



In the Matter of:

FLOYD B. RUSHING,

ARB CASE NO. 03-062

COMPLAINANT,

ALJ CASE NO. 2002-STA-49

v.

DATE: May 27, 2004

WALLER TRUCK COMPANY, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Floyd B. Rushing, *pro se*, Polo, Missouri

For the Respondents:

Patrick K. McMonigle, Esq., *Dysart, Taylor, Lay & Cotter, Kansas City, Missouri*

FINAL DECISION AND ORDER

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended, 49 U.S.C.A § 31105 (West 1997) and its automatic review procedures found at 29 C.F.R. §§ 1978.109(a) (2003).¹ Floyd B. Rushing filed a STAA complaint alleging that Waller Trucking Company, Inc. discriminated against him in retaliation for engaging in activities protected by the STAA. After a hearing on the merits a Department of Labor Administrative Law Judge (ALJ) recommended that Rushing's complaint be dismissed. Pursuant to 29 C.F.R. § 1978.109(c)(1), the Administrative Review Board is required to issue "a final decision and order based on the record and the decision and order of the administrative law judge." On February 28, 2003, we issued a Notice of Review and Briefing Schedule informing the parties of their right, pursuant to 29 C.F.R. § 1978.109(c)(2), to file a brief

¹ This regulation provides, "The [Administrative Law Judge's recommended] decision shall be forwarded immediately together with the record to the Secretary for review by the Secretary or his or her designee."

in support of or in opposition to the ALJ's Recommended Decision and Order (R. D. & O.). Rushing submitted a one-page document objecting to the R. D. & O, but neither party filed a brief.

Pursuant to the STAA's implementing regulations, the Board is bound by the factual findings of the ALJ if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3). The Board reviews the ALJ's conclusions of law de novo. *Johnson v. Roadway Express, Inc.*, ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000), citing *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

After a careful review of the entire record we conclude that the ALJ's findings of fact are supported by substantial evidence. See R. D. & O. at 10-15 (and transcript pages cited therein), Respondent's Exhibits 1, 3-5, 10. According to the ALJ's findings, Waller placed Rushing on part-time status because "his miles were insufficient according to Waller's standards and because Mr. Rushing was difficult to contact." R. D. & O. at 12. Waller also believed that Rushing had taken full-time employment with another company, and thereby had quit his employment with Waller. His employment was terminated accordingly. R. D. & O at 13. The ALJ therefore properly determined that Rushing failed to prove by a preponderance of the evidence that Waller's actions were discriminatory. We therefore **ADOPT** the ALJ's findings of fact in the attached ALJ's R. D. & O. and **DISMISS** the complaint.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge