



In the Matter of:

ROBERT NELSON,

ARB CASE NO. 10-077

COMPLAINANT,

ALJ CASE NO. 2010-STA-017

v.

DATE: May 27, 2010

**SHAKY TOWN EXPRESS, L.L.C., and
LAWRENCE TRANSPORTATION
COMPANY,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, Esq., *Truckers Justice Center, Burnsville, Minnesota*

For the Respondent:

Gregory J. Walsh, Esq., *Walsh & Gaertner, P.A., St. Paul, Minnesota*

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown,
*Deputy Chief Administrative Appeals Judge***

FINAL DECISION AND DISMISSAL ORDER

Robert Nelson complained that Shaky Town Express, L.L.C., and Lawrence Transportation Company violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),¹ and its implementing regulations,² when

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2009), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Section 405 of the STAA provides protection from discrimination to

it fired him on May 18, 2009, for voicing concerns about hours-of-service violations to his dispatcher.

After an investigation, the Occupational Safety and Health Administration (OSHA) found that Nelson's allegations of violations of Department of Transportation (DOT) regulations regarding his hours of service did not contribute to his discharge. Accordingly, OSHA dismissed the complaint.³ Nelson objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ).⁴

The ALJ scheduled the case for hearing, but on March 3, 2010, Nelson, through counsel, wrote to the ALJ that he wished to withdraw his request for a hearing and dismiss his complaint against Lawrence Transportation and Shaky Town Express. Nelson indicated that he had settled his case against Lawrence Transportation while the case was pending before OSHA, so that this complaint should be dismissed with prejudice. He also stated that he understood that Shaky Town Express was no longer in business, so it would be a waste of time and money to pursue his claim against the company. He requested that his complaint against Shaky Town Express be dismissed without prejudice.

By Recommended Order Approving Withdrawal of Objections and Dismissing Claim (R. O.) dated March 15, 2010, the ALJ cancelled the hearing and dismissed Nelson's complaint against Lawrence Transportation with prejudice and the complaint against Shaky Town Express without prejudice. The ALJ stated that if a complainant seeks to withdraw his or her complaint, the request is construed as a withdrawal of objections to the Secretary's preliminary finds as provided in 29 C.F.R. § 1978.111(c):

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

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).

³ Secretary's Findings, Dec. 15, 2009.

⁴ See 29 C.F.R. § 1978.105.

portion of the findings or preliminary order with respect to which the objection was withdrawn.^{5]}

The case is now before the Administrative Review Board (ARB or Board) pursuant to the STAA's automatic review provisions.⁶ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁷ When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁸ 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" ⁹ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹⁰

On March 31, 2010, the Board issued a Notice of Intent to 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 (30) days of the ALJ's decision, or by April 14, 2010.¹¹ Neither Nelson, Shaky Town, nor Lawrence responded to the Board's notice.

Accordingly, we **AFFIRM** the ALJ's Recommended Order and **GRANT** Nelson's unopposed request to dismiss his complaint.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

⁵ *Accord Mysinger v. Rent-A-Drive*, 1990-STA-023 (Sec'y Sept. 21, 1990).

⁶ *See* 29 C.F.R. § 1978.109(c)(1).

⁷ Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1978.109(a).

⁸ 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).

⁹ 5 U.S.C.A. § 557(b) (West 1996).

¹⁰ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹¹ *See* 29 C.F.R. § 1978.109(c)(2).