



In the Matter of:

RICKY D. FORREST,

ARB CASE NO. 06-157

COMPLAINANT,

ALJ CASE NO. 2006-STA-008

v.

DATE: February 29, 2008

EQUITY TRANSPORTATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Edward Malinzak, Esq., Doyle & Malinzak, Grand Rapids, Michigan

**FINAL DECISION AND ORDER GRANTING REQUEST TO WITHDRAW
OBJECTIONS TO SECRETARY'S FINDINGS**

The Complainant, Ricky D. Forrest, filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that the Respondent, Equity Transportation, violated the employee protection provisions of section 405 of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations² when it forced him to resign from his position as a truck driver because it withheld wages, used poor dispatch practices to violate Department of Transportation hours of service regulations, and

¹ 49 U.S.C.A. § 31105 (West 2007). The STAA has been amended since Forrest filed his complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amended provisions are applicable to this complaint because even if the amendments applied, they are not at issue in this case and thus would not affect our decision.

² 29 C.F.R. Part 1978 (2007).

poorly maintained its vehicles. OSHA investigated the complaint and found it to have no merit (Secretary's preliminary findings). Forrest objected and requested a hearing by a Department of Labor Administrative Law Judge (ALJ).³

The ALJ to whom the case had been assigned scheduled a hearing for October 3, 2006, in Houston, Texas. On September 16, 2006, Forrest forwarded a "Motion to Dismiss" by e-mail to the ALJ, in which Forrest stated that he was "unable to continue prosecuting the charges of 2006-STAA-8" and requested the ALJ to "[p]lease accept this motion to dismiss."⁴

On September 22, 2006, the ALJ issued a Recommended Order of Dismissal (R. O.). The ALJ acknowledged Forrest's withdrawal of his request for a hearing and noted that Equity Transportation was served with Forrest's Motion to Dismiss and had filed a response indicating that it did not object.

The STAA and its regulations do not specifically provide for withdrawal of a complaint once the case has been referred to an administrative law judge for hearing, but as the ALJ recognized, the STAA's implementing regulations do provide:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.^{5]}

The ALJ construed Forrest's Motion to Dismiss as a withdrawal of objections to the Secretary's preliminary findings pursuant to 29 C.F.R. § 1978.111(c), cancelled the hearing, and issued an order recommending that the Secretary's findings be reinstated, and the matter be dismissed.

The ALJ forwarded the file and his recommended decision to the Administrative Review Board for review and to issue a final agency decision pursuant to the STAA's automatic review provisions.⁶ The Secretary of Labor has delegated to the Board her

³ See 29 C.F.R. § 1978.105(a).

⁴ Complainant's Motion to Dismiss at 1.

⁵ 29 C.F.R. § 1978.111(c).

⁶ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

authority to issue final agency decisions under the STAA.⁷ When reviewing STAA cases, the Board is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁸ 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"⁹ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹⁰

The Board issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs with the Board in support of or in opposition to the ALJ's recommended order within thirty days of the date on which the ALJ issued it.¹¹ Equity Transportation filed a brief urging the Board to affirm the ALJ's R. O. Forrest did not file a brief with the Board.

Forrest has not objected to the ALJ's decision to treat his Motion to Dismiss as a request to withdraw his objections to the Secretary's preliminary findings and we know of no reason to reject the ALJ's recommended decision. Accordingly, we **GRANT** the request to withdraw the objections to the Secretary's preliminary findings and **AFFIRM** those findings denying Forrest's complaint as provided in 29 C.F.R. § 1978.111(c).

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁷ Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁸ 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).

⁹ 5 U.S.C.A. § 557(b) (West 1996).

¹⁰ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹¹ *See* 29 C.F.R. § 1978.109(a).