

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 31 March 2010

CASE NO.: 2010-STA-00026

In the Matter of:

CRIS BOOTH,
Complainant,

vs.

WRR ENTERPRISES, INC.,
Respondent.

ORDER OF REMAND

When the Occupational Health and Safety Administration investigated this complaint under the Surface Transportation Assistance Act, 49 U.S.C. § 31105, it investigated the wrong employer. I am therefore remanding to give the Administration an opportunity to investigate the case and make findings.

Complainant initiated this action with a complaint written to the Secretary of Labor and apparently received on October 14, 2009. The Occupational Health and Safety Administration issued Findings on January 14, 2010, dismissing the complaint because Complainant failed to cooperate in the investigation. The record is silent as to the manner of Complainant's failure. The investigator noted in the portion of his final report on the record only that Complainant did not have voicemail on his telephone line.

Complainant timely requested a hearing in a letter postmarked February 12, 2010. After being assigned to the case, I noticed it for hearing. At first, no one appeared for Respondent. As the hearing date approached, we were able to contact Wesley Rocha, the former owner of the now-defunct named Respondent, WRR Enterprises, Inc., which had been located in Moreno Valley, California. Mr. Rocha stated and confirmed in writing on March 18, 2010 that his former company was an internet company, not a trucking company, and that it never employed Complainant.

I ordered Complainant to identify by name and address the former employer against whom he is complaining. Complainant filed a response on March 29, 2010. He confirmed that he never worked for the named Respondent. He identified his former employer as WRR Industries, Inc., 570 West 400 South, Salt Lake City, Utah, with a mailing address of P.O. Box 27597, Salt Lake City, Utah 84129.

It appears from the Final Investigative Report at Occupational Health and Safety that the investigator was aware of both the Salt Lake company and the California company. Complainant had recited in his complaint letter to the Secretary that his employer was “WRR Enterprises, Inc. of Salt Lake City.” There apparently is no such company. The investigator was aware that the company in Salt Lake City was WRR *Industries*, not *Enterprises*. And given that Complainant lives in eastern Nevada and said that his employer was located in Utah, the investigator correctly inferred that he likely meant to identify the Utah employer despite the difference in names.¹

Nonetheless, because the investigator viewed Complainant as uncooperative, he never investigated the Utah employer. Instead, he closed the investigation without pursuing the likely employer. Whether the difficulty during the investigation was Complainant’s lack of voicemail or whatever it was, hopefully Complainant can address this on remand so that he is available to answer the investigator’s questions.

Accordingly, I find the company against whom Complainant is complaining to be the Utah employer identified above, not the named Respondent. The Regional Administrator has never investigated the allegations against the correct employer. He must be afforded an opportunity to do so. The matter is therefore REMANDED to the Occupational Health and Safety Administration for investigation and findings.

SO ORDERED.

A

STEVEN B. BERLIN
Administrative Law Judge

¹ Moreno Valley, California is more than 700 miles from Elko, Nevada. Salt Lake City is less than 200 miles.