

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 25 February 2005

Case No.: 2004-STA-0009

In the Matter of:

EDDIE L. HUTCHINS,
Complainant

v.

TNT LOGISTICS,
Respondent

BEFORE: JOSEPH E. KANE
Administrative Law Judge

RECOMMENDED ORDER OF DISMISSAL

This proceeding arises under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. app. § 31105, and the regulations promulgated thereunder at 29 C.F.R. Part 1978. Section 405 of the 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 be in violation of those rules.

On October 10, 2003, Richard T. Gilchrist, Area Director for the United States Department of Labor, Occupational Safety and Health Administration issued findings which stated that, after a full investigation, the Secretary found that Complainant's case had no merit. The letter transmitting these findings contained an appropriate explanation of the parties' rights to object to the findings, in accordance with 29 C.F.R. § 1978.104(b). On November 21, 2004, the Office of Administrative Law Judges, received Complainant's letter of appeal objecting to the Secretary's findings.

This case was scheduled for hearing in 2004. The parties are not represented by counsel. The hearing was continued after the complainant indicated in a letter and during a telephone pre-hearing conference that he wished to pursue binding arbitration per his union contract on a grievance he filed against Respondent. Complainant stated that the arbitration may resolve all issues involved in the instant claim, which statement was concurred in by the representative of Respondent during the conference. On January 7, 2005, I received written notice by Complainant that the arbitrator's decision on December 1, 2004 was fully favorable to him and he has now been reinstated by Respondent. Complainant concludes in his letter that he "asks that his case be DISMISSED" (Emphasis in original). He further states: "I see no reason to take up your time and that of the Courts." Respondent has not objected to the request.

Neither the STAA nor the implementing regulations at 29 C.F.R. Part 1978 expressly provide for the withdrawal of a complaint at this stage of the proceeding. However, 29 C.F.R. § 1978.111(c) does permit a party to withdraw objections to the Secretary's preliminary findings or preliminary order at any time before the findings or order becomes final. It is required that the Complainant file a written withdrawal request with the administrative law judge. Upon receipt of the withdrawal request, it is incumbent upon the administrative law judge to affirm "any portion of the findings or preliminary order with respect to which objection was withdrawn." 29 C.F.R. § 1978.111(c).

The proper procedure in this circumstance is to construe the complainant's notice to the effect that he is dropping his charges against Respondent as a withdrawal of Complainant's objection to the Secretary's Preliminary Findings, and to issue an order reinstating and affirming those findings. *Hall v. Yellow Freight Systems*, 1993-STA-24 (Sec'y July 1, 1993); *Snow v. TNT Redstar Express, Inc.*, 1991-STA-44 (Sec'y Mar. 13, 1992). Thus, Complainant's letter of January 7, 2005, to which no objection was filed by Respondent, shall be construed as a withdrawal of Complainant's objection to the Preliminary Findings. If the case is before the administrative law judge, the judge's order becomes the final administrative order in the case, and there is no need for review of the order by the Secretary. *Underwood v. Blue Springs Hatchery*, 1987-STA-21, Order to Show Cause, Issued September 23, 1987. Accordingly, in view of the foregoing,

ORDER

IT IS ORDERED that the Area Director's findings on behalf of the Secretary are hereby **AFFIRMED** and the above-captioned claim is **DISMISSED WITH PREJUDICE**.

A

JOSEPH E. KANE
Administrative Law Judge

NOTICE: This Recommended Order of Dismissal and the administrative file in this matter will be forwarded for review by the Administrative Review Board, U.S. Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210. 29 C.F.R. § 1978.109(a). The parties may file with the Administrative Review Board, United States Department of Labor, briefs in support of or in opposition to Recommended Order of Dismissal within thirty days of the issuance of this Recommended Order of Dismissal unless the Administrative Review Board, upon notice to the parties, establishes a different briefing schedule. 29 C.F.R. § 1978.109(c).