



Issue Date: 24 June 2016

CASE NO.: 2015-STA-39

IN THE MATTER OF

CLARENCE FLOWERS,
Pro-se Complainant

vs.

FOUR SEASONS ICE SUPPLY,
Respondent

ORDER OF DISMISSAL

This proceeding arises under the employee protective provisions of the Surface Transportation Assistance Act (STAA),¹ and the regulations promulgated thereunder.² The Secretary of Labor is empowered to investigate and determine “whistleblower” complaints filed by employees of commercial motor carriers who are allegedly discharged or otherwise discriminated against with regard to their terms and conditions of employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

The *pro se* Complainant filed his initial complaint with the Occupational Health and Safety Administration (OSHA) on 29 Jan 15, alleging that that Respondent discharged him in retaliation for refusing to drive in violation of DOT regulations. OSHA dismissed the claim as outside of the 180 day limit and untimely. On 10 Mar 15, Complainant filed his objection and request for a de novo hearing.³

After multiple unsuccessful attempts to contact Complainant by telephone and arrange an initial scheduling conference call, on 7 May 15, I issued a written order for Complainant to contact my staff.

On 11 Apr 16, Respondent filed a motion for summary decision. Complainant’s response was inconsistent and ambiguous, so I conducted a conference call with the parties to clarify his position. I determined that the complaint was not timely as to any adverse action except for a 2 Aug 15 letter that related to the accounting of his final pay.

¹ P.L. 103-272 at 49 U.S.C. § 31105.

² C.F.R. Part 1978.

³ The letter was dated 26 Feb 15, but not received until 10 Mar 15.

When I conducted a second telephone conference call with the parties on 12 May 16 to inform them of my decision, Complainant stated that the only damages he suffered relating to that letter and pay check was approximately \$16 in reduced wages. Respondent's Counsel offered to pay Complainant \$16 to resolve his claim. I informed Complainant that he could have some time to negotiate a settlement with Respondent or, if he believed my decision as to timeliness was in error and wanted to appeal, he could continue with the case, which could be done by telephone, if he chose. Complainant declined the offer of a telephonic hearing. When I asked if the parties were ready to try the case, Respondent noted that Complainant had failed to respond to any discovery requests. I ordered Complainant to do so within seven days.

On 16 May 16, I issued a written ruling as to the partial summary dismissal for timeliness and summarizing the procedural status of the case. That order specifically directed Complainant to respond to Respondent's discovery requests. It also ordered both parties to exchange exhibits and disclose witnesses no later than 18 May 16 and make themselves available for a conference call on 20 May 16. My staff obtained a courtroom in Del Rio and on 17 May 16, I issued an order identifying the location and time for the formal hearing on 24 May 16.

The ruling and order was delivered to Complainant on 18 May 16, and a second copy was delivered the following day. Multiple phone calls were made to and messages left on Complainant's phone numbers. Nonetheless, Complainant failed to respond in any manner through 20 May 16. Respondent likewise indicated that Complainant had still not responded in any way to its discovery requests.

On the afternoon of 23 May 16, I received a rambling letter from Complainant that was essentially a motion to recuse and a request for a continuance. The letter was dated 16 May 16, but postmarked 20 May 16. There is nothing in the letter to indicate that Complainant had read either the order granting partial summary decision or the notice of location and time of hearing. Neither was there any indication that Complainant had sent a copy to Respondent.⁴ When contacted, Respondent stated that he was unaware of Complainant's 16 (20) May 16 letter, but would not oppose the requested continuance. Once again, repeated phone calls and messages for Complainant went unanswered and unreturned.

On 25 May 16, I issued an order denying the motion to recuse, cancelled the hearing, and ordering Complainant file in writing with a post mark no later than seven days after receipt of the order a response explaining why he had not (1) complied with the order to respond to Respondent's discovery requests; (2) complied with the order to exchange exhibits and disclose witnesses; (3) complied with the order to participate in a conference call on 20 May 16; (4) responded to telephone messages⁵ to contact my staff; and (5) read documents sent to the address⁶ he originally provided and continues to use as a return address.

⁴ At the very first conference call, and on multiple occasions after, Complainant was instructed that he must provide Respondent with a copy of anything he filed.

⁵ Using both 830-313-7241 and 830-834-0139.

⁶ 1409 North Main Street Del Rio TX 78840

I warned Complainant that failing to respond could result in the dismissal of his case and told him if he had any questions or needed any assistance on how to proceed, he should contact my staff. The postal service attempted delivery of the letter on 1 Jun 16, but no authorized recipient was available. A notice was left, but the letter remained unclaimed and eventually was returned. Additional attempts to contact Complainant by telephone have been unsuccessful.

Complainant has on repeated occasions failed to comply with or even respond to orders. He has now essentially disappeared, making it impossible for me to conduct any meaningful litigation and adjudication of his complaint. His refusal to participate or cooperate in even the most basic matters gives me no alternative but to determine that he has abandoned any intention to prosecute his complaint and it is dismissed.⁷

ORDERED this 24th day of June, 2016, at Covington, Louisiana.

PATRICK M. ROSENOW
ADMINISTRATIVE LAW JUDGE

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) 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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be

⁷ See, e.g., *Rose v. ATC Vancom, Inc.*, ARB No. 05-091, 2005-STA-14 (ARB Aug. 31, 2006) (citing *Kruml v. Patriot Express*, ARB 03-015, ALJ No. 02-STA-7, slip op. at 4-5 (ARB Feb. 25, 2004); *Assistant Sec'y for OSH and Reichelderfer v. Bridge Transp., Inc.*, ARB No. 02-068, ALJ No. 2001-STA-041, slip op. at 3 (ARB Aug. 29, 2003); *Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-53, slip op. at 4 (ARB Mar. 15, 2002); *Curley v. Grand Rapids Iron & Metal Co.*, ARB No. 00-013, ALJ No. 99-STA-39, slip op. at 2 (ARB Feb. 9, 1999)).

had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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 may be found to have waived 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).

If filing paper copies, 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 an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file 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. If you e-File your petition and opening brief, only one copy need be uploaded.

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 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 may include 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. If you e-File your responsive brief, only one copy need be uploaded.

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 you e-File your reply brief, only one copy need be uploaded.

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(b). 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(b).