

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 15 October 2004

CASE NO.: 2004-STA-00052

In the matter of

JAMES ROSHIA, JR.
Complainant

v.

SCHWAN FOOD COMPANY, INC.
Respondent

DECISION AND ORDER DISMISSING REQUEST FOR HEARING

This proceeding involves a complaint under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982 (the Act), as amended, 49 U.S.C. Section 31105 (formerly 49 U.S.C. § 2305), and its implementing regulations found at 29 C.F.R. Part 1978. Section 31105 of the Act provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when the operation would be a violation of these rules.

Complainant James Roshia filed a complaint with the Secretary of Labor, Occupational Safety and Health Administration (OSHA) on January 16, 2004, alleging that Respondent, Schwan Food Company, Inc., discriminated against him in violation of Section 405 of the Act. Following an investigation, the Secretary of Labor served its Findings and Preliminary Order on June 2, 2004, denying relief. On July 6, 2006, Complainant appealed that finding to this Office.

A Notice of Hearing was issued on July 15, 2004, scheduling a formal hearing on August 3, 2004 in Plattsburgh, New York. On July 29, 2004, the hearing was rescheduled to August 31, 2004 at the request of counsel for Respondent. By Order dated August 6, 2004 the claim was again rescheduled to September 28, 2004 due to Judge Teitler’s unavailability. By Order dated September 15, 2004 the hearing was canceled at Complainant’s request. By Telefax transmittal dated October 14, 2004, Complainant stated that he no longer wished to pursue his claim. (See Exhibit A).

29 C.F.R. §1978.111 (c) permits a party to withdraw objections to the Secretary's Preliminary Findings or Preliminary Order at any time before the Findings or Order become final. *Creech v. Salem Carriers, Inc.* 88-STA-29 (Secy's Sept. 27, 2988, slip op. at 2). The regulations provide that if a party files a written withdrawal of his objections, "[t]he judge shall affirm any portion of the findings or preliminary order with respect to which the objection was withdraw." §1978.111(c). I treat Complainant's letter as a request to withdraw his objections to the Area Director's findings. See *Snow v. TNT Red Star Express, Inc.* 1991-STA-44, slip op. at 2-3 (Secy's Mar. 13, 1992).

ORDER

IT IS ORDERED that Complainant's request for withdrawal of his request for a hearing is hereby **GRANTED** pursuant to 29 C.F.R. §1978.111(c). Accordingly, the June 2, 2004 Secretary's Findings issued by the Area Director of the Occupational Safety and Health Administration, finding the Respondent's discharge of the Complainant was not a violation of Section 405 of the Act, is hereby affirmed and reinstated. The complaint, therefore, is hereby **DENIED**. This Order is the final administrative action and no Secretarial review is required. *Underwood v. Blue Springs Hatchery*, 1987-STA-21 (Dep. Secy Nov. 2, 1987) (Order to Show Cause).

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PAUL H. TEITLER
Administrative Law Judge

Cherry Hill, New Jersey