

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 23 February 2009

Case No. 2009-STA-00002

In the Matter of

SHUKRI JOHN AMIN,
Complainant,

v.

MARTEN TRANSPORT, LTD.,
Respondent.

**RECOMMENDED ORDER APPROVING WITHDRAWAL OF OBJECTION TO OSHA'S
FINDINGS AND RECOMMENDED ORDER APPROVING OSHA'S FINDINGS**

This proceeding arises under the employee protection provisions of 49 U.S.C. Section 31105 of the Surface Transportation Assistance Act (STAA), and the applicable regulations issued thereunder at 29 C.F.R. Part 1978. On September 3, 2008, the United States Department of Labor's Occupational Safety and Health Administration ("OSHA") Area Director, issued his findings on a complaint filed by Shukri John Amin (Complainant) against Martin Transport, Ltd. (Respondent), in which he concluded that there was no reasonable cause to believe that Respondent violated 49 U.S.C. § 31105.

In response to OSHA's Area Director's determination, the Complainant appealed the findings, by letter dated October 12, 2008, and requested a hearing before an administrative law judge. The above-captioned matter is currently pending before me and I issued a notice on November 6, 2008 scheduling the case for hearing on March 12, 2009 at Detroit, Michigan. IT IS HEREBY ORDERED that the formal hearing on March 12, 2009 is cancelled.

By letter dated February 6, 2009, Complainant states:

"I respectfully like to ask the courts that I Shukri John Amin would like to withdraw from case 2009sta-00002 with Martin Transport. I am without proper legal representation and feel they have demonstrated a ethical manner of conduct on this case were I want no further contact with Martin Transport in this matter."

On February 12, 2009, I issued an “Order to Show Cause Why Complainant’s Letter Should Not Be Considered a Request to Withdraw His Objections to OSHA Findings.” By letter dated February 16, 2009, Complainant indicated that he was sending the letter “to help clarify my request to withdraw.”

In his letter, Complainant acknowledges that, although he understands “I don’t need legal counsel for this case[,]” “I feel strongly it is important to have proper legal representation with dealing with the judicial system.” He indicates that he feels Respondent has demonstrated some unspecified, ethical problem behavior, based upon events which raised his suspicions. He refers to a conversation with counsel for Respondent, seemingly misinterpreting Respondent’s request for deposition testimony of approximately two to three hours, which was followed by Complainant’s telephone call to counsel, in which Complainant indicated a willingness to submit to a deposition of no more than twenty minutes. This was followed by a letter from counsel indicating that the Code of Federal Regulations did not allow him to unilaterally limit his deposition testimony to a certain number of minutes and “[i]f you fail to appear for the deposition, or otherwise fail to fully comply with your discovery obligations, I will seek sanctions against you, including, but not limited to dismissal of your claim and the actual costs incurred by Marten Transport as a result of your failure to meet your discovery obligations.” (letter of Brian R. Smigelski, counsel for Respondent, dated February 3, 2009).

Counsel for Respondent sent a letter February 11, 2009, in response to the Order to Show Cause, stating that Respondent stipulates to the dismissal of the matter. Counsel also stated that his contacts with Mr. Amin concerned his attempts to schedule his deposition at a mutually acceptable time and that he advised him that Respondent “would be filing a motion for a summary decision in this matter.” He further stated: “At all times, my communications with Mr. Amin were respectful and ethical.”

Depositions of any witness is authorized by 29 C.F.R. § 18.22, upon as little as five days notice. There is nothing in the regulations which would allow a party to limit the deposition to a particular amount of time. Section 18.14 (a) indicates in pertinent part “... the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” Subsection (b) states “It is not ground for objection that information sought will not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” The administrative law judge becomes the arbiter of whether discovery questions are within the relatively broad relevance criteria. My Prehearing Order of November 6, 2008 also states that failure to timely comply with the prehearing order without good cause may result in the dismissal of the proceeding or the imposition of other appropriate sanctions against the noncomplying party.

I see nothing which indicates improper conduct by Respondent or its counsel in the two letters from counsel for Respondent to Complainant, which Complainant submitted as attachments to his February 16, 2009 letter.

Twenty-nine C.F.R. Section 1978.111(c) governs withdrawals of STAA complaints. The regulation specifically states:

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.

Complainant concludes his letter with the following statement:

Since I only have my suspicions, and unable to obtain help from anyone or get legal counsel to help me through this mess[,] I decided to withdraw myself from the case 2009-STA-002. Wishing to no longer peruse [sic] this matter.

Complainant's request to withdraw his appeal is tantamount to a request to withdraw any objection to OSHA's findings. *Thompson v. Inland Northwest Dairies, LLC*, ARB No. 07-085, ALJ No. 2007-STA-31 (ARB July 31, 2007).

RECOMMENDED ORDER

Accordingly, **IT IS HEREBY RECOMMENDED** that Complainant's request to withdraw his objection to OSHA's findings be granted and OSHA's findings be affirmed.

A

JOSEPH E. KANE
Administrative Law Judge

Notice of Review: The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. *See* 29 C.F.R. § 1978.109 (a); Secretary's Order l-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 Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order 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.

