

# U.S. Department of Labor

Office of Administrative Law Judges  
11870 Merchants Walk - Suite 204  
Newport News, VA 23606

(757) 591-5140  
(757) 591-5150 (FAX)



**Issue Date: 15 October 2007**

Case No.: 2006-STA-00047

*In the matter of:*

DANIEL DAVIS,

Complainant,

v.

CHEM CANADA LOGISTICS, INC.,

Respondent.

## **RECOMMENDED DECISION AND ORDER - DENYING COMPLAINT**

This case is before the undersigned Administrative Law Judge pursuant to the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 USC § 31105 based on a complaint filed by Complainant on March 25, 2006. Federal Regulations set forth in 29 CFR Part 1978 and 20 CFR Part 18 apply to this case.

### **Procedural History**

The Assistant Secretary for the Occupational Safety and Health Administration denied the complaint on August 17, 2006 and filed the original complaint with the Office of Administrative Law Judges on August 22, 2006 (ALJX 1<sup>1</sup>). The Complainant filed an appeal in the Office of Administrative Law Judges on September 19, 2006 (ALJX 2).

Efforts to contact officers and the operator of Respondent Employer corporation to schedule a telephone pre-hearing conference call were unsuccessful. The hearing was scheduled and the Notice of hearing was served by regular first class mail and certified mail upon the Complainant, Respondent Employer and the Secretary of State for the State of North Carolina (ALJX 3). The certified mail from the Respondent Employer was returned as unclaimed (ALJX 4). The Secretary of State for the State of North Carolina acknowledged receipt of the Notice of Hearing

---

<sup>1</sup> "ALJX" refers to Administrative Law Judge exhibit; "CX" refers to Complainant's exhibit; "EX" refers to Respondent Employer's exhibit; "TR" refers to pages of the hearing transcript.

“as statutory agent for service of process for the entity referenced above [Respondent Employer]” (ALJX 6).<sup>2</sup>

Through the initial June 19, 2007 Notice of Hearing (ALJX 3), the parties were advised of their respective right to representation, possible sources of lawyer referral services through the North Carolina Lawyer Referral Service, the right to present documentary and testimonial evidence for consideration, the right to testify under oath, the right to examine witnesses under oath, the right to object to questions asked of witnesses by the opposing party and the Administrative Law Judge, the right to enter into an agreement with opposing party as to facts not in dispute, and the opportunity to explain why the respective party believed the evidence shows that party is entitled to relief requested.

The hearing was held in Charlotte, North Carolina on July 26, 2007. The Complainant appeared without representation, advised he had not obtained representation, stated that he would proceed by himself, and subsequently testified under oath. No representative from the Respondent Employer appeared. On August 13, 2007, C. Cavazos, vice-president of Respondent Employer, notified the Clerk of Court by voice mail message that “he had missed a Court date of July 26, 2007 because he is a truck driver and was out of town ... [he] wants to arrange an appeal. ... he does not pick up his certified mail ... [and] acknowledged that he does receive letters via regular mail and that he received the hearing notice by regular mail.” (ALJX 9) When contacted the same day by the Attorney Advisor, C. Cavazos was advised that “the record [was being held] open to August 26, 2007 for any documents or written statements that would support his case.” (ALJX 10) On August 20, 2007, C. Cavazos filed ten pages of documents with the Court, which were marked and admitted as EX 1. By Notice issued September 4, 2007, the Parties were provided copies of ALJX 9 and 10 as well as EX 1. The Parties were advised that any written post-hearing argument was to be filed by September 17, 2007. (ALJX 11) The Complainant submitted a post-hearing statement with attachments that was marked and admitted as CX 8. The Respondent Employer did not submit any further documents or written statements for consideration.

---

<sup>2</sup> North Carolina General Statutes, Title 55D-33(b) provides that “When an entity required to maintain a registered off and registered agent under G.S. 55D-30 fails to appoint or maintain a registered agent in this State, or when its registered agent cannot with due diligence be found at the registered office, or when the Secretary of State revokes a certificate of authority or a statement of foreign registration of a foreign entity authorized to transact business or conduct affairs in this State, the Secretary of State becomes agent of the entity upon whom any such process, notice or demand may be served” (copy in ALJX 6). North Carolina Secretary of State public records (ALJX 5) indicate that the Respondent employer filed Articles of Incorporation on July 18, 2000, naming P.W. Brown as registered agent. The “Business Corporation North Carolina Annual Report” filed June 3, 2002 indicated P.W. Brown as the corporation president and C.S. Cavazos as the corporation vice-president. In response to a “Certificate of Dissolution” issued on May 5, 2005, C.Cavazos filed the “Business Corporation Annual Report” for the years ending 2001, 2002, 2003, and 2004 on July 7, 2005. P. Brown remained as president, C. Cavazos remained as vice-president, the registered office was 512 Cox Lake Road, Stanley, NC 28164 and the principal address was 405 Cox Lake Road, Stanley, NC 28164. State public records from 2007 indicate that the corporation was formed July 18, 2000 as a domestic corporation in North Carolina with a “perpetual” duration. The corporation is in a “current-active” status with P.W. Brown as registered agent and 405 Cox Lake Road, Stanley, NC 28164 as the registered and principal office location.

The record consists of Administrative Law Judge exhibits (ALJX) 1 through 12; Complainant exhibits (CX) 1 through 8; Respondent Employer exhibit (EX) 1; and the written transcript of the July 26, 2007 hearing. The record is now closed.

### **Issue**

The original allegation was that the Complainant's employment was terminated on or about April 5, 2006, in reprisal for raising safety concerns regarding truck equipment problems to C. Cavazos. The Secretary found that "Credible evidence and testimony was unable to support Complainant's contention that he was fired for raising any truck safety concerns to Cavazos. Therefore, the case is dismissed." (ALJX 1 and 2, CX 8, EX 1)

### **Evaluation of Evidence**

*Complainant's July 26, 2007, Hearing Testimony.* (TR 13 to 37)

At the beginning of his testimony, the Complainant reviewed and adopted the information written by him in CX 1 as his sworn testimony.

The Complainant testified that he did not refuse to drive a truck but that he was trying to get repairs done to the air compressor, the marker lights and the turn signals. He had just started a new job driving the truck for Respondent Employer and "was hoping that the repairs would be made to the truck that maybe he wasn't aware of at the time, and it would be fixed and I could go ahead and continue on." He stated that during the time when he was hired and when he completed his physical and drug test, he assumed that the truck was in the shop. He testified that he made two trips for the Employer using the same truck unit #02 and same trailer #004. He testified that the air compressor was on the truck had a leak and that "if I had to use the brakes for an extended period of time ... [like] a backing maneuver where I have to pull up, put the brakes on, back up, put the brakes on, back up, put the brakes on, or if I had to be in traffic, stop and go ... the pressure would drop down to where I would have to put it in neutral to keep revved up real high ... run the pressure up ... push the brakes back into release and continue on. As long as I kept the RPMs up relatively high as though I was driving 65 miles per hour, it generally kept the air pressure real close to the operating range it was supposed to be at." He reported that he did not log the air pressure problem on the first trip but that it was on a two page list of things Corey Cavazos was supposed to correct before the second trip. He testified that he logged the air pressure as a problem on the second trip. He stated that he also reported, on the two-page list of thing to be completed before the second trip, problems with the front two turn signals on the truck, the air leak on the truck, the truck gear ratio causing overheating, concern over the truck speed setting, brake adjustments, and trailer marker lights being out. He testified that he returned from the first trip around March 21 and went out on the second trip about March 26 and thought the list of things to be done would be done then.

The Complainant testified that when he was stopped by the Louisiana State Police, it was a log book inspection and not a "full pull" on the truck.

The Complainant testified that on the second long haul trip the engine was still overheating, the gear and speed ratio hadn't been changed, the front truck turn signals sometimes worked and sometimes didn't work. He reported he had been told that a mechanic had looked for the air leak after the first trip, changed the RPMs and did something with the computer. He stated that during the second trip stop at "Big Rigs" they greased the tractor and trailer, checked the fluids and changed the oil. Soon after the stop at "Big Rigs" he had a tire blow-out and had to have the tire changed. He reported that he did not report the turn signal or marker light problems to "Big Rig" or the tire place because he was instructed by C. Cavazos, over his cell phone, not to have it done until he returned when a local person would look at the truck.

The Complainant testified that in the last day of the second trip on April 6<sup>th</sup>, he talked to C. Cavazos by cell phone and was told to stop and get the truck washed on the way back from Maryland. He stopped and washed the truck and finally got back in about 9:30 PM when he again called C. Cavazos. He testified that he told C. Cavazos about the things that still needed fixed on the truck, C. Cavazos did not like being told that, and he was instructed by C. Cavazos to "just clean the truck out, just clean your stuff." He reported that he drove about three more miles, turned the truck out, found a Fed-ex envelope, and got home around midnight. He reported that the next day he completed his paperwork and turned it in around 11:30 AM by placing it in C. Cavazos' screen door.

The Complainant testified that he never went back to the truck area or C. Cavazos' house until sometime in December when he was told by the Court Clerk that she was having a difficult time contacting C. Cavazos. He stated he went to the house, looked in the mailbox, C. Cavazos still lived there, and saw that he was using a different company name – "W. Jenkins." The Complainant testified that C. Cavazos called him and told him that he had called the police and reported I had stolen his mail.

The Complainant testified that he does not know why C. Cavazos told the OSHA investigator that the second run to California would be the last run for him. He testified that he had just started the job driving for C. Cavazos, the first two weeks went pretty smooth, and that he sometimes had difficulty finding work because of his medical history of sleep apnea, pacemaker and type II diabetes. He stated he never gave an ultimatum like "You fix the truck or I quit." He indicated that he even had submitted a request for time off for VA appointments for after the second trip. He testified that when he was told to clean out the truck, he was shocked. He denied ever saying to C. Cavazos that the second trip would be his last trip for C. Cavazos.

The Complainant testified that C. Cavazos and P. Brown had about six to eight trucks and about that many trailers in the company in the country. He never met P. Brown or saw any of the other drivers. He dealt with C. Cavazos as if "he was the president, foreman, secretary, cashier ... the whole company in one." C. Cavazos did all the dispatching and called the brokers. He reported that the OSHA investigator had told him during the investigation that the Respondent Employer had gone out of business.

The Claimant testified that when he took his D.O.T. physical on March 8<sup>th</sup>, he had a pacemaker for irregular heartbeat, took medicine for type II diabetes, used a CPAP machine with mask, and

took Coumadin for the pacemaker, and takes high blood pressure medicine. He reported that his monthly VA Coumadin test is always at normal levels.

The Complainant testified that he was never disciplined or reprimanded while he worked for Respondent Employer

The Complainant testified that he does not want his old job back because, even though the pay was good, he does not want to work for C. Cavazos and his mood swings. He reported that he was unemployed for 86 days after being told to “clean the truck out” and he would like to receive the average pay he was receiving when he was driving for the Respondent Employer - \$165.19 a day, which “comes out to \$14,206.34.”

#### *CX 1 – Adopted Testimony of Complainant*

CX 1 consists of 12 typed and handwritten pages from Complainant. At the hearing the Complainant reviewed the documents and adopted them as his testimony. Through the documents, the Complainant testified substantially as follows.

(Page 1) The Complainant testified that he worked for Respondent Employer from March 6, 2006 through April 6, 2006 when he was terminated for reporting “numerous unsafe and illegal truck/trailer write-ups and safety violations.” He reported that he made numerous verbal and written reports of truck and trailer equipment and safety problems during two trips to California for Respondent Employer. He stated that the first write-up was two pages long and reported concerns with turn signals on the truck and trailer not working properly as well as a serious truck air-leak. He testified that Respondent Employer ordered him out onto the road for the second trip with knowledge of the safety and regulatory violation concerns. He reported that at approximately 10:30 PM, May 5, 2006, he talked to Respondent Employer “about the truck/trailer write-ups and repairs among other things and was then told to clean out the truck.”

(Pages 2 to 7) The Complainant testified that his only contact with Respondent Employer was with Cory who interviewed him for a driving position on March 6, 2006. He was to be paid \$.028 per mile for driving work, \$10.00 per hour for periods of detention time and local work, \$100.00 per day for lay-over time, and paid for breakdown periods. He was to call Cory and report any detention time over two hours long. Payments were made by “EFS checks.” He stated that he was hired as a company driver, did not receive any federal or state tax forms to complete, and, that when he cleaned out his truck, he was asked to sign forms for being an independent contractor.

The Complainant testified that he completed his DOT physical and urinalysis testing on March 8, 2006, in Charlotte, North Carolina and then cleaned the assigned truck cab and placed his belongings in the truck during March 10 and 11, 2006. He reported that his first trip was from March 11 to 22, 2006. He stated the trip took him from North Carolina to California, to Georgia, to South Carolina and then back to North Carolina. He testified that he “told Cory quite a few times about all the truck/trailer repair write-ups” during the daily call-ins. He reported writing the complaints down on two pages. He stated that during the first trip he was laid over in California for two days and that he completed 11.5 hours of local work for Cory. In Georgia he

was on detention time for five hours and on detention time in South Carolina for eight hours. He stated that during the trip Cory would call him on the cell phone but the truck would be very noisy and loud at 60 to 70 miles per hour; making it hard to hear Cory and requiring him too ask Cory to repeat himself often. He testified that upon his return from the first trip, Cory came up to the truck and a heated discussion occurred over the cell phone use and need to repeat things. He testified that during the second trip to California he would answer the cell phone and then hang up like he had lost the call.

The Complainant testified that on his first trip to San Fernando, California, he delivered a load late that Cory had taken, that he “did falsify my logs as [Cory] told me to do and I will answer for that but I did not go without sleep.” The violation involved “back dating a logbook to always have hours” and was turned into Cory on March 26, 2006.

The Complainant testified that he was home March 23 to 25, 2006, “because the truck was suppose to be fixed and repaired.” He stated that on March 26, 2006, he was in Stanley, North Carolina, getting ready for his second trip when he was told by Cory that the truck speed / RPM had been changed and fixed. He departed on the second trip and “kept track of any needed truck/trailer repairs ... told Cory about them .... started writing down certain ones that were more serious in my log book ... [and] made copies of everything that I could.” On this trip he went from North Carolina to California, then to Maryland and back to North Carolina. He was instructed to get the truck serviced and on the way back told to get the truck washed. He reported being laid over in California for one day, detained in Maryland for fourteen hours and laid over in Maryland for one day.

The Complainant testified that on April 6, 2006, he stopped in Virginia to have the truck washed, arrived back in Stanley, North Carolina, around 9:30 PM, and returned a phone message from Cory. He testified that during that telephone call Cory told him to clean out the truck. He reported cleaning his personal belongings from the truck, returning to his pickup truck, and finding contractor papers with notation requesting that they be signed. He got home between 11:00 PM and midnight, filled out necessary paperwork the next morning, deposited two pay checks in the bank, and went to Stanley, North Carolina to turn in the paperwork. He put the paperwork between the screen door and door of Cory’s house and left. He reported that he was finally paid some of what was owed for his last trip about four weeks after the trip.

(Pages 8 to 12) These brief documents recorded March 6, 2006 hiring date; layover 1500 March 15, 2006 to 0800 March 17; five hours detention time in Tifton, Georgia on March 21; eight hours layover in South Carolina; one day layover in Los Angeles, California starting March 30; fourteen hour detention April 4 in Frederick, Maryland and a layover in Frederick, Maryland to April 5, 2006. He recorded “Truck #02” with air pressure not 120 psi; truck air leak somewhere, rear passenger-side brake and marker light out, needing another spare tire for the truck/trailer, broken AC/Heater switch in the truck causing heat to get to 140 degrees in the truck, intermittent truck overheating even without a trailer, and truck turn signals not working some of the time. He recorded “Trailer #004” with rear and middle marker lights being out on both sides and trailer brake lights not working all the time. The Complainant included a copy of a written “Time Off Request” which indicated a need to be off April 6 to 9, 2006, and being ready to go on April 10<sup>th</sup>. He also included a note that he would call the next day “Thursday” for an EFS number for a

paycheck. The Complainant reports he was still owed \$213.63 for his first long-haul trip and owed \$624.08 on the second trip.

*CX 2 – March 11 to 21, 2006 First Trip Sheet and Log Entries*

CX 2 contains copies of time sheet, mileage log, and daily logbook entry sheets for the Complainant's first long-haul from Stanley, North Carolina to California and return. The records reflect that the Complainant drove Truck #02 and Trailer #004 on the trip; the starting mileage was 304,478; the ending mileage was 310,568; and he detected "no defect or deficiency in this motor vehicle as would be likely to affect the safety of its operation or result in its mechanical breakdown." These entries were above the Complainant's signature in a block reading "I certify that these entries are true and correct." The daily records also contained the Complainant's signature below the statement "Above defects need not be corrected for the safe operation of vehicle" in each lower block where defects and deficiencies likely to affect the safety of operation or result in mechanical breakdown were to be recorded. None of the blocks for recording defects and deficiencies contained any entries of such deficiencies or defects.

*CX 3 – Louisiana State Police Driver/Vehicle Examination Report of March 20, 2006*

CX 3 is a copy of a State Police report indicating that the Complainant was stopped in tractor #02 with Trailer #004 on the morning of March 20, 2006, in Saint Martin County, Louisiana. The Complainant was cited for not having his record of duty status current. The record contains the March 27, 2006, dated signature of "Cory Cavazos" as the Motor Carrier certifying that corrective action was taken.

*CX 4 - March 26 to April 5, 2006 Second Trip Sheet and Log Entries*

CX 4 contains copies of time sheet, mileage log, and daily logbook entry sheets for the Complainant's second long-haul from Stanley, North Carolina to California and return. The starting mileage was 310,568 and the ending mileage was over 316,217. On each of the Driver's Record of Duty Status sheets, adjacent to the form statement "I detect a defect or deficiency in this motor vehicle as would be likely to affect the safety of its operation or result in its mechanical breakdown and have recorded it (them) in detail on the bottom of this form", the Complainant's signature appears in a box with a line through the words "I certify that these entries are true and correct." In the bottom half of each sheet, the entries reflect that the Complainant drove Truck #02 and Trailer #004 on the trip. In each of the daily reports he recorded the same exact defect/deficiency entry reporting - Tractor #02 with an air leak, air tanks not 120 psi, and Trailer #004 with middle and rear marker lights out on both sides. A "Reimbursement" sheet indicates that an expense was incurred to service the truck and trailer on March 28, fix a flat tire on March 28, and wash the truck and trailer on April 5, 2006.

*CX 5 – Vehicle Repair Invoice of March 9, 2006*

CX 5 is a repair invoice from Charlotte Freightliner of Charlotte, North Carolina. The invoice indicates that tractor #02 from Chem Canada Logistics, Inc. was delivered at 304,453 mileage for complaints of "air system constantly popping off – air dryer bypassed." The assigned

mechanic replaced and repaired an air line from the air dryer to governor and checked and repaired air leaks at the air compressor. The mechanic also replaced the intake hose between the check valve and air compressor. The vehicle was received for repair on March 8, 2006. Repairs were completed by the next day.

*CX 6 – Vehicle Service Invoice of March 28, 2006*

CX 6 is a service invoice from Big Rigs of Tye, Texas. The invoice indicates that the 2004 Freightliner #02 had a full oil change, oil/gas filter change, fluid check and greased tractor and trailer on March 28, 2006. The mileage in/out was 311,922.

*CX 7 – Copy of June 5, 2006 E-mail*

CX 7 is a copy of an e-mail purportedly sent to Complainant by on A. Dale Boyd, the original complaint investigator. The e-mail cannot be confirmed as an accurate representation of its contents, nor is the name/e-mail address of the purported author verified. This lessens the weight of the document.

The contents of the e-mail indicates a verbal representation to the investigator by “Cory Cavazos” that the Complainant had quit his job, that Complainant told Cory Cavazos that the second trip was the last run he would make, and that the company was going out of business on July 8, 2006. The document reports Cory Cavazos had no plans to start another trucking business and that “Mr. Brown, his current business partner, will be dissolving their business relationship entirely.”

*CX 8 – Complainant’s Closing Statement Made in Response to EX 1*

On September 16, 2007, the Complainant filed CX 8. CX 8 contained a three page typed statement and copies of ALJX 9, 10 and 11 as well as EX1.

In the typed statement, the Complainant objected “to the extension of time and for any submitted documentation of any kind in any way thereof by Mr. Cavazos.” The Complainant gave twelve reasons for the objection. However, hearings are conducted in conformance with the Administrative Procedure Act and the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 29 CFR §§ 1978.106(a) and 18.26. The Rules of Evidence are to be “construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined” 29 CFR § 18.102. After review of EX 1 and the Complainant’s objections in CX 8, this Administrative Law Judge finds that the Complainant’s due process rights are not violated by consideration of EX 1 and the consideration of EX 1 is in accordance with federal regulations. Accordingly, the objections are overruled pursuant to 29 CFR § 18.104.

In CX 8 Complainant also includes several relevant statements on his behalf. The Complainant states that he has “never at anytime in my life ever sued anybody” as alleged by Cory Cavazos in



EX 1. He acknowledges that he has filed administrative complaints in the past against former employers.

*EX 1 – Documents Filed by Respondent Employer Officer/Owner on August 20, 2007*

On August 20, 2007, Respondent Employer officer/owner filed EX 1. EX 1 contained copies of ALJX 1 and 7 as well as four pages dealing with a complaint to the U.S. Postal System dated December 22, 2006 and a copy of a July 17, 2006 decision by the Federal Motor Carrier Safety Administration.

(Page 1) Page one was a copy of the front page of ALJX 7 noting the designating the local address and time for the formal hearing.

(Pages 2 to 5) These pages are copies of ALJX 1 dealing with the findings of the OSHA investigator. Since this document was submitted by Respondent Employer in defense of the complaint, the representations within the document related to the Complainant and company owners will be considered. The specific findings and conclusions of the investigator are not considered.

This document notes that Cory Cavazos and Philip Brown are the owners of Chem Canada Logistics, Inc.. The report notes that the Complainant was hired on or about March 6, 2006 and discharged on or about April 6, 2006. It reports that the Complainant made two trips to California and back to North Carolina as a truck driver for Respondent. The first trip was between March 12, 2006 and March 22, 2006. The second trip was between March 26, 2006 and April 5, 2006. Cory Cavazos denied that the Complainant ever raised truck or trailer equipment problems during either of his two trips. Cory Cavazos stated that he had an argument with the Complainant before the second trip during which time the Complainant told Cory Cavazos “that if he didn’t want Complainant to take the load to tell him that.” Cory Cavazos stated he responded that “he didn’t want the Complainant to take the load and told him to clean out the truck” but that the Complainant got into the truck and began the trip. The investigator reported that “Cavazos denied Complainant engaged in protected activity [by telling Cory Cavazos about problems with the truck equipment by telephone on April 5, 2006 and then being fired by Cavazos] and stated that he simply reminded Complainant that this was his last trip since Complainant had previously said he was quitting at the end of the second trip.”

(Pages 6 to 9) These pages concern the report of suspected theft of mail filed by Cory Stanford Cavazos on December 22, 2006. In the complaint, Cory Cavazos records his address as 405 Cox Lake Road, Stanley, North Carolina, the same address used on the returned mail from Mr. Cavazos that sent him the original Notice of Hearing and Preliminary Order (ALJX 3 and 4) and Order Designating Location (ALJX 7) and reported by the Secretary of State for North Carolina as the business address and registered agent address for Respondent Employer (ALJX 5, 6, 8, and 12). Mr. Cavazos reported that the OSHA investigator had been to his business at the 405 Cox Lake Road address. Mr. Cavazos noted that he suspected Complainant of stealing mail and attached copies of the Complainant’s social security card, front of the North Carolina commercial driver license, and a Medical Examiner’s Certificate dated April 4, 2005 with an

April 4, 2006 expiration date. The documents also include an address and cell telephone number for the Complainant.

(Page 10) This document is a copy of “Decision MC-386983-P, Chem Canada Logistics, Inc., Stanley, NC, Revocation of Authority” issued by the Acting Chief of the Commercial Enforcement Division of the Federal Motor Carrier Safety Administration. The document reports that the U.S. Department of Transportation entered a June 12, 2006 decision and notified Respondent Employer that “failure to respond or comply with the terms of the decision would result in revocation of its authority registration effective 30 days after service. The document also notifies Respondent Employer “that its authority registration has been revoked effective July 17, 2006.” A hand-written note, in script similar to that by Mr. Cavazos on pages 6 and 7 of EX 1, states “Out of business on 7-10-06.” No reason for the involuntary revocation of authority is provided within the document.

## **DISCUSSION**

The “whistle-blower” provisions under the Surface Transportation Assistance Act of 1982, as amended, are designed to protect “employees in the commercial motor transportation industry from being discharged in retaliation for refusing to operate a motor vehicle that does not comply with applicable state and federal safety regulations or for filing complaints alleging such noncompliance.” *Brock v. Roadway Express, Inc.*, 481 US 252 (1987)

To be entitled to a remedy under the Act, the Complainant must show that he engaged in protected activity, that the respondent was aware of the protected activity, that he was subjected to an adverse employment action, and that there was a causal connection between the protected activity and the adverse action (i.e.: the employer was aware of the protected activity when it took the adverse action). *Bechtel Construction Co. v. United States Sec’y of Labor*, 50 F.3d 926 (11th Cir. 1995); *Self v. Carolina Freight Carriers Corp.*, ARB No. 89-STA-9 (Jan. 12, 1990); *Clean Harbors Environmental Services, Inc. v. Herman*, 1998 WL 293060 (1st Cir. June 10, 1998); *Moon v. Transport Drivers, Inc.*, 836 F.2d 226 (6th Cir. 1987)

Here the Complainant did not refuse to operate the 2004 Freightliner tractor #02 and haul trailer #004 during his employment with Chem Canada Logistics, Inc., which would be within the provisions of Section 31105(a)(1)(B) of the Act. His cause of action is under Section 31105(a)(1)(A) of the Act dealing with filing a complaint regarding equipment safety. Accordingly, “protected activity” under the Act would include Complainant’s reporting of commercial motor vehicle equipment defects and discrepancies that may reasonably have an adverse impact on the safe operation of the motor vehicle or the safety of the public. Both Parties agree that the Complainant was told to “clean out the truck” by 9:30 PM, April 5, 2006, thus ending the Complainant’s employment. Respondent asserts that this directive to “clean out the truck” was because the second trip was the last trip by Complainant because he quit. Complainant asserts that this directive was because he was fired due to making safety complaints. Accordingly, the “protected activity” of communicating safety concerns to the Respondent Employer must have occurred before 9:30 PM, April 5, 2006.

## **I. The Documentary Evidence Fails to Establish Violation of the Act Occurred.**

Documentary evidence establishes that the Complainant drove tractor #02 with attached trailer #004 on two long-hauls to California and return to North Carolina. The first trip was March 11 to 21, 2006 (CX 2). The second trip was March 26, 2006 to April 5, 2006 (CX 4). Both Complainant and Respondent Employer agree to these periods of time. The documents also indicate that the air compressor system on tractor #02 was serviced by Charlotte Freightliner on March 8/9, 2006, before the Complainant drove the tractor on the two long hauls. None of the time sheets, logbook entries or mileage logs from the first trip indicate any commercial motor vehicle or equipment defects or deficiencies. They do indicate that the Complainant certified on the daily Driver's Report of Duty Status that no defects or deficiencies were noted by him during the first trip (CX 2). It may reasonably be inferred that the Complainant turned these records into the Respondent soon after he completed the first trip on March 21, 2006. These documents, as a whole, fail to demonstrate that the Complainant reported safety defects and/or discrepancies to Respondent Employer through March 21, 2006. No documentation related to equipment problems are in evidence for the period between March 21, 2006 and March 26, 2006.

The sole documentation recording uncorrected safety defects and/or deficiencies in tractor #02 and/or trailer #004 are the records created by the Complainant for the second trip, March 26, 2006 to April 5, 2006. Even if these documents were considered credible, despite the lined out certification language and changed entries for the first two days, Complainant testified that he did not deliver the paperwork to Respondent until the afternoon of April 6, 2006, when he put the trip paperwork between the door and screen door at the home of Cory Cavazos. This was after the Complainant "cleaned out the truck" of personal belongings. This is a material fact because the contents of the logbooks could not have been reviewed by Respondent Employer until the day after the Complainant was discharged. Accordingly, the Respondent Employer is not charged with actual knowledge of the paperwork from the second trip until after the termination of Complainant. Since "protected activity" must cause the adverse employment action to prevail under the Act, this paperwork does not provide the basis of the Complainant notifying the Respondent Employer of unsafe conditions prior to an adverse employment action.

## **II. The Testimonial Evidence Fails to Establish Violation of the Act Occurred.**

Since the documentary evidence fails to establish "protected activity" under the Act before 9:30 PM, April 5, 2006, the basis of the complaint depends entirely on the Complainant's testimony and written assertions that he verbally notified Cory Cavazos by cell telephone of the air compression problem, RPM/governor problem, brake light problems, marker light problems and turn signal problems, during daily conversations during both long-haul trips and the evening hours of April 5, 2006. Cory Cavazos denies such conversations about tractor and trailer safety problems took place.

The Complainant testified that he would delay completing his daily Driver's Record of Duty Status in order to always have hours available. The Louisiana State Police citation during the first trip was for such failure to have his daily log up to date. This practice devalues the Driver's Record of Duty Status reports of the second trip since it indicates that the second trip logs were not routine business records recording events as they occurred. This practice and the

Complainant's testimony that he had to complete the paperwork from the second trip on April 6, 2006, before dropping the paperwork at Cory Cavazos' house, further demonstrate that the Driver's Record of Duty Status reports are not records of occurrences made at the time of the event. The reports do not bolster the Complainant's testimony of verbal reports of safety defects and deficiencies before 9:30 PM, April 5, 2006.

The Driver's Record of Duty Status reports do diminish the Complainant's credibility. The Complainant testified that he reported the safety defects and deficiencies by telephone to Cory Cavazos during both long-haul trips. However, the Complainant signed the reports for the first trip by certifying that there were no safety defects/deficiencies in the truck and trailer (CX 2). Additionally, in every Driver's Record of Duty Status for the second trip the Complainant lined out the certification of the entries to be true and correct wording above his signature and used the exact same words for the defects and deficiencies entries. On the reports for March 26 and March 27, 2006, the Complainant first recorded no defect or deficiency and later changed the entry to reflect detection of the listed safety defects and deficiencies. This undermines the Complainant's credibility.

After deliberation on all the evidence of record, documentary and testimonial, this Administrative Law Judge finds that Complainant's assertion that verbal reports of safety defects and deficiencies reports were made to the Respondent Employer during both trips and before 9:30 PM, April 5, 2006, is not credible. The Complainant has failed to establish that verbal "protected activity" took place before 9:30 PM, April 5, 2006.

### **FINDINGS OF FACT**

After deliberation on all the evidence of record, this Administrative Law Judge finds the following:

1. The Complainant was employed by Respondent Employer as a long-haul tractor-trailer driver for the period March 6, 2006 through 9:30 PM, April 5, 2006.
2. The Complainant drove Respondent Employer's tractor-trailer, within the scope of the Act, from Stanley, North Carolina to California and back, during the period March 11, 2006 through March 21, 2006.
3. The Complainant drove Respondent Employer's tractor-trailer, within the scope of the Act, from Stanley, North Carolina to California and back, during the period March 26, 2006 through April 5, 2006.
4. The Complainant has failed to establish that he reported to Respondent Employer any tractor-trailer safety defects or deficiencies, defined by the Act as "protected activity", during his period of employment with Respondent Employer.

5. The Complainant has failed to establish that his termination of employment with Respondent Employer on April 5, 2006, was the proximate result of prior reporting of truck-trailer safety defects and/or deficiencies to Respondent Employer.
6. The Complainant is not entitled to relief under the Act.

### **RECOMMENDED ORDER**

It is hereby **ORDERED** that Complainant's cause of action is **DENIED**.

A

ALAN L. BERGSTROM  
Administrative Law Judge

ALB/jcb  
Newport News, Virginia

**NOTICE OF REVIEW:** The administrative law judge's Recommended Decision and Order, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Decision and Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.