

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 19 May 2005

CASE №.: 2003-STA-00018

In the Matter of:

David Sexton,
Claimant,

vs.

Kroll's Trucking and Ed Baskaron,
Respondents.

Order of Remand to OSHA

The Administrative Review Board affirmed the dismissal of Murphy's Garage and Towing as a Respondent to the complaint that David Sexton filed under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, 49 U.S.C. § 31105 (West 1997) against Ed Baskaron and his short-lived business, Kroll's Trucking. The caption given above reflects that dismissal.

No party is represented by counsel.

Evidence at the trial proved that Ed Baskaron ran Kroll's Trucking from the premises of Murphy's Garage and Towing. Murphy's is an established business that Roshdy Baskaron, Ed's uncle, operates in Hesperia, CA. Ed agreed to pay his uncle rent if Kroll's (a new business) made a profit. It didn't, and after three months Roshdy Baskaron evicted his nephew and Kroll's from Murphy's premises. Ed Baskaron then left the area; his whereabouts are unknown, and Kroll's ceased operating. (Transcript of 11/18/2003 at 99, 103).

Sexton drove for Kroll's. He complained to OSHA that Kroll's fired him when he refused to drive a truck that was in such poor repair it constituted a safety hazard. The Board found that because Sexton gave the address of Murphy's as the address for Kroll's, "OSHA erroneously conflated Kroll's Trucking and Murphy's Garage and Towing as a single entity and assumed that Murphy's was Sexton's employer." The Board affirmed the finding that Sexton had no valid claim against Murphy's or Roshdy Baskaron.

When dismissing the claim against Murphy's, the Board found that:

the record does not indicate that either Kroll's Trucking or a representative of Kroll's was ever informed of Sexton's complaint, OSHA's investigation into the complaint, or the proceedings before the ALJ. This leaves unresolved the issue of whether Kroll's Trucking violated the STAA. Because the ALJ has not disposed of Sexton's complaint against Kroll's Trucking we REMAND the case to the ALJ for further proceedings consistent with this decision.

The matter cannot proceed to adjudication at the Office of Administrative Law Judges. Fairness requires that OSHA notify Ed Baskaron of the Sexton complaint, investigate it, and give him notice of its findings.

The more practical problem is that the Office of Administrative Law Judges has no address where a notice of a trial could be sent to Ed Baskaron or the now-defunct Kroll's; the testimony in the last trial was that no one knew where Ed was. (Transcript of 11/18/2003 at 103). This Office lacks investigators or any way to locate him. No trial on remand can be noticed given the current record.

The matter is remanded to OSHA to locate Ed Baskaron, give him notice of the Sexton complaint, investigate it, and make findings on behalf of the Secretary. Any party aggrieved by those findings may seek review at the Office of Administrative Law Judges.

So Ordered.

A

William Dorsey
Administrative Law Judge