

U.S. Department of Labor

Office of Administrative Law Judges
2 Executive Campus, Suite 450
Cherry Hill, NJ 08002

(856) 486-3800
(856) 486-3806 (FAX)



Issue Date: 23 May 2013

Case No.: 2013-STA-00014

In the Matter of

GREG RUSSELL

Complainant

v.

IN-PORT EXPERTS

Respondent

**ORDER APPROVING WITHDRAWAL OF OBJECTIONS
AND DISMISSAL OF CLAIM**

This proceeding arises under the Surface Transportation Assistance Act of 1982 (“STAA”), 49 U.S.C. § 31105, and the regulations promulgated thereunder at 29 C.F.R. Part 1978.

On November 21, 2011, Greg Russell (“Complainant”) filed a timely complaint with the United States Department of Labor’s Occupational Safety and Health Administration (“OSHA”) alleging his former employer, In Port Experts, Inc. (“Employer” or “Respondent”), violated the STAA’s employee protection provisions when it terminated his employment on or about October 11, 2011. After conducting an investigation, the OSHA’s Regional Administrator, acting on behalf of the Secretary, issued a final determination letter outlining the Secretary’s findings on December 5, 2012. Concluding the evidence showed Complainant was terminated due to his refusal to report to work and Complainant lacked a reasonable apprehension of death or serious injury as there was a reasonable alternative to operation of his assigned vehicle, OSHA dismissed the complaint with a finding Respondent would have taken the same adverse action in the absence of Complainant’s protected activity under the STAA.

By letter dated December 10, 2012, and received by this office on December 19, 2012, Complainant, through counsel, timely filed objections to the Secretary’s findings and order dismissing the claim. I issued a Notice Of Hearing And Pre-Hearing Order on December 20, 2012, scheduling the matter for a hearing on April 4, 2013 and a prehearing conference on March 21, 2013.

I held a recorded teleconference in this matter on March 21, 2013. Paul Weiner, Esquire, of the Law Offices of Wiener & Weiner, LLC, appeared on Complainant’s behalf; Respondent’s

President, Michael Ortiz, appeared for Respondent without representation. Mr. Weiner indicated that his office had been unable to locate his client and Mr. Ortiz indicated that he had not received the Notice of Hearing until the day prior to the teleconference because it was sent to an incorrect address. I issued an Order Rescheduling Hearing And Pre-Hearing Order, directing that the hearing be rescheduled for June 13, 2013 to allow Complainant to be located and Respondent to obtain representation, if desired.

By facsimile transmission received on May 21, 2013, Complainant's counsel filed a Notice of Motion with a supporting Certification of Joshua L. Weiner, Esquire. In the Notice of Motion, Complainant seeks dismissal of the instant matter with prejudice. Mr. Weiner states in his Certification, in part, that "[a]fter several communications, [Complainant] has indicated to him that he no longer wishes to pursue this matter and prefers that it be dismissed with prejudice" and that "[Complainant] is currently serving in a humanitarian capacity in South America and wants to focus his efforts toward this end." As proper service of Complainant's Notice Of Motion with supporting Certification on Respondent was unclear, this office provided Mr. Ortiz with a copy of Complainant's May 21, 2013 submission on May 22, 2013 via facsimile transmission. On that date, Mr. Ortiz indicated, also by facsimile transmission, that Respondent has no objection to Complainant's Motion.

The rules governing withdrawal of STAA complaints provide that "at any time before the findings and preliminary order become final, a party may withdraw its objections to the findings and/or preliminary order by filing a written withdrawal with the administrative law judge," who shall then determine whether to affirm any portion of the findings or preliminary order or approve the withdrawal. *See* 29 C.F.R. § 1978.111(c). Complainant's Notice of Motion shall be construed as request to withdraw his objections to the Secretary's findings.

No final decision has been issued in the matter. As such, upon review of the entire record, and for good cause shown, Complainant's request to withdraw his objections is hereby **GRANTED**.

The hearing scheduled for June 13, 2013 in New York, NY is hereby **CANCELED**. Consistent with the regulations, the Secretary's findings are affirmed in their entirety and the above captioned matter is hereby **DISMISSED** with prejudice without costs awarded to either party.

SO ORDERED

LYSTRA A. HARRIS
Administrative Law Judge

Cherry Hill, New Jersey