



**Issue Date: 05 April 2011**

Case No.: **2010-STA-00055**

In the matter of

TERRY HOLLIFIELD,  
Complainant

v.

KDXPRESS, INC.,  
Respondent

**DECISION AND ORDER DISMISSING THE COMPLAINT**

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 405 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.

This matter was scheduled to be heard on Thursday, November 4, 2010 in Memphis, Tennessee. On November 2, 2010, Paul O. Taylor, Esq., counsel for complainant, filed a Notice of Settlement and Unopposed Motion to Vacate Hearing Setting. The hearing was canceled and the undersigned has been awaiting the settlement documents.

On February 11, 2011, the undersigned Administrative Law Judge issued an order to show cause directing the Respondent to reply to Complainant’s motion to enforce a “settlement agreement.”

On February 24, 2011, Dale Armstrong, former CFO of KDXpress LLC, stated, in part:

10. The company is insolvent and no funds are available to pay the settlement. All assets of the company have been or are in the process of being ceased. We are in bankruptcy discussion at present. I could not in good faith agree to a settlement that I knew KDXpress could never pay.

11. We have no choice but to reject the settlement agreement and attempt to plead our case in court if your honor will give us the opportunity, although there are no funds to pay an attorney.

Mrs. Armstrong also stated that

We did in fact report to Hire Right that Mr. Hollifield worked for KDXpress but said nothing negative regarding his employment.

On March 24, 2011, Paul Taylor, Esq., counsel for the Complainant stated

Terry Hollifield moves the Court to dismiss this proceeding as it appears that Respondent has ceased operations and that pursuit of Complainant's claim would waste the Court's time and would not result in recovery for Complainant. The undersigned represents that by telephone conference on March 23, 2011, Mr. Hollifield agreed to authorize the undersigned to file a motion to dismiss this proceeding.

Therefore, this case is **DISMISSED** without prejudice.

**A**

RICHARD K. MALAMPHY  
Administrative Law Judge

RKM/CCB/ccb  
Newport News, Virginia

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(a). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. §§ 1978.110(a) and (b).