



In the Matter of:

MARTIN KERCHNER,

ARB CASE NO. 10-003

COMPLAINANT,

ALJ CASE NO. 2009-STA-052

v.

DATE: November 30, 2009

**GROCERY HAULERS INCORPORATED,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 863,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

Martin Kerchner complained that Grocery Haulers and International Brotherhood of Teamsters Local 863 violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when it blacklisted him.

After an investigation, the Occupational Safety and Health Administration (OSHA) found that Kerchner's claim of blacklisting was not supported by the record and dismissed the

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007). 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 violate those rules.

² 29 C.F.R. Part 1978 (2009).

complaint.³ Kerchner objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁴

The ALJ assigned to Kerchner's case scheduled the case for hearing, but prior to the hearing, Kerchner wrote to the ALJ and indicated that he could not proceed with his case because he could not find an attorney who would represent him. The ALJ issued an Order to Show Cause Whether Complainant's Submissions Constitute Request for Withdrawal. In her Order, the ALJ explained that pursuant to 29 C.F.R. § 1978.111(c), at any time before the Secretary's findings become final, a party may withdraw his objection to the findings by filing a written withdrawal with the administrative law judge.⁵ Kerchner responded that he had "no other choice but to withdraw his complaint." Thereafter, on October 2, 2009, the ALJ issued a Recommended Order of Dismissal (R. O.) in which she stated, "Pursuant to 29 C.F.R. § 1978.11[1](c), at any time before they become final, Complainant may withdraw his objection to the Secretary's findings upon his complaint by filing a written withdrawal with the Administrative Law Judge. I find it appropriate to **GRANT** Complainant's motion to withdraw his complaint and request for hearing."⁶ Therefore after advising Kerchner that the consequences of his request to withdraw his complaint would be dismissal of his appeal pursuant to 29 C.F.R. § 1978.111(c), the ALJ recommended that Kerchner's complaint be dismissed with prejudice.

The ALJ forwarded her recommended decision and the administrative record to the Administrative Review Board (ARB or Board) and the case is now before us pursuant to the STAA's automatic review provisions.⁷ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁸ When reviewing STAA cases, the

³ Secretary's Findings and Order at 2.

⁴ See 29 C.F.R. § 1978.105.

⁵ 29 C.F.R. § 1978.111(c) provides in relevant part:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

⁶ R. O. at 1.

⁷ See 29 C.F.R. § 1978.109(c)(1).

⁸ Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁹ In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision"¹⁰ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹¹

The Board issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs with the Board in support of or in opposition to the ALJ's recommended order within thirty days of the ALJ's decision, or by November 2, 2009.¹² Neither party responded to the Board's request.

The ALJ's R. O. is in accordance with 29 C.F.R. § 1978.111(c). Accordingly, we affirm the ALJ's recommendation that we **DISMISS** Kerchner's complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁹ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

¹⁰ 5 U.S.C.A. § 557(b) (West 1996).

¹¹ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹² *See* 29 C.F.R. § 1978.109(c)(2).