**U.S. Department of Labor**

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)

**Issue Date: 10 August 2016**

Case No.: 2016-STA-8

*In the Matter of:*

PHYLLIS COFFMAN,
Complainant,

v.

NAVAJO EXPRESS TRUCKING,
Respondent.

**DECISION AND ORDER GRANTING NAVAJO EXPRESS TRUCKING'S MOTION FOR SUMMARY DECISION AND ORDER DISMISSING CASE AND CANCELLING HEARING**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C.A. § 31105 (Thomson/West Supp. 2012) ("STAA"), and its implementing regulations at 29 C.F.R. Part 1978, 77 FR 44121-01, 2012 WL 3041790 (F.R.) (Jul. 27, 2012). The Complainant, Phyllis Coffman, a trucker, initiated this action when she filed a complaint with the Department of Labor's Occupational Safety and Health Administration ("OSHA") on March 4, 2014. In her OSHA complaint, Coffman alleged that Respondent, Navajo Express Trucking ("Navajo") violated the STAA when it terminated her employment in retaliation for Coffman making oral threats to make a complaint to the Department of Transportation for driver time log violations. After completing an investigation, OSHA dismissed Coffman's complaint in a letter dated August 20, 2015. Coffman timely requested a hearing before the Office of Administrative Law Judges ("OALJ"). A Notice of Assignment was issued on December 21, 2015, and, following a January 19, 2016, conference call, an Order was issued on, January 21, 2016, scheduling this matter for hearing in Denver, Colorado on September 20, 2016.

Navajo filed a Motion for Summary Decision ("Motion") on June 20, 2016, with supporting documentation as well as a Memorandum of Law. The Motion argues that Navajo is entitled to judgment as a matter of law. In its Memorandum of Law, Navajo contends the following:

1. Coffman cannot establish a violation of the STAA because she did not engage in any protected activity under the statute.

2. Even if she engaged in protected activity, Coffman cannot show there is a causal connection between her protected activity and her subsequent termination.

On July 8, 2016, Coffman filed its Response to Motion for Summary Decision ("Response.") No further briefing was allowed.[1]

Whistleblower Protection under the STAA

The STAA prohibits an employer from discharging or discriminating against an employee because the employee has engaged in certain protected activity. The employee protection provisions of the STAA provide in relevant part:

> (a) Prohibitions:
>
> (1) A person may not discharge an employee or discipline or discriminate against an employee regarding pay, terms, or privileges of employment because: (A) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding.[2]

Congress amended the STAA on August 3, 2007 to incorporate the legal burdens of proof set forth in the Wendell H. Ford Aviation and Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. §42121(b).[3] *Smith v CRTS International, Inc*., No. 11-086, 2013 WL 2902809, *2 fn 1 (ARB Jun. 6, 2013); 49 U.S.C. §31105(b). Because the complaint was filed on March 4, 2014, the post-2007 standards of proof apply.

In order to prove a STAA violation under these standards, Coffman must show, by a preponderance of evidence: (1) that she engaged in protected activity; and (2) that Navajo took an adverse employment action against her, and (3) that her protected activity was a contributing factor in the adverse action. *Williams v. Dominos Pizza*, ARB No. 09-092, ALJ No. 2008-STA-052, slip op. at 5 (ARB Jan. 31, 2011). There is no dispute as to element (2) – Coffman was fired by Navajo. Protected activity is a contributing factor if "the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision." 77 FR 44127 (July 27, 2012); *Benjamin v. Citationshares Management, LLC*, No. 12-029, 2013 WL 6385831 (ARB Nov. 5, 2013) "If the employee does not prove one of these elements, the entire complaint fails." *Coryell v. Arkansas Energy Services, LLC*., No. 12-033, 2013 WL 1934004, *3 (ARB Apr. 25, 2013).

If Coffman successfully proves that she engaged in protected activity, and also proves that her protected activity was a contributing factor in the decision to discharge her, then Navajo

[1] There has been further briefing. A separate Order discussing those briefs has been issued.
[2] 49 U.S.C. § 31105(a).
[3] Pub. L. 110-53, 9/11 Commission Act of 2007, 212 Stat. 266 §1536.

may nonetheless avoid liability if it demonstrates by clear and convincing evidence that the adverse employment action was the result of events or decisions independent of protected activity.[4] Clear and convincing evidence is "evidence indicating that the thing to be proved is highly probable or reasonably certain." *Coryell v. Arkansas Energy Services, LLC*., No. 12-033, 2013 WL 1934004, *3 (ARB Apr. 25, 2013) quoting *Warren v. Custom Organics*, No. 10-092, 2012 WL 759335, *5 (ARB Feb. 29, 2012); *Klosterman v. E.J. Davies, Inc.*, No. 12-035, 2013 WL 143761 (ARB Jan. 9, 2013).

Coffman alleges that she engaged in protected activity when she threatened to make a complaint that Breanna Reid, a fellow driver who was training Coffman to become a driver for Navajo, had not properly recorded Coffman's hours of service:

> [Coffman's] complaint or retaliation is that Ms. Reid caused Ms. Coffman's termination in retaliation for Ms. Coffman's threat to report that Ms. Reid logged in Ms. Coffman without her knowledge or approval . . . and that Ms. Reid was not properly reporting her hours of service.

Coffman's *Response to Motion for Summary Decision* at p. 7.

The "complaint" clause of the STAA protects an employee who has "filed a complaint or begun a proceeding related to a violation of a regulation, standard, or order, or has testified or will testify in such a proceeding." 49 U.S.C. §31105(a)(A)(i). The statute covers internal complaints to supervisors as well as external complaints to government officials. *See Nix v. Nehi-RC Bottling Co., Inc.*, 84 STA-1 (Sec'y Jul. 13, 1984); *Davis v. H.R. Hill, Inc.*, 86-STA-18 (Sec'y Mar. 19, 1987); *Harrison v. Roadway Express, Inc*., 1999 STA 37 (ARB Dec. 31, 2002). A complaining employee's complaints should not be too generalized or informal. *Calhoun v. U.S. DOL*, 576 F.3d 201, 213-14 (4th Cir. 2009).

In this case, no written complaint of protected activity was made by Coffman before she was discharged by Navajo. Instead, Coffman asserts that oral complaint(s) were either made or threatened by her. In such cases, the oral "communications . . . must be sufficient to give notice that a complaint is being filed." *Jackson v. CPC Logistics*, ARB No.07-006, ALJ No. No 2006-STA-4 (ARB Oct. 31, 2008); *see Clean Harbor Env't Servs., Inc. v. Herman*, 146 F.3d 12, 22 (1st Cir. 1998) (finding that a driver "filed a complaint" when he sent letters to his superiors explaining various safety precautions he had been taking in an attempt to explain his slow pick-up times). All complaints, whether internal or external, must "relate to" safety violations. Courts have construed "relate to" broadly to encompass violations of both federal and state laws. *Yellow Freight Sys., Inc. v. Martin*, 954 F.2d 353, 356-57 (6th Cir. 1992). However, in order to qualify for protection, the complaint must be based on a "reasonable belief that the company was engaging in a violation of a motor vehicle safety regulation." *Calhoun*, 576 F.3d at 213.

[4] 49 U.S.C.A. § 42121(b)(2)(B)(iv); 29 C.F.R. § 1979.109(a)).

Standards for Summary Decision

Summary decision is appropriate in a proceeding before an ALJ "if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 29 C.F.R. § 18.72; *see also Williams v. Dallas Indep. Sch. Dist.*, No. 12-024, 2012 WL 6849447 (ARB Dec. 28, 2012). "At the summary decision stage of a STAA case, the ALJ assesses the evidence for the limited purpose of deciding whether it shows a genuine issue as to a material fact . . . If Coffman fails to establish an element essential to his case, there can be "no genuine issue as to a material fact" since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Coates v. Southeast Milk, Inc.*, No. 05-050, 2007 WL 4107740, *3-4 (ARB Jul. 31, 2007).

In evaluating if Navajo is entitled to a summary decision in this matter, all facts and reasonable inferences therefrom are considered in the light most favorable to the non-moving Complainant. *Battle v. Seibles Bruce Ins. Co*., 288 F.3d 596 (4th Cir. 2002) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574 (1986)). "However, even when all evidence is viewed in the light most favorable to the nonmoving party, the non-moving party cannot defeat a properly supported summary judgment motion without presenting 'significant probative evidence.'" *Pueschel v. Peters*, 340 Fed. Appx 858, 860 (4th Cir. 2009)( unpub.) (citing *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 249 (1986)). A party opposing a motion for summary decision "may not rest upon the mere allegations or denials of [a] pleading; [the response] must set forth specific facts showing that there is a genuine issue of fact for the hearing." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

When the information submitted for consideration with a motion for summary decision and the reply to that motion demonstrates that there is no genuine issue as to any material fact, the request for summary decision should be granted. Where a genuine question of a material fact remains, a motion for summary decision must be denied.

Factual Background

Coffman began working for the Navajo in October 2013. (Motion at 2, Response Exhibit 1 at ¶ 1.) Navajo enrolled Coffman in a training program in which newly-hired drivers learn driving skills through "practical experience by pairing each trainee with an experienced Navajo driver." (*Id.*) The third trainer assigned to Coffman,[5] Breanna Reid, began training Coffman on December 3, 2013, on a dispatch from Commerce City, Colorado to Seattle, Washington. (Motion at 5, Response at 4.) Coffman was at the wheel as she and Reid drove from Colorado to Ogden, Utah, where they pulled off at approximately 7:00 p.m. to rest overnight. (Motion at 5, Response at 4.)

[5] Coffman had a tempestuous relationship with each of the 3 trainers assigned to her during her brief tenure with Navajo. Coffman expressly acknowledges that no STAA claims arise out her stormy dealings with her first two trainers. (Response at 7.)

The next morning, December 4, 2013, Reid drove to the Oregon border, where she woke Coffman to tell her it was time for Coffman to drive. (Motion at 5, Response at 4.) Reid and Coffman stopped at a truck stop. Reid arrived back at the truck before Coffman, and Reid made Coffman's log book entry for her. When Coffman returned to the truck, Reid informed Coffman that Reid had already completed Coffman's log book entry, which irritated Coffman.[6] Additionally, before the two left the truck stop, Reid logged Coffman off-duty for her required 30-minute break without Coffman's knowledge.[7] (Motion at 5, Response at 4.) After Coffman had driven approximately 200 miles, she requested a meal break. (Motion at 5, Response at 5.) Reid informed Coffman that she had already taken her 30-minute break and did not have time for another. (Motion at 5, Response at 5.) According to Coffman, "she accused Ms. Reid of violating DOT regulations by logging in Ms. Coffman for a break without her even knowing it." (Response at 5.)

A verbal argument between Coffman and Reid ensued and as a result, Reid called Navajo's dispatch office. (Motion at 5, Response at 5.) According to Coffman, "Shortly after Ms. Reid's phone call with dispatch, the unnamed dispatcher called Ms. Coffman at 4:59 p.m. . . .[and] Ms. Coffman told him of Ms. Reid's DOT violations and told the dispatcher that she (Ms. Coffman) could not stay with Ms. Reid as her trainer." (Response at 5.)

Later that evening, Reid informed Coffman that Coffman would not be driving the truck to its final destination, but that instead Coffman would be dropped off at a Navajo yard along the way in Washington. (Motion at 5-6, Response at 6.) Reid would then drive the truck by herself to Seattle. Upon delivery of this information, a verbal argument between Reid and Coffman broke out. (*Id.*) According to Reid, Coffman, while Coffman was at the wheel of the moving Navajo truck, was "screaming, throwing her arms in the air, pounding the steering wheel, and acting crazy." (Motion at 6)(citing Motion Exhibit F at ¶11.)

Coffman then exited the highway and called the police. (Motion at 6, Response at 6.) Law enforcement officers arrived at the scene, spoke with Coffman and with Navajo dispatch, and escorted Ms. Coffman to a nearby motel. (Motion at 6, Response at 6.) The following day, Gwyne Presser, Human Resources Manager for Navajo, discharged Coffman from her employment "because of her behavior on the road and because she could not get along with her Driver Trainers." (Motion Exhibit B at ¶18.)

Protected Activity

The OSHA Regional Administrator concluded that Coffman had engaged in protected activity, though he ultimately dismissed her complaint. He found that that Coffman's expression of concerns regarding hours of service rules constituted protected activity under STAA. However, as made clear by Coffman's Response,[8] the only protected activity now at issue in this

[6] Coffman's Response highlighted that this act violated "DOT regulations and company policy," though no specific regulation or policy is identified by Coffman. (Response at 4.)

[7] Coffman's Response explains that drivers are mandated to take a 30-minute break once every eight-hour driving shift. (Response at 4.)

[8] Coffman's Response outlined: "Ms. Coffman also agrees that she is not basing her claim on anything that happened with Ms. Dickson in November, 2013. To wit, Ms. Coffman agrees that she did not report, nor threaten to

case is that alleged to have occurred on December 4, 2013, when Coffman says she threatened to "report that Ms. Reid logged in Ms. Coffman without her knowledge or approval, especially for the break, and that Ms. Reid was not properly reporting her hours of service." (Response at 7.)

At different times during the adjudication of her claim, Coffman has made varying assertions about her threat to contact the Department of Transportation for alleged hours of service violations. Her Response and Affidavit stated that she first threatened to contact DOT while on the phone with Navajo dispatch shortly after 5:00 p.m. on December 4, 2013. (Response Exhibit 1 at ¶17.) Coffman asserts that around 7:45 p.m. the same evening, after she and Reid had passed a closed weigh station, in response to Ms. Reid's acknowledgement that she was running low on available hours of service "Ms. Coffman told Ms. Reid that she would call DOT regarding this violation also." (Response at 5, Response Exhibit 1 at ¶19 ("I told her I would call DOT regarding the fact that she was not properly reporting her hours of service. . .").

However, in her earlier typed rebuttal to the Navajo's submission to OSHA, Coffman alleged only that after Reid "ordered [Coffman] out of the driver's seat," at approximately 9:00 p.m. on December 4, did she tell Ms. Reid "to stop the truck, that [Reid] was taking [her] against [her] will, that she was out of compliance with her HOS, and [Coffman] was calling the cops and the D.O.T." (Motion Exhibit M at 13.) That otherwise comprehensive recitation of the facts notably omitted Coffman's previous allegation of protected activity.

Similarly, in her response to Navajo's Interrogatory No. 3, which read "Identify each instance of STAA-protected activity upon which you base your Complaint," Coffman generally asserted "I made clear my intention to contact DOT to report Ms. Reid's falsification of both her[s] and my log entries." (Motion Exhibit Q at 2.) In response to Interrogatory No. 4, which prompted Coffman to identify those employees who may have personal knowledge of her allegedly protected activity, Coffman listed:

> The two night dispatchers on duty on December 3, 2013, one of whom is named Damon; Trainer Brianna Reid; HR Director Gwen Pr[e]sser; and VP Becky Mac[k]intosh. ***These employees all have first hand*** (sic) ***knowledge of my protected activity as I told each of them my intention to report the company to DOT***.

(*Id.*)(emphasis added). Notably, none of Coffman's multiple factual recitations articulate a scenario in which she expressed to HR Director Gwen Presser or VP Becky Mackintosh her intent to report Navajo to DOT for Reid's alleged regulatory violations.[9] Furthermore, her inconsistent allegation that she discussed reporting potential violations with Navajo dispatch employees, including Damon Edwards, is contradicted by not only the Declaration of Damon Edwards (*See* Motion Exhibit G, ¶9)("Ms. Coffman never told me she was going to report

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report, that Ms. Dickson committed any DOT violation. Finally, she also agrees that she did not participate "in any other protected activity" outlined in the motion." (Response at 7)(internal citations omitted).

[9] *See also* Motion Exhibit B, Declaration of Gwen Presser, ¶20 ("Ms. Coffman never told me she was going to report Navajo Express to the DOT or any other governmental agency"); Motion Exhibit H, Declaration of Becky Mackintosh, ¶12 ("Ms. Coffman never told me she was going to report anyone to the DOT or any other governmental agency").

anyone to the DOT or any other governmental agency") but also by the email exchange between Damon Edwards and HR Director Gwen Presser. (*See* Motion Exhibit P at 2.) As documented by an exhibit attached to Navajo's Motion, Damon Edwards emailed Navajo's HR Director at 4:58 a.m. on December 5, 2013, less than 12 hours after Coffman's alleged protected activity. His nearly-contemporaneous documentation makes no reference to having spoken to Coffman before she was removed from the company truck by local police. Instead, it outlines:

> Once Breanna insisted to have her drive to a truck stop Phyllis then told Breanna she was going to call the police and tell them that she was kidnapped. Then Phyllis pulled the truck off of I-90 exit 61 in Waston, WA and did call the police for kidnapping
>
> . . .
>
> I explained to her that I could not authorize [$250] for [food and transportation] but that I could put her into a motel for the night. She started cursing became very vulgar and stated she would just pay the motel herself and will call [D.O.T.] for leaving her stranded.

(Motion Exhibit P at 2.) Notably, Mr. Edwards's email notes that Coffman threatened to contact the DOT for yet another purported violation not referenced elsewhere in her pleadings.

The ARB has made clear that threatening to file a complaint with a regulating body may constitute protected activity. *Carter v. Marten Transport, Ltd*., ARB Nos. 06-101, 06-159, (June 30, 2008) ("Threatening to file a complaint based on a reasonable belief regarding the existence of a violation is also protected"). However, as outlined above, Coffman's multiple allegations of protected complaints vary in number, location, content, and audience. The affidavits of the Navajo employees Coffman alleges received her complaints unanimously deny that Coffman ever made any written or oral complaints. (*See* Motion Exhibit B at ¶ 20, Motion Exhibit G at ¶ 9, Motion Exhibit H at ¶12, and Motion Exhibit P at 2.)[10] To her response, Coffman attached an affidavit containing a conclusory denial of the Employer's corroborated factual assertions, which I find insufficient to cure the deficiency in her allegations of protected activity. *See Marsh v. Hog Slat, Inc.*, 79 F.Supp 2d 1068, 1072 (N.D. Iowa)(2000)(conclusory affidavits are insufficient to generate an issue of fact necessary to survive a properly-supported motion for summary judgment); *see also FTC v. Publ'g Clearing House, Inc.* 104 F.3d. 1168, 1171 (9th Cir. 1997)("a conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact"). I therefore find that Coffman's inability to consistently articulate her allegation of protected activity, or support her allegation with more than conclusory statements, precludes satisfaction of her burden to present a prima facie case of retaliatory discrimination under the Act. *See* 29 C.F.R. §18.72(c)(1).[11]

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[10] In fairness, no such affirmative denial appears in Ms. Reid's Declaration. (*See* Motion Exhibit F.)

[11] That provision mandates: "A party asserting that a fact . . . is genuinely disputed must support the assertion by:

> (i) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

In the alternative, even if Coffman would have cited specific evidence in support of her claim that she threatened to report her former employer to the Department of Transportation, I note that not every threat to file a complaint constitutes protected activity. *See Clean Harbors Envtl. Servs. v. Herman,* 146 F.3d 12, 22 (1st Cir. 1998)("Clearly there is a point at which an employee's concerns and comments are too generalized and informal to constitute 'complaints' that are 'filed' with an employer within the meaning of the STAA. The risk of inadequate notice to an employer that the employee has engaged in protected activity is greater when the alleged protected complaints are purely oral"). Notably, in *Jackson v. Eagle Logistics, Inc.*, ARB No. 07-005, (June 30, 2008), the ARB found that the threat of the claimant there to "go to the DOT" did not rise to the level of "filing a complaint" sufficient to constitute protected activity under the STAA based on its context. The threat in *Jackson* was made by the claimant there during a telephone call from the company's president, who had called to ask the complainant there why he had arrived late for three scheduled trips within the first weeks of his employment. In response, the complainant in *Jackson* responded by swearing at the president and threatening contact with the DOT. Ultimately, the claimant in *Jackson* never actually filed any type of complaint with the DOT. *Id.*

Here, each alleged threat shares the same context; each was made during escalating verbal conflict between Coffman and another Navajo employee. This is especially true regarding the threat primarily relied upon by Coffman. In her response, Coffman disclaimed reliance on any instance of protected activity other than her oral threat made on December 4, 2013, when Coffman purportedly threatened to "report that Ms. Reid logged in Ms. Coffman without her knowledge or approval, especially for the break, and that Ms. Reid was not properly reporting her hours of service." (Response at 7.) By Coffman's own admission, this statement was made while the two were in a heated verbal exchange, which culminated in multiple calls to law enforcement. Similarly, Coffman's allegation that she threatened to contact DOT while talking to Navajo dispatch employee Damon Edwards was also made in a heated exchange in which Coffman was purportedly "very vulgar" and seemingly combative. (Motion Exhibit P at 2.) The context of these statements leads me to find that, like the claimant in *Jackson*, Coffman's threat to "go to the DOT" similarly does not rise to the level of "filing a complaint" sufficient to constitute protected activity under the STAA. Coffman's complaint is therefore dismissed for failure to demonstrate by a preponderance of the evidence that she engaged in protected activity.

Coffman Was Discharged for Reasons Independent of Any Alleged Protected Activity

I further find that Coffman was discharged from her employment for a legitimate, non-discriminatory, reason wholly independent of any claim of alleged protected activity. Coffman does not deny that while Coffman was driving a loaded truck on an interstate highway she participated in a shouting match with Reid. Coffman admits:

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(ii) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Q: What did happen?

A: We – the conversation, the level of – [Reid] began talking loud. **I began talking loud**. I – we were coming up to an exit and I – and I put on my turn signal because – because of the demeanor, the atmosphere in the cab, **it wasn't safe**. And as I was putting my turn signal on and taking the exit, she sad – she screamed at me, Pull over, you're not driving safe.

Well, I was already pulling over, and **I already was concerned with the safety issue because we were in an argument** about the log falsification and DOT.

Q: So did you start yelling at any point during that conversation before you pulled over?

A: Both of our levels of conversation was louder than at this level. It was not conversational, it was – it was something enough to where **I was concerned about the safety of being in an argument**. **She was yelling. I was countering**.

Q: Given Ms. Reid's statement, are you surprised to hear that she was worried about your driving and safety?

A: Am I surprised she said it because **I said, this isn't safe.**

(Motion Exhibit A, at pp. 67-68)(emphasis added).

While Coffman denies Reid's description that Coffman was "throwing her arms in the air, pounding the steering wheel, and acting crazy" (Motion Exhibit F at ¶11), she does admit to participation in a verbal altercation which Coffman admits made continued operation of the truck driven by Coffman unsafe.

While Coffman's deposition testimony is silent as to the length of her altercation with Reid, Navajo dispatcher Damon Edwards has a distinct memory. Edwards was on the telephone with Reid during the altercation, and he testified:

I could hear Ms. Coffman yelling and cussing. I also heard thumping noises coming from inside the cab. I thought Ms. Coffman was throwing things against the windows. I repeatedly told Ms. Coffman to pull off the highway. She ignored my direction. **Ms. Coffman's tirade continued for more than one-half hour. I could hear Ms. Reid telling Ms. Coffman to pull the truck off the highway. Ms. Coffman kept driving**.

Motion Exhibit G at ¶¶ 5 and 6 (emphasis added). Coffman does not deny that the verbal altercation may have lasted as long as 30 minutes.

According to Navajo, Coffman was discharged "because of her behavior on the road and because she could not get along with her Driver Trainers." Motion Exhibit B at ¶18. Presumably the altercation with Reid and the consequent threat to safety constitutes at least part of the "behavior" for which Coffman was fired. Coffman admits participating in at least a verbal altercation, and she admits that the truck she was driving was not being operated safely by her. In the light of Coffman's own admissions, I find that there is no disputed question as to the appropriateness of Navajo's decision to discharge Coffman from her employment. In the light of Coffman's own admissions, Navajo has demonstrated by clear and convincing evidence that Coffman was terminated from employment for reasons wholly independent from any alleged protected activity.

## ORDER

For the reasons explained above, I **GRANT** Navajo's Motion for Summary Decision, and I **DISMISS** Coffman's claim. The hearing set for September 21, 2016, in Denver, Colorado, is hereby **CANCELLED**.

Digitally signed by Steven D. Bell
DN: CN=Steven D. Bell, OU=Administrative Law Judge, O=US DOL Office of Administrative Law Judges, L=Cincinnati, S=OH, C=US
Location: Cincinnati OH

Steven D. Bell
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

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).