

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 December 2011

CASE NO. 2010-STA-75

In the Matter of:

JOZEF WYSOCKI,
Complainant

v.

RICK TRANS, INC.,
Respondent

Appearances:

Jozef Wysocki,
Pro Se

Patrick Pontarelli, Esq.
For Respondent

BEFORE: MICHAEL P. LESNIAK
Administrative Law Judge

DECISION AND ORDER OF DISMISSAL

This case arises under Section 405 of the Surface Transportation Assistance Act of 1982 (“STAA”), codified at 49 U.S.C. § 31105, and the implementing regulations at 29 C.F.R. 1978. The STAA prohibits “a person” from discharging, disciplining or discriminating against “an employee” in pay, terms or privileges of employment when the employee refuses to operate a vehicle in violation of a regulation of the United States relating to commercial vehicle safety or health. 49 U.S.C. § 31105 (a)(1)(B).

I held a formal hearing in the above-captioned case on November 2, 2011 in Chicago, Illinois. At the outset, I had concerns that Complainant did not understand what was going on because he spoke with such a heavy Polish accent. However, I established that Complainant has lived in the United States for 33 years and can read and write in English. (TR 8,12).¹ Therefore, I was satisfied that he understood the proceedings. During the hearing, I also admitted Complainant’s exhibits 1-4. *Id.* at 42-43, 52.

¹ TR = Transcript of the November 2, 2011 hearing.

At the conclusion of Complainant's case, Respondent moved for a directed verdict because Complainant failed to show "safety retaliation." *Id.* at 50. I granted the directed verdict because Complainant did not establish a prima facie case. *Id.* at 50-51.

Testimony of Jozef Wysocki

Complainant testified under oath that he accepted a job driving a truck owned by Rick Trans from Chicago, Illinois to Arizona and New Mexico beginning in January 2010, at the rate of 40 cents a mile. (TR 20, 23-24). Instead of returning the truck to Chicago, however, he left it at an Exxon gas station in Tuquieri, New Mexico. *Id.* at 32.² Complainant testified that he was threatened by a woman named Aneshka who sometimes worked for Rick Trans. *Id.* at 38-39. This woman threatened him because he did not pick up freight from Nogales, Arizona to take back to Chicago, and he was not supposed to come back empty. *Id.* at 36-37. Complainant called 911 while in Tuquieri not because of safety problems with the truck, but because he received five threatening phone calls on his cell phone. *Id.* at 35-36. Therefore, his decision to abandon the vehicle was unrelated to any safety issue. *Id.* at 39. Complainant took a Greyhound bus to Dallas, Texas where he then boarded a plane back to Chicago, Illinois. *Id.* at 40-41.

Directed Verdict/Judgment as a Matter of Law

In an STAA case, the ALJ may grant a motion for directed verdict where, viewing the evidence in a light most favorable to Complainant and drawing all reasonable factual inferences in Complainant's favor, he determines that Complainant has not established a prima facie case. *See Scott v. Roadway Express, Inc.*, 1998-STA-8 (ALJ Nov. 6, 1998)(motion for directed verdict granted where Complainant did not establish a causal connection between his protected activity and his discipline or discharge).³

Under the STAA, the plaintiff has the initial burden of establishing a prima facie case of retaliatory discharge. *Moon v. Transport Drivers, Inc.*, 836 F.2d 226, 229 (6th Cir. 1987). To establish a prima facie case of retaliatory discharge, the complainant must prove: (1) that he or she engaged in protected activity under the STAA; (2) that he or she was the subject of adverse employment action; and (3) that there was a causal link between his or her protected activity and the adverse action of the employer. *Id.* Furthermore, while a pro se complainant may be held to a lesser standard than legal counsel with regard to matters of procedure, the burden of proving the elements necessary to sustain a claim of discrimination is no less. *Flener v. H.K. Cupp, Inc.*, 90-STA-42 (Sec'y Oct. 10, 1991).

At the conclusion of Complainant's case, I found that Complainant failed to show he was discriminated against for engaging in protected activity; rather he abandoned Respondent's truck in New Mexico, essentially walking off the job, for reasons totally unrelated to safety issues or

² Complainant was unable to spell the name of this city, but testified that it was "about 690 miles away from Phoenix." (TR 32). There is no city with this name, or a similar name, that distance from Phoenix.

³ In *Scott*, The ALJ noted that current FRCP 50 now provides for a "Judgment as a Matter of Law" rather than a "directed verdict," but that the change was not intended to change the standards under which "directed verdicts" could be granted.

protected activity. (TR 50-51). I affirm those findings now, and I determine that Complainant has not established a prima facie case under the STAA.

I also dismiss Complainant's case because he did not obey my Order of August 11, 2011. On that date, I ordered Mr. Wysocki to turn over documents requested by Respondent. (TR 6). Halina Yordan, who lives with Complainant, received and signed for the Order, which was sent by certified mail. *Id.* at 7. Although Complainant received the Order and brought it with him to the hearing, he failed to provide the requested documents to Rick Trans. *Id.* at 6,8. As a result, Respondent motioned for sanctions at the beginning of the hearing, a motion that I took under advisement. *Id.* at 5-6, 11-12. I now find Complainant's failure to turn over his exhibits to Rick Trans an intentional violation of my August 11, 2011 Order. I grant Respondent's Motion for Sanctions and dismiss Complainant's case for this reason as well.

Wherefore, the above considered, Complainant's case is dismissed.

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MICHAEL P. LESNIAK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: If you are dissatisfied with the administrative law judge's decision, you may file an appeal with the Benefits Review Board ("Board"). To be timely, your appeal must be filed with the Board within thirty (30) days from the date on which the administrative law judge's decision is filed with the district director's office. *See* 20 C.F.R. §§ 725.478 and 725.479. The address of the Board is: Benefits Review Board, U.S. Department of Labor, P.O. Box 37601, Washington, DC 20013-7601. Your appeal is considered filed on the date it is received in the Office of the Clerk of the Board, unless the appeal is sent by mail and the Board determines that the U.S. Postal Service postmark, or other reliable evidence establishing the mailing date, may be used. *See* 20 C.F.R. § 802.207. Once an appeal is filed, all inquiries and correspondence should be directed to the Board. After receipt of an appeal, the Board will issue a notice to all parties acknowledging receipt of the appeal and advising them as to any further action needed. At the time you file an appeal with the Board, you must also send a copy of the appeal letter to Associate Solicitor, Black Lung and Longshore Legal Services, U.S. Department of Labor, 200 Constitution Ave., NW, Room N-2117, Washington, DC 20210. *See* 20 C.F.R. § 725.481. If an appeal is not timely filed with the Board, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 20 C.F.R. § 725.479(a).