



In the Matter of:

PETER P. CEFALU,

ARB CASE NO. 08-001

COMPLAINANT,

ALJ CASE NO. 2003-STA-055

v.

DATE: January 30, 2008

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 OF REMAND

This case is before the Administrative Review Board (ARB or Board) on remand from the United States Court of Appeals for the Seventh Circuit. *Roadway Express, Inc. v. United States Dep't of Labor*, 495 F.3d 477 (7th Cir. 2007).

In 2002, the Respondent, Roadway Express, Inc., fired the Complainant, Peter P. Cefalu, after he assisted another employee in the employee's grievance hearing. Cefalu filed a complaint with the Department of Labor (DOL), alleging that Roadway retaliated against him in violation of the whistleblower protection provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C.A. § 31105 (West 1997).

On May 20, 2004, a DOL Administrative Law Judge (ALJ) issued a

Recommended Decision and Order concluding that Roadway violated the STAA and that Cefalu was entitled to damages and reinstatement in his previous job as a truck driver. *Cefalu v. Roadway Express, Inc.*, ALJ No. 2003-STA-055 (May 20, 2004). Roadway appealed to the ARB, which adopted the ALJ's recommendations. *Cefalu v. Roadway Express, Inc.*, ARB Nos. 04-103, 161, ALJ No. 2003-STA-055 (Jan. 31, 2006).

Roadway appealed the ARB's decision to the United States Court of Appeals for the Seventh Circuit. On July 25, 2007, the Seventh Circuit affirmed the Board's determination that Roadway had violated the STAA. *Roadway*, 495 F.3d at 483. The court also affirmed the ALJ's imposition of a discovery sanction as within his discretion, when considering the merits of this case. The ALJ had excluded evidence and documents related to Roadway's proffered reason for firing Cefalu, that he had lied on his employment application about his record of accidents, because Roadway refused to identify the person who reported the alleged falsehood. *Id.* at 484.

The court stated, however, that the evidentiary sanction on the merits should not have applied to the question of remedy. *Id.* at 486. Roadway "should have been permitted to refer to Cefalu's earlier driving record" on the issue of his reinstatement. *Id.* Therefore, the court remanded the case for reconsideration of whether reinstatement was an appropriate remedy. *Id.*

We in turn **REMAND** the case to the ALJ for further proceedings consistent with the ruling of the Seventh Circuit.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge