*, 200 F.3d 1055, 1059 (7th Cir. 2000) (under ADA, plaintiff has burden of showing disability within meaning of statute). In this case, an indispensable element of Bauman’s claim was to demonstrate that he was an “employee” within the STAA’s definition, which perforce means that he operated a “commercial motor vehicle.” Inasmuch as Bauman was engaged in transporting general cargo (*i.e.*, not passengers or hazardous materials), he needed to show that he operated a vehicle with a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds. Bauman made no such proof; moreover, there is substantial and undisputed evidence in the record of this case showing that the vehicles Bauman operated were below the 10,001 pound limit. In light of that evidence, we find that Bauman is not covered by the STAA and concur with the ALJ’s recommendation to grant Respondent’s motion to dismiss.

SO ORDERED.

PAUL GREENBERG

Chair

RICHARD A. BEVERLY

Alternate Member