

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

ANGELO SCOTT,

COMPLAINANT,

v.

E.O. HABHEGGER COMPANY,

RESPONDENT.

**ARB CASE NOS. 2022-0036
2022-0037**

ALJ CASE NO. 2019-STA-00048

DATE: December 5, 2022

**Before HARTHILL, Chief Administrative Appeals Judge, and BURRELL
and PUST, Administrative Appeals Judges**

ORDER DISMISSING PETITIONS FOR REVIEW WITHOUT PREJUDICE

PER CURIAM:

These cases arise under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA) and its applicable implementing regulations.¹ Angelo Scott (Complainant) filed a whistleblower complaint against E.O. Habhegger Company (Respondent) for alleged retaliation. On April 11, 2022, a United States Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) ordering reinstatement based on her finding that Respondent unlawfully retaliated against Complainant under STAA.² Holding the record open for thirty days, the ALJ noted that “[n]either party presented evidence on damages, or mitigation of damages” and ordered the parties to submit evidence

¹ 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2022).

² D. & O. at 20-21.

to determine Respondent's obligation for backpay and further damages.³ Although the ALJ anticipated issuing further orders in this case, and had not fully disposed of the complaint before her, she included a Notice of Appeal Rights in the D. & O.⁴

On April 16, 2022, Complainant filed a Petition for Review with the Administrative Review Board (Board), and by Order dated April 22, 2022, the Board issued a briefing schedule and assigned the petition ARB Case No. 2022-0036. On April 25, 2022, Respondent also filed a Petition for Review with the Board, and by Order dated April 26, 2022, the Board issued a briefing schedule and assigned this petition ARB Case No. 2022-0037.

By Order dated July 7, 2022, the Board consolidated ARB Case Nos. 2022-0036 and 2022-0037, and issued a final briefing schedule (Briefing Order). The Briefing Order noted the Board received Respondent's opening brief in ARB No. 2022-0037, and that it received a fax correspondence titled "Angelo Scott Answers to Interrogatories" from Complainant. The Briefing Order considered Complainant's filing as Complainant's opening brief in ARB Case No. 2022-0036 and as the response to Respondent's appeal in ARB Case No. 2022-0037. Respondent filed a response brief in ARB Case No. 2022-0036 and neither party filed reply briefs.

The Secretary of Labor has delegated his authority to issue final administrative decisions in cases arising under STAA to the Board.⁵

Notwithstanding the inclusion of appeal rights, the ALJ's D. & O. does not constitute a final ruling because the ALJ held the record open for further action and has not yet issued a final ruling on all of Respondent's obligations as to damages. As such, acceptance of the Petitions for Review was improvidently granted because this case is not yet ripe for consideration. In the proceedings below, the ALJ may receive additional evidence and argument regarding damages.⁶

³ *Id.* at 21-22.


⁴ *Id.* at 22-25.

⁵ 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). The Board's delegated authority includes the consideration and disposition of interlocutory appeals, "in exceptional circumstances, provided such review is not prohibited by statute." *Id.* at § 5(b)(69). In these cases, neither party has obtained the ALJ's certification or otherwise petitioned for or established grounds for an interlocutory appeal. Furthermore, "[t]he Secretary of Labor and the Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals in stages before the final order." *Dick v. United Servs. Auto. Ass'n*, ARB No. 2019-0004, ALJ No. 2018-STA-00054, slip op. at 3 (July 23, 2020).

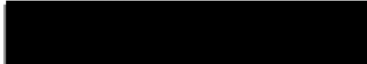
⁶ We note that during the pendency of these cases before the ARB, evidence and briefs containing argument regarding damages have been filed with the ARB.

Accordingly, we **DISMISS** the Petitions for Review without prejudice and **REMAND** the matter to the ALJ for a final ruling.


SO ORDERED.



SUSAN HARTHILL
Chief Administrative Appeals Judge



THOMAS H. BURRELL
Administrative Appeals Judge



TAMMY L. PUST
Administrative Appeals Judge