



Issue Date: 01 September 2010

CASE NO.: 2010-STA-54

IN THE MATTER OF

MICHAEL CERNY,
Complainant

vs.

LISA MOTOR LINES, INC.,
Respondent

**RECOMMENDED ORDER APPROVING WITHDRAWAL
OF OBJECTIONS AND DISMISSING CLAIM**

This proceeding arises under the Surface Transportation Assistance, P.L. 103-272 at 49 U.S.C. § 31105 *et seq.*, and the regulations promulgated thereunder at 29 C.F.R. Part 1978, which are employee protective provisions. The Secretary of Labor is empowered to investigate and determine “whistleblower” complaints filed by employees of commercial motor carriers who are allegedly discharged or otherwise discriminated against with regard to their terms and conditions of employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

On 24 Aug 10, Complainant submitted a motion to withdraw his complaint. Pursuant to 29 C.F.R. § 1978.111(c), a complainant may file a written withdrawal of objections to the Secretary’s preliminary findings with an Administrative Law Judge at any time before the findings or order becomes final. Thus, where a complainant seeks to withdraw his or her complaint, the complainant’s request is construed as a withdrawal of objections to the Secretary’s preliminary findings.¹ The judge shall determine whether to affirm any portion of the findings or preliminary order or to approve the withdrawal. The Respondent does not object to the withdrawal of the complaint.

¹ *Mysinger v. Rent-A-Driver*, 1990-STA-23 (Sec’y Sept 21, 1990).

Accordingly, it is hereby **ORDERED** that the Secretary's findings are **REINSTATED** and the above-captioned matter is hereby **DISMISSED** pursuant to 29 C.F.R. § 1978.111(c).

In view of the foregoing, the hearing scheduled for **02 Nov 10** in **San Antonio, Texas** is hereby **CANCELLED**.

So ORDERED.

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PATRICK M. ROSENOW
Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.