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: 20 April 2017

Case No.: 2016-STA-00042

In the Matter of:

RICHARD HILDEBRANDT,
Complainant

v.

BRAVE LINE, INC.,
Respondent

ORDER DISMISSING COMPLAINT

This action arises under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act ("STAA") of 1982, 49 U.S.C. § 31105, and the regulations promulgated thereunder at 29 C.F.R. Part 1978.

On May 10, 2014, Complainant, Richard Hildebrandt, filed a timely complaint with the U. S. Department of Labor's Occupational Safety and Health Administration (OSHA) alleging Respondent, Brave Line, Inc., violated the STAA's Section 405 employee protection provisions by terminating his employment, allegedly in reprisal for refusing a dispatch, because Complainant would have been over hours and in violation of the Federal Motor Carrier Safety Regulations (FMCSR) 14-hour rule. After conducting an investigation, the OSHA's Regional Administrator issued a final determination letter on April 22, 2016, dismissing the complaint, finding no reasonable cause to believe a violation of the STAA's employee protection provisions occurred.

On June 17, 2016, I issued a Notice of Assignment and Intent to Schedule Telephone Conference. The notice was sent to the Complainant and to the listed President and Owner of Respondent Company, Marek Kiela, at the business address we have on file. However, the notice was returned and marked "unable to forward" by the U. S. Postal Service. Subsequently, we sent the notice to a second address we located for Mr. Kiela, and a signed, certified receipt was returned. However, since then this office has not been able to contact Mr. Kiela or anyone at the Respondent Company, which has a telephone number provided, which is out of service.

In checking with the online website for the Secretary of State for the State of Illinois, where Brave Lines is incorporated, in July 2016, the Corporation File Detail Report indicates that the corporation is not in good standing. The name and address of the President, Marek Kiela, is provided. However, several further attempts to contact Mr. Kiela or anyone at the phone numbers we have on file have been unsuccessful.

I attempted to set up a telephone conference with the parties on January 25, 2017, in an effort to try to move the case forward, but was only able to reach Complainant. No responses from mail or from calling telephone numbers previously obtained for Respondent resulted in contact or response from Respondent. During the conference, upon questioning, Complainant responded that he had not obtained counsel. I reiterated to him his right to counsel, and that he could proceed to hearing without counsel. I informed him of the status of the Respondent Company and informed him that if the company were in bankruptcy (and this office has not received any information that it is), it would be impossible for him to obtain "make whole" relief, such as recovering back pay, compensatory damages, obtaining a work record expunged, and other relief. I informed Complainant that we could do a hearing by telephone or in person, do a hearing on the record, or that he could withdraw his complaint. If he did the latter, I stated that the OSHA dismissal of his complaint would be the final decision of the Secretary of Labor.

Mr. Hildebrandt mentioned that Marek Kiela, the owner of the Respondent Company has a new company with a different name. He mentioned that he was informed that the owner of Respondent company would not be able to avoid personal responsibility simply by closing the company. I informed Complainant that I could not give him legal advice, but that an action could also be brought against the owner, but it might be too late to join him in this action. Complainant made some other allegations about the Respondent owner and his practices. I also mentioned that even if he pursued an action to judgment against Respondent and/or the owner, that if Respondent were bankrupt, the judgment would not be worth anything. Complainant stated that he will withdraw his complaint because "it's not going to go anywhere." (Transcript of Jan. 25, 2017 conference call ("Tr."), p. 10.) I requested that Complainant send something to my office in writing by mail, stating that he wants to withdraw his complaint and send it to my Legal Assistant. (Tr. 11-12). It has been thirty days since the telephone conference and we have not received anything from Complainant.

Concerning withdrawal of a complaint under the STAA regulations, 29 C.F.R. § 1978.111 states, in pertinent part:

> (c) At any time before the findings or order become final, a party may withdraw his objections to the findings or order **by filing a written withdrawal with the administrative law judge** or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

(Emphasis supplied.)

Thereafter, I issued an Order to Show Cause on February 28, 2017, ordering Complainant to present evidence as to why his complaint should not be withdrawn. Complainant had fifteen days to respond to the Order to Show Cause. Complaint did not respond to the Order.

Accordingly, due to Complainant's failure to Show Cause as to why his claim should continue, I find that this claim should be **DISMISSED.**

Digitally signed by JOSEPH KANE
DN: CN=JOSEPH KANE,
OU=ADMINISTRATIVE LAW JUDGE,
O=US DOL Office of Administrative Law
Judges, L=Cincinnati, S=OH, C=US
Location: Cincinnati OH

JOSEPH E. KANE
Administrative Law Judge