

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 23 October 2012

Case No.: 2010-STA-00035

In the Matter of:

BARRY STROHL,

Complainant,

v.

YRC, INC.,

Respondent.

ORDER OF DISMISSAL WITH PREJUDICE

This proceeding arose from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (“STAA”) and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978 and Part 18. The claim was referred to this Office of Administrative Law Judges for formal hearing upon Complainant’s April 14, 2010, appeal of the Occupational Safety and Health Administration March 23, 2010, determination that the warning letter issued to Complainant did not rise to the level of an adverse action and the complaint was without merit.

On May 6, 2010, Respondent’s counsel filed “Respondent’s Motion for Summary Decision” on the grounds that the only issue is whether a warning letter issued to the Complainant on January 9, 2009 is an adverse personnel action within the meaning of the STAA. On May 24, 2010, Complainant’s counsel filed “Complainant’s Memorandum of Law in Opposition to Respondent’s Motion for Summary Decision.” On May 27, 2010, this Administrative Law Judge issued a “Recommended Decision and Order Granting Respondent’s Motion for Summary Decision and Dismissing Complainant.”

On June 1, 2010, Complainant appealed the Recommended Decision and Order to the Administrative Review Board. The case was assigned ARB Case No. 10-116. By Order of August 12, 2011, the Administrative Review Board noted the change to implementing federal

regulations on August 31, 2010, at 29 CFR §1978.102(b)¹ and remanded the case for reconsideration as to whether the January 6, 2009 warning letter constitutes an adverse action in light of the law's current state, including regulatory language of 29 CFR §1978.102 and our *Williams*² decision. On September 19, 2011, Respondent's counsel filed a "Motion for Reconsideration of Order of Remand" with the Administrative Review Board. That Motion was denied on May 7, 2012. The record was received in this office on May 9, 2012.

On October 15, 2012, Claimant's counsel filed documents with the Court in which the Complainant requested the request for hearing be dismissed with prejudice. Federal regulations at 29 CFR §1978.11(c) permit a party to withdraw objections to the Assistant Secretary's findings and/or the preliminary order by filing a written withdrawal with the presiding Administrative Law Judge. In this case, the Complainant, with the advice of his counsel, has filed a written request to have the above captioned matter dismissed with prejudice. Review of the written request demonstrates that the Complainant knowingly, intelligently and voluntarily made the written request to dismiss the pending action with prejudice.

In view of all the foregoing, the Complainant's request to dismiss with prejudice is granted and **the above captioned matter is hereby DISMISSED WITH PREJUDICE.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/jcb
Newport News, Virginia

¹ The implementing regulations were again changed effective July 27, 2012; 77 Fed. Reg. 44121-44139 (Jul. 27, 2012).

² *Williams v. American Airlines, Inc.*, ARB No. 09-018, ALJ No. 2007-AIR-004 (ARB Dec. 29, 2010)