



**In the Matter of:**

**RICK JACKSON,**

**ARB CASE NO. 07-005**

**COMPLAINANT,**

**ALJ CASE NO. 2006-STA-003**

**v.**

**DATE: June 30, 2008**

**EAGLE LOGISTICS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Rick Jackson, *pro se*, Jonesville, Wisconsin**

**FINAL DECISION AND ORDER**

The Complainant, Rick Jackson, contends that the Respondent, Eagle Logistics, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended, 49 U.S.C.A. § 31105 (West 2007), and its implementing regulations, 29 C.F.R. Part 1978 (2007). For reasons stated herein, we affirm the Administrative Law Judge's (ALJ) Recommended Decision and Order (R. D. & O.) issued on October 3, 2006, that Eagle did not violate the STAA.

## BACKGROUND

We adopt and summarize the ALJ's findings of fact. Jackson was a tractor-trailer driver, working for Eagle, a shipping company subject to the STAA, from June 15, 2005, until July 25, 2005. R. D. & O. at 1; Respondent's Exhibit (RX) 4 (State of Wisconsin Department of Workforce Development Letter).

On June 15, Jackson's first day working for Eagle, he was late for a scheduled appointment with a client. Transcript (Tr.) at 17. Jackson was also late for scheduled appointments on June 16 and June 23. Tr. at 92, 126. On June 20 Jackson falsified his driver's log, altering the listed miles traveled and time spent traveling. R. D. & O. at 8; Tr. at 163 - 64. At the hearing, Jackson admitted that he also falsified his driver's logs on other occasions. R. D. & O. at 8; Tr. at 197.

On June 23, Dean Raasch, President of Eagle, called Jackson and asked why he was arriving late for scheduled trips. R. D. & O. at 8; Tr. at 175-77. In response to these questions, Jackson told Raasch to "get fucked" and threatened Raasch with "calling the DOT [(Department of Transportation)]." *Id.*

On July 22, Jackson failed to submit his driver's logs as Eagle required. Tr. at 116. On July 23, Raasch called Jackson, while he was on the road to get a status update for Jackson's current shipment. Tr. at 120. Jackson "indicated that everything was fine." *Id.* On July 25, Jackson arrived late for his scheduled delivery. Tr. at 119.

Later that day, Eagle called Jackson to terminate his employment. RX 3 (July 26, 2005 Letter of Termination). On July 26, Eagle issued Jackson a letter documenting Eagle's termination of Jackson's employment. *Id.* The letter stated "the reason for termination of employment was for unsatisfactory work performance." *Id.* The letter listed eight specific incidents that contributed to Jackson's poor work performance, including arriving late for scheduled appointments, falsifying driver logs, and insubordinate behavior. *Id.*

Jackson filed a complaint with the Occupational Safety and Health Administration (OSHA) on August 1, 2005, asserting that Eagle fired him "in retaliation for his refusal to drive because on July 23, 2005, [Jackson] was too tired to continue driving and needed to take [his] 10 hour rest break; and because [he] had a late delivery on July 25, 2005, which [Jackson claimed he] could not make without violating . . . 'hours of service.'" OSHA Findings (OF) at 1, Sept. 22, 2005. OSHA denied Jackson's complaint and he timely requested a hearing before a Department of Labor administrative law judge. On October 3, 2006, the ALJ found that Jackson "failed to establish that he engaged in protected activity, that such activity had any causal connection to his termination, or that the nondiscriminatory reasons offered by the Respondent were mere pretexts." R. D. & O. at 10. Accordingly, the ALJ denied his claim.

## DISCUSSION

The Secretary of Labor has delegated to the Administrative Review Board the authority to issue final agency decisions under, inter alia, the STAA and the implementing regulations at 29 C.F.R. Part § 1978. Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002). This case is before the Board pursuant to the automatic review provisions found at 29 C.F.R. § 1978.109(a). We are 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); *BSP Transp., Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1063 (5th Cir. 1991). However, the Board reviews questions of law de novo. See *Yellow Freight Sys., Inc. v. Reich*, 8 F.3d 980, 986 (4th Cir. 1993); *Roadway Express*, 929 F.2d at 1063.

The STAA, 49 U.S.C.A. § 31105(a), provides that an employer may not “discharge,” “discipline,” or “discriminate” against an employee-operator of a commercial motor vehicle “regarding pay, terms, or privileges of employment” when the employee refused to drive because “operation [would] violate[ ] a regulation, standard, or order of the United States related to commercial motor vehicle safety or health,” 49 U.S.C.A. § 31105(a)(B)(i), or because “the employee has a reasonable apprehension of serious injury to the employee or public because of the vehicle’s unsafe condition.” 49 U.S.C.A. § 31105(a)(B)(ii).

To prevail on a claim of unlawful discrimination under the STAA’s whistleblower protection provisions, the complainant must allege and later prove by a preponderance of the evidence that he is an employee and the respondent is an employer; that he engaged in protected activity; that his employer was aware of the protected activity; that the employer discharged, disciplined, or discriminated against him; and that the protected activity was the reason for the adverse action. *Eash v. Roadway Express*, ARB No. 04-063, ALJ No. 1998-STA-028, slip op. at 5 (ARB Sept. 30, 2005); *Forrest v. Dallas & Mavis Specialized Carrier Co.*, ARB No. 04-052, ALJ No. 2003-STA-053, slip op. at 3-4 (ARB July 29, 2005); *Densieski v. La Corte Farm Equip.*, ARB No. 03-145, ALJ No. 2003-STA-030, slip op. at 4 (ARB Oct. 20, 2004); *Regan v. Nat’l Welders Supply*, ARB No. 03-117, ALJ No. 2003-STA-014, slip op. at 4 (ARB Sept. 30, 2004).

In this case, it is undisputed that Jackson was an Eagle employee and Eagle was an employer subject to the STAA, and that Eagle fired Jackson. At issue, however, is whether Jackson engaged in protected activity and whether Eagle retaliated against Jackson based on that protected activity. If Jackson fails to prove that he engaged in protected activity, a requisite element of his case, his entire claim must fail. *Eash*, slip op. at 5; *Forrest*, slip op. at 4.

### **1. Protected Activity**

When Jackson filed his complaint with OSHA, he argued that he engaged in protected activity when he refused to drive on July 23, 2005, and arrived late to a delivery

on July 25, 2005. *See* OF at 1. Although he raised these issues to OSHA, he never testified to them at trial. When Jackson argued before the ALJ, he only attempted to negate the rationales for termination given by Eagle in the July 26 letter rather than provide instances of protected activity. R. D. & O. at 8; *see* RX 3. The ALJ found that Jackson “never testified to anything that qualifies as protected activity.” R. D. & O. at 7. In fact, when Jackson testified about his actions on July 25, the date Jackson told OSHA he engaged in protected activity, Jackson testified that he told Eagle that “everything was fine” with his shipment. Tr. at 120. Substantial evidence on the record supports this finding. Moreover, Jackson does not argue in his brief to the Board the existence of any incident that would qualify as protected activity. *See* Jackson’s Brief at 1.

Since Jackson did not argue other instances of protected activity, and in light of Jackson’s pro se status, the ALJ addressed, although not argued by Jackson as such, whether Jackson’s threat to “go to the DOT” qualified as a complaint under 49 U.S.C.A. § 31105(a)(1)(A). R. D. & O. at 8. The ALJ found that Jackson’s threat did “not rise to the level of ‘filing a complaint.’” *Id.*, quoting *Clean Harbors Env’tl. Servs., Inc. v. Herman*, 146 F.3d 12, 22 (1st Cir. 1998). Given the context of the phone call with Raasch and the fact that Jackson, while working for Eagle for over a month following the threat, never attempted to actually file any type of complaint with the DOT, the ALJ was correct in finding that this threat does not qualify as protected activity.

The record supports the ALJ’s finding that Jackson has not demonstrated any participation in protected activity. Accordingly, the ALJ correctly held that Jackson did not engage in protected activity, and so his STAA complaint failed. R. D. & O. at 8.

## **2. Causation**

In terminating Jackson’s employment, Eagle provided, in a letter on July 26, eight legitimate nondiscriminatory reasons, including numerous instances of arriving late for deliveries, falsifying logs, and insubordination. *See* RX 3. The ALJ found that Eagle “introduced adequate evidence to establish legitimate, nondiscriminatory reasons for the discharge.” R. D. & O. at 9. Indeed, Jackson had a history, from the day he started with Eagle, of arriving late for appointments. Tr. at 17. He falsified logs as charged by Eagle, and even admitted at the hearing that he falsified other logs, which Raasch did not catch. R. D. & O. at 8. Jackson has demonstrated no reason to doubt the authenticity of Eagle’s reasons for terminating his employment.

To establish causation, Jackson must show that he suffered an adverse action because he engaged in protected activity. *See Minne v. Star Air, Inc.*, ARB No. 05-005, 2004-STA-026, slip op. at 15 (ARB Oct. 31, 2007). The ALJ found that even if Jackson had established his threat to go to the DOT as protected activity, Jackson offered “no direct or circumstantial evidence of any causal link between that threat and his termination one month later.” R. D. & O. at 9. The ALJ also found that “mere temporal proximity is inadequate to create an inference of causation” due to “intervening events and evidence of legitimate, nondiscriminatory reasons for the Complainant’s discharge.” *Id.*

## **CONCLUSION**

In sum, we hold that substantial evidence in the record supports the ALJ's findings. We hold that Jackson has not demonstrated that he engaged in protected activity, nor has he proved that Eagle retaliated against him for engaging in protected activity. Accordingly, we **AFFIRM** the ALJ's R. D. & O. and **DENY** Jackson's complaint.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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