



**Issue Date: 30 October 2013**

Case No.: 2010-STA-00066  
*In the Matter of:*

MICHAEL YUSIM,

Complainants,

v.

MIDNIGHT SUN TOURS,

Respondent.

**ORDER DISMISSING THE COMPLAINT  
DUE TO THE BANKRUPTCY OF THE RESPONDENT**

This action arises under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982, (STAA) as amended and re-codified, 49 U.S.C. § 31105, and the corresponding agency regulations, 29 C.F.R. Part 1978. The complaint asserts that the Complainant, a motor coach driver, suffered retaliation for accurately reporting duty hours. He contends that the Respondent directed him to record hours when he was on duty but not driving as off duty, in violation of federal hours of service regulations.

On January 3, 2012, the parent corporation of the Respondent filed for bankruptcy. Under 11 U.S.C. §362(a)(1), the filing of the bankruptcy petition operated as “a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.”

On March 7, 2012, the Complainant filed a Proof of Claim regarding the present complaint with the Bankruptcy Court. On May 25, 2012, the Bankruptcy Court entered orders approving the sales of substantially all of the Respondent’s operating assets.

On May 31, 2013, the Court entered an order that approved two trust agreements, a Lender Trust Agreement and a General Unsecured Creditor (GUC) Trust Agreement. In the same order, the Court authorized the transfer of the Respondent’s remaining assets to the Lender Trust and dismissed the Chapter 11 claims of creditors. In its order, the Court stated that “[n]otwithstanding the dismissal of the Chapter 11 Cases, this Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or relating to the implementation of this or any other Order of this Court entered in the Chapter 11 Cases.”

As a result of the sales and the Bankruptcy Court's dismissal order, the Respondent has no remaining assets. The Chief Restructuring Officer directed the attorneys for the Respondent to withdraw from matters in which they represented the Respondent. On September 9, 2013, in accordance with this direction, counsel for the Respondent filed a motion to withdraw as counsel in the pending case.

On September 9, 2013, the Complainant filed a response to the motion by counsel for the Respondent. He supplemented this filing with a further letter on September 26, 2013. In these filings he argued that a claim such as this one should be adjudicated by the Department of Labor under the STAA rather than in bankruptcy proceedings. In support of this position he cites 28 U.S.C. §157(d), which provides that:

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. §157(d).

This provision relates to a district court's authority to withdraw a matter that it had previously referred to a bankruptcy judge. It does not provide, or even hint at, any authority for an administrative law judge to divest a bankruptcy court of jurisdiction.

There has been no evidence of the District Court having withdrawn this matter from the Bankruptcy Court, either to try the claim itself or to refer it to the Department of Labor. The only evidence on this issue is the unambiguous assertion of jurisdiction by the Bankruptcy Court quoted above. In addition, the Respondent has not emerged from bankruptcy as a going concern capable of being proceeded against in a hearing.

### **ORDER**

The Motion by Counsel for the Respondent to withdraw from representation is **GRANTED**. The complaint is **DISMISSED** due to the bankruptcy of the Respondent.

KENNETH A. KRANTZ  
Administrative Law Judge

KAK/mrc  
Newport News, VA

**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. § 1979.110(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. § 1979.110(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 the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. § 1979.110(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. § 1979.110. 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. §§ 1979.109(c) and 1979.110(a) and (b).