

No. 20-4342

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 18, 2022
DEBORAH S. HUNT, Clerk

WEATHERFORD U.S., L.P.,)

Petitioner,)

v.)

U.S. DEPARTMENT OF LABOR,)
ADMINISTRATIVE REVIEW BOARD,)

Respondent,)

ESTATE OF DANIEL A. AYRES, by Kimberly)
Ayres, Administrator,)

Intervenor.)

ORDER

Before: GUY, DONALD, and MURPHY, Circuit Judges.

Weatherford U.S., L.P. petitions for review of a Department of Labor Administrative Review Board (“ARB”) order affirming in part and reversing in part a Department of Labor Administrative Law Judge’s (“ALJ”) amended decision concluding that Weatherford violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (“STAA”), 49 U.S.C. § 31105, and awarding back pay and damages to Intervenor, the Estate of Daniel A. Ayres (“the Estate”). The ARB also affirmed the ALJ’s award of attorney’s fees and costs to the Estate. The Estate moves to dismiss the petition for lack of jurisdiction, asserting that Weatherford

No. 20-4342

-2-

did not timely appeal the ALJ's decision to the ARB or to this court. Weatherford responds in opposition, and the Estate replies.

On September 25, 2017, the ALJ entered a decision concluding that Weatherford violated the STAA and awarded back pay and damages to the Estate. But the ALJ's September 25, 2017 decision was inadvertently not served on Weatherford's counsel due to an administrative error, and the deadline to appeal the decision to the ARB had expired when this error was discovered. On October 17, 2017, the ALJ held a conference call with the parties to discuss the service issue, and counsel for the Estate did not object to issuance of an amended decision. On October 20, 2017, the ALJ issued an amended decision that, apart from an explanatory footnote, was substantively identical to the September 25, 2017 decision.

On November 3, 2017, Weatherford appealed the ALJ's October 20, 2017 amended decision to the ARB. While the appeal was pending, the ALJ awarded attorney's fees and costs to the Estate. The Estate later moved to dismiss Weatherford's appeal as untimely. The ARB denied the motion to dismiss, explaining that Weatherford had filed its appeal within fourteen days of the ALJ's amended decision and the appeal was therefore timely.

On November 18, 2020, the ARB affirmed the ALJ's conclusion that Weatherford violated the STAA and affirmed the award of back pay and compensatory damages, but reversed the award of punitive damages. The ARB also affirmed the award of attorney's fees and costs.

Weatherford filed this petition for review on December 31, 2020, within 60 days of the ARB's November 18, 2020 order. The petition is therefore timely. *See* 49 U.S.C. § 31105(d); 29 C.F.R. § 1978.112. The Estate argues that we lack jurisdiction over the petition because Weatherford did not timely appeal the ALJ's September 25, 2017 decision to the ARB. The Estate fails to cite any authority holding that an untimely appeal to the ARB divests this court of

No. 20-4342

-3-

jurisdiction over a timely petition for review of an ARB order. In any event, as the ARB explained in its prior order, Weatherford appealed to the ARB within fourteen days of the ALJ's October 20, 2017 amended decision so its appeal from this decision was timely. *See* 29 C.F.R. § 1978.110.

Accordingly, the motion to dismiss for lack of jurisdiction is **DENIED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk