



**In the Matter of:**

**CECIL H. FLETCHER,**

**ARB CASE NO. 07-094**

**COMPLAINANT,**

**ALJ CASE NO. 2005-STA-047**

**v.**

**DATE: March 27, 2009**

**MORRISTOWN DRIVING SERVICE,**

**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> STAA 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.

On June 24, 2005, Cecil Fletcher filed a complaint with the Secretary of Labor alleging that his employer, Morristown Driving Service (Morristown), violated STAA, Section 31105, when it reported to D.A.C., a clearinghouse for drivers, that he was terminated from Morristown for safety reasons. Fletcher claimed Morristown terminated him for an accident that was not his fault. Occupational Safety and Health Administration (OSHA) Order at 1.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2005), and implementing regulations, 29 C.F.R. Part 1978 (2006). The STAA has been amended since Fletcher filed his complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

OSHA found that Fletcher did not demonstrate that Morristown violated the STAA and dismissed his case. *Id.*; 49 U.S.C.A. § 31105(b). Fletcher objected to OSHA's findings and the case was assigned to an Administrative Law Judge (ALJ).

After a pre-hearing conference, the ALJ issued a show cause order asking Fletcher to show cause why his case should not be dismissed for failure to prosecute. Fletcher did not respond. When asked about the status of his case by the ALJ's office following his failure to respond to the show cause order, Fletcher replied that he was not able to nor interested in pursuing his claim. R. D. & O. at 2. The ALJ then dismissed the case on August 20, 2007.

The Secretary of Labor has delegated to the Administrative Review Board (ARB or 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).

On August 29, 2007, 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 filed a brief.

Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution.<sup>2</sup> This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."<sup>3</sup> Like the courts, the Department of Labor's Administrative Law Judges and this Board must necessarily manage their dockets in an effort to achieve the orderly and expeditious disposition of cases.

Fletcher indicated to the ALJ that he did not intend to pursue his case. The ALJ issued a show cause order asking why the case should not be dismissed. Fletcher did not respond and the ALJ dismissed the case. Based upon the record before us, we conclude that well-established legal precedent supports the ALJ's recommended decision to dismiss.<sup>4</sup> Thus, the Board will affirm an ALJ's recommended decision and order on the

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<sup>2</sup> *Link v. Wabash R. R. Co.*, 370 U.S. 626, 629-30 (1962).

<sup>3</sup> *Id.* at 630-631.

<sup>4</sup> *Rose v. ATC Vancom, Inc.*, ARB No. 05-091, ALJ No. 2005-STA-014 (ARB Aug. 31, 2006).

grounds of abandonment, where the facts dictate that a party has failed to prosecute his or her case.<sup>5</sup>

#### **CONCLUSION**

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

**SO ORDERED.**

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

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>5</sup> *Kruml v. Patriot Express*, ARB 03-015, ALJ No. 2002-STA-007, slip op. at 4-5 (ARB Feb. 25, 2004); *Assistant Sec'y for OSH and Reichelderfer v. Bridge Transp., Inc.*, ARB No. 02-068, ALJ No. 2001-STA-040, slip op. at 3 (ARB Aug. 29, 2003).