



In the Matter of:

PETER P. CEFALU,

**ARB CASE NO. 04-103
04-161**

COMPLAINANT,

ALJ CASE NO. 2003-STA-55

v.

DATE: May 12, 2006

ROADWAY EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

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

For the Respondent:

Lisa A. McGarrity, Esq., *Franczek Sullivan, P.C., Chicago, Illinois*

ORDER DENYING STAY

Peter P. Cefalu complained that Roadway Express, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 1997), and its implementing regulations, 29 C.F.R. Part 1778 (2005), when it terminated his employment on February 21, 2002. An Administrative Law Judge issued a Recommended Decision and Order (R. D. & O.) on May 20, 2004, in which he concluded that Roadway violated the STAA. In our January 31, 2006 decision, we approved the R. D. & O., and affirmed the ALJ's award of reinstatement, back pay, and other relief. *Cefalu v. Roadway Express, Inc.*, ARB Nos. 04-103, 04-161; ALJ No. 2003-STA-55 (ARB Jan. 31, 2006). We also accepted the ALJ's Recommended Attorney's Fee Order dated August 9, 2004. *Id.*

Roadway has filed a petition to review our decision in the United States Court of Appeals for the Seventh Circuit. Before us now is Roadway's April 20, 2006 Motion to Stay Enforcement of our Final Decision and Order pending the outcome of its appeal. On May 1, 2006, Cefalu filed a Memorandum in Opposition. For the reasons that follow, we deny the motion to stay.

DISCUSSION

This Board applies a four-part test to determine whether to stay its own actions: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the Board grants the stay; and (4) the public interest in granting a stay. *Dutkiewicz v. Clean Harbors Envtl. Servs., Inc.*, ARB No. 97-090, ALJ No. 1995-STA-34 (ARB Sept. 23, 1997) (arising under the STAA). *See also Hobby v. Georgia Power Co.*, ARB Nos. 98-166, 98-169; ALJ No. 90-ERA-30 (ARB Apr. 20, 2001) (arising under the Energy Reorganization Act). Roadway fails to meet these criteria.

1. *Roadway not likely to prevail on the merits*

Cefalu was a commercial truck driver for Roadway. In the form of an affidavit, he provided testimony related to motor vehicle safety at another driver's grievance hearing. Roadway knew about Cefalu's safety complaint, because its representative was there. And Roadway fired Cefalu within a few hours of the hearing, thereby establishing the requisite causal relationship between Cefalu's STAA-protected activity and the termination of his employment. Slip op. at 6-7.

Roadway sought to defend its decision to fire Cefalu on the ground that he had lied on a job application more than two years before. But during discovery, Roadway refused to disclose when it had obtained this information and from whom. Because of the sanctions the ALJ imposed, no Roadway witness could testify about its reason for discharging Cefalu. Accordingly, Cefalu prevailed on his evidence that he was fired for engaging in STAA-protected activity. Slip op. at 5-7.

We upheld the ALJ's sanction as within his discretion, and, based upon substantial evidence, upheld his finding of a causal connection between Cefalu's safety complaint and his termination. Slip op. at 4-5, 7. Thus, Cefalu proved that Roadway violated the STAA's worker-protection provision. Roadway's Motion for Stay provides no reasons why it is likely to succeed on appeal. *See* Motion for Stay.

2. *Roadway not likely to be irreparably harmed*

We next consider whether Roadway would be irreparably harmed if we do not grant a stay. Absent proof of hostility between the parties, reinstatement is an automatic remedy. 49 U.S.C.A § 31105(b)(3)(A)(ii); *Clifton v. United Parcel Serv.*, ARB No. 97-

045, ALJ No. 94-STA-0016 (ARB May 14, 1997). Roadway did not argue to us previously and does not assert on behalf of its Motion for Stay that it would suffer irreparable harm with Cefalu's reinstatement.

Roadway argues only that "[t]he Board's January 31, 2006 Order would require Roadway to expend \$80,000 in payments to Cefalu and his counsel, as well as the extensive time and resources required to post notices of the decision in all of its trucking terminals throughout the country." Motion for Stay. But "mere" financial loss is insufficient to support a finding of irreparable harm. *Dutkiewicz*, slip op. at 3. Thus, Roadway fails to show that it would suffer irreparable harm if we deny a stay.

3. *Prospect that Cefalu will be harmed*

Roadway terminated Cefalu's employment on February 21, 2002. The ALJ recommended reinstatement, back pay and other relief on May 20, 2004. This Board affirmed the ALJ's R. D. & O. on January 31, 2006. Cefalu has waited more than four years to have his pay and benefits restored. He may continue to suffer harm. Roadway does not address, and therefore does not appear to dispute, the harm to Cefalu if the stay is granted.

4. *Public interest does not favor stay*

The STAA is not only a worker protection statute. It is a public protection statute insofar as it provides job protection to commercial truck drivers who report deficiencies that could harm the motoring public. As we have said with respect to reinstatement, "The public interest militates against a stay." *Dutkiewicz*, slip op. at 3 (both Congress and the Department of Labor have determined that reinstatement should have immediate effect). Again, in favor of a stay Roadway argues only its own economic interests. We find and conclude that the public interest would not be served in granting Roadway's motion to stay reinstatement and other relief in this case.

Finally, we briefly address the only legal authority that Roadway cites to us in favor of its motion, 29 C.F.R. § 1978.115 (2005). Motion to Stay. The regulation allows an ALJ or the Secretary of Labor (acting through a delegation of her authority to this Board) "for good cause shown" to waive any of the rules implementing the STAA or to issue "such orders as justice . . . requires." Roadway does not provide any precedent for the application of § 1978.115 to the granting of a motion to stay. In favor of "good cause" and "justice," Roadway makes only an argument about the effect on its economic

interests. Even if we were to apply § 1978.115 to this case, rather than the four-part test we have applied, the outcome would not be different.

In short, Roadway's Motion to Stay is **DENIED**.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge