



Issue Date: 15 December 2015

CASE NO.: 2015-STA-00048

*In the Matter of:*

JOHN KEHM,  
*Complainant,*

v.

LUCAS TRUCKING, LLC.,  
*Respondent.*

**DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR A DEFAULT JUDGMENT**

This matter involves an appeal by Complainant, John Kehm, from the April 1, 2015, determination by the Regional Administrator, who found no reasonable cause to believe that Respondent, Lucas Trucking LLC, violated the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105, as amended, ("STAA") by constructively firing Complainant in retaliation for engaging in activity protected by the STAA. Complainant appealed and the matter was assigned to the undersigned for a *de novo* hearing.

On June 2, 2015, the undersigned issued a *Notice of Hearing and Prehearing Order*, which notified the parties that a formal hearing for the above-captioned case was scheduled for November 17, 2015, in or near Kansas City, Missouri. Additionally, the *Prehearing Order* informed the parties that "[a]ll discovery will be concluded 30 days before the hearing date."

On September 29, 2015, Respondent's counsel filed a notice of withdrawal as Respondent's counsel. This Court permitted Respondent's counsel to withdraw. *See Order Permitting Withdrawal of Respondent's Counsel.*

Also on September 29, 2015, Complainant's counsel filed a Motion to Compel Discovery, stating that Respondent had failed to respond to Complainant's requests for discovery. On October 6, 2015, this Court granted Complainant's Motion, and ordered that Respondent "respond to Complainant's Interrogatories and Requests for Discovery not later than October 19, 2015." *Order Requiring Respondent to Provide Responses to Complainant's Discovery Requests* at 2.

On October 22, 2015, Complainant's Counsel filed *Complainant's Motion to Vacate Hearing Setting*, which stated in pertinent part:

Complainant John Kehm moves the Court for an order vacating the hearing setting in this case and in support thereof states as follows:

1. Respondent Lucas Trucking, LLC has failed to answer discovery in this case served June 1, 2015, notwithstanding the Court's order of October 6, 2015 directing it to do so not later than October 19, 2015.
2. Complainant has filed herewith a Motion for Sanctions including issuance [of] a decision and order in favor of Complainant and against Respondent Lucas Trucking, LLC on the merits. Even if the Court denies that motion, Complainant cannot adequately prepare for a hearing on the merits in this case unless and until Lucas Trucking, LLC answers the discovery which Complainant served.
3. If the Court grants Complainant's Motion for Sanctions by issuance of a decision and order on the merits, then evidence of damages can easily be submitted by affidavit or declaration, making a hearing unnecessary.

*Complainant's Motion to Vacate Hearing Setting* at 1.

Also on October 22, 2015, Complainant filed *Complainant's Motion for Sanctions and Entry of Default*, which stated in pertinent part:

Pursuant to 29 C.F.R. §§ 18.33 and 18.57(b) Complainant John Kehm moves the Court for an order granting the following relief because the Respondent has failed to respond to Complainant's discovery in violation of the Court's order dated October 6, 2015:

1. Entering the default of Lucas Trucking, LLC and striking its defenses;
- [2.] Rendering a default decision and order in favor of Complainant and against Respondent Lucas Trucking, LLC on the merits;
- [3.] Ordering Lucas Trucking, Inc. to offer Complainant immediate reinstatement;
- [4.] Granting Complainant 30 days to submit, by declaration or affidavit, evidence of his damages, and to submit a petition for attorney fees and costs.

*Complainant's Motion for Sanctions and Entry of Default* at 1.

By Order issued on November 3, 2015, the undersigned cancelled the hearing set for November 17, 2015, and required the Respondent to show cause, no later than thirty (30) days from the date of the Order, why this Court should not render a default decision and order in favor of Complainant and against Respondent on the merits. Respondent was further advised that if no response was received in the timeframe prescribed, that a default decision and order would be

rendered against it in accordance with 29 C.F.R. § 18.57(b). Notification that the requested discovery had been produced in compliance with the orders of this Court would have been considered sufficient cause for avoidance of a default judgement.

As of the date of this Decision and Order, Respondent has provided no response.

### **DISCUSSION**

The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, 29 C.F.R. Part 18, Subpart A, § 18.57(b), provides the following potential sanctions for failure to follow a Judge's order:

- (i) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the proceeding, as the prevailing party claims;
- (ii) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) Striking claims or defenses in whole or in part;
- (iv) Staying further proceedings until the order is obeyed;
- (v) Dismissing the proceeding in whole or in part; or
- (vi) Rendering a default decision and order against the disobedient party;

*Id.*

Respondent failed to follow the requirements contained in the pre-hearing order, terminated the services of his attorney, and has failed to further participate in this case by failing to provide any response to the written orders of this Court. This has resulted in an inability of this tribunal to adjudicate the issues before it and a denial of Complainant's right to discovery and adjudication of his claim. Accordingly, I find that a default judgment is required.

### **Remedies**

Statutory remedies under the STAA include directing the employer to

- (i) take affirmative action to abate the violation; (ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and (iii) pay compensatory damages, including back pay with interest and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

49 U.S.C. § 31105(b)(3)(A). Relief may also include punitive damages in an amount not to exceed \$250,000.00. 49 U.S.C. § 31105(b)(3)(C).

Under the STAA, the Secretary of Labor must order reinstatement upon finding reasonable cause to believe that a violation occurred. *Spinner v. Yellow Freight System, Inc.*, 90-STA-17 (Sec'y May 6, 1992). The Administrative Review Board (ARB) has held that reinstatement is an automatic remedy under the STAA and must be ordered unless it is impossible or impractical. *Dickey v. West Side Transport, Inc.*, ARB Nos. 06-150, 06-151, ALJ Nos. 2006-STA-26 and 27 (ARB May 29, 2008). Thus, as Complainant has established, through Respondent's default, that his rights under the STAA have been violated, Complainant is entitled to reinstatement to his former position and to damages.

### **ORDER**

Accordingly, **IT IS ORDERED THAT:**

- 1) Complainant is entitled to a default judgment against Respondent;
- 2) Respondent shall immediately reinstate Complainant to his prior position;
- 3) Respondent shall immediately expunge from Complainant's personnel records all derogatory or negative information contained therein related to Complainant's protected activity and that protected activity's role in Complainant's termination;
- 4) Respondent shall be prohibited from disclosing disparaging information about Complainant to prospective employers, or otherwise interfering with any applications he might make in the future;
- 5) Within thirty (30) days from the receipt of this Order, Complainant's counsel shall file proof of damages, setting forth the compensatory and exemplary damages which Complainant alleges he is entitled. Complainant's counsel shall also inform the court if a hearing will be necessary with regards to the damages aspect of this matter; and
- 6) Respondent shall have thirty (30) days within which to respond to Complainant's request for alleged damages. Additionally, Respondent will also notify the undersigned in its response whether or not it believes a hearing will be necessary on the issue of damages.

LARRY S. MERCK  
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 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](mailto: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, the Associate Solicitor, 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).

**The preliminary order of reinstatement is effective immediately upon receipt of the decision by the Respondent and is not stayed by the filing of a petition for review by the Administrative Review Board.** 29 C.F.R. § 1978.109(e). If a case is accepted for review, the decision of the administrative law judge is inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board unless the Board grants a motion by the respondent to stay that order based on exceptional circumstances. 29 C.F.R. § 1978.110(b).