



In the Matter of:

ADRIANO BUDRI,

ARB CASE NO. 2020-0061

COMPLAINANT,

ALJ CASE NO. 2020-STA-00090

v.

DATE: August 17, 2020

FIRSTFLEET, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Adriano Budri; *pro se*; Burleson, Texas

For the Respondent:

C. Eric Stevens, Esq.; *Littler Mendelson, P.C.*; Nashville, Tennessee

Before: James D. McGinley, *Chief Administrative Appeals Judge*; Thomas H. Burrell, James A. Haynes, Heather C. Leslie, and Randel K. Johnson, *Administrative Appeals Judges*

DECISION AND ORDER

PER CURIAM. Complainant, Adriano Budri, filed the instant complaint with the United States Department of Labor's Occupational Safety and Health Administration on July 1, 2020. Budri alleged that his employer, Firstfleet, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified, when Tenstreet LLC¹ maintained or republished negative information about Complainant it had originally received from Respondent. The STAA prohibits employers from discriminating against employees when they report violations of commercial motor

¹ Tenstreet is a company that provides data about truck drivers to potential employers.

vehicle safety rules or when they refuse to operate a vehicle when such operation would violate those rules. 49 U.S.C. § 31105 (2007).

BACKGROUND

This is the fifth complaint Budri has filed against Firstfleet. In his first complaint, filed on March 20, 2017, Budri alleged that Firstfleet fired him in retaliation for STAA-protected activities. The Administrative Law Judge (ALJ) issued a decision and order granting Respondent's motion for summary decision because he concluded that there was no genuine issue of material fact that any protected activity contributed to Complainant's termination. *Budri v. Firstfleet, Inc.*, ALJ No. 2017-STA-0086 (ALJ Feb. 2, 2018). Complainant appealed the decision, which the Administrative Review Board (ARB or the Board) summarily affirmed. *Budri v. Firstfleet, Inc.*, ARB No. 2018-0025, ALJ No. 2017-STA-0086 (ARB Jun. 19, 2018). Complainant appealed the Board's decision to the Fifth Circuit, which issued a per curiam affirmance. Complainant petitioned for writ of certiorari to the United States Supreme Court, which was denied.

In his second complaint, Budri alleged that Respondent had taken additional adverse action against him in retaliation for protected activities when it reported negative information about him to Tenstreet. The ALJ issued a decision granting Respondent's motion to dismiss having concluded the Budri's complaint was untimely because he had learned about Firstfleet's report to Tenstreet more than 180 days before filing of the complaint. *Budri v. Firstfleet, Inc.*, ALJ No. 2018-STA-00033 (ALJ Jun. 26, 2018). The ALJ concluded that the reporting agency's retention of the information did not create a continuous violation so the complaint was untimely. Complainant appealed the decision to the Board, which summarily affirmed the ALJ decision. However, the Board later vacated that decision because Complainant informed the Board that he had filed a District Court complaint without notifying the Board, removing the Board's jurisdiction.² *Budri v. Firstfleet, Inc.*, ARB No. 2018-0055, ALJ No. 2018-STA-00033 (ARB Jul. 30, 2019).

The ALJ in the third complaint granted Respondent's motion to dismiss after explaining that Budri had failed to timely file his complaint based on Tenstreet's

² The District Court also concluded that it had no jurisdiction and dismissed the complaint, and upon Respondent's motion for Rule 11 sanctions, reprimanded and warned Complainant that sanctions would result if he filed any future litigation against Respondents arising out of the same facts in any federal court without prior judicial authorization. *Budri v. Firstfleet, Inc.*, 2019 WL 5587181 (N.D. Tex. Sept. 20, 2019); 2019 WL 5578975 (N.D. Tex. Oct. 29, 2019). Complainant appealed to the Fifth Circuit on November 4, 2019. *Budri v. Firstfleet, Inc.*, ALJ No. 2019-STA-00071, slip op. at 4, n.13 (ALJ Dec. 16, 2019) (citing Case No. 19-11203).

retention of information Respondent provided to it beyond the statutory filing deadline. The Board denied Budri's petition for review.

The ALJ dismissed the fourth complaint noting that because maintenance or republication by a third party of information provided by an employer does not constitute new or continuous adverse action, there was no actionable adverse action and thus, Complaint failed to state a claim upon which relief could be granted. The ALJ dismissed for this reason and also for the additional reason that Complainant's conduct warranted dismissal because of his flagrant and defiant failure to comply with the ALJ's orders. The Board denied Budri's petition for review.

JURISDICTION

The ARB has jurisdiction to review the ALJ's decision pursuant to Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020).

DISCUSSION

In this fifth complaint, the ALJ denied the complaint because Budri was unable to "allege[] something beyond that included in his four previously denied complaints." Amended Order of Denial at 6 (ALJ Aug. 5, 2020). Specifically, the ALJ stated that "Complainant alleges nothing in his current complaint that was not alleged and fully adjudicated in his four prior complaints. Those allegations are barred by res judicata and issue preclusion and the complaint consequently fails to state a claim upon which relief can be granted." *Id.* at 4. Finally, noting that "[f]rivolous and vexatious law suits threaten the availability of a well-functioning judiciary to all litigants,"³ the ALJ held that Complainant's complaint failed to allege a claim upon which relief could be granted and was frivolous. *Id.* at 5-6. For these reasons, the ALJ denied the complaint. *Id.* at 6.

The Board has discretion to deny petitions for review under the STAA. 29 C.F.R. 1978.110(b). ("If . . . the ARB denies review, the decision of the ALJ will become the final order of the Secretary."). In this circumstance, we exercise that discretion.

CONCLUSION

Accordingly, we **DENY** Complainant's petition for review.

SO ORDERED.

³ *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008).