



Issue Date: 05 July 2016

CASE NO.: 2016-STA-18

IN THE MATTER OF

ERIC KEENER,

Pro-se Complainant

vs.

NON STOP CARRIER INC.,

Respondent

ORDER TO DISMISS

This proceeding arises under the Surface Transportation Assistance Act¹ (hereinafter the Act) 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 the terms and conditions of employment because they refused to operate a vehicle when it would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

On 22 May 15, Complainant’s Counsel filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that Respondent had fired him on 15 May 15 in retaliation for his refusal to operate a vehicle and reporting violation of a safety regulation. OSHA conducted an investigation, and on 16 Feb 16 issued a decision finding that Complainant was not fired, but voluntarily quit. On 19 Feb 16, Complainant’s Counsel objected to the findings and requested a *de novo* hearing. The matter was referred to the OALJ for hearing and on 21 Mar 16, I conducted a conference call with both counsel, who agreed that discovery would close on 17 Jul 16 and a hearing would be conducted on 4 Aug 16.

On 14 Apr 16, Complainant’s counsel filed a motion to withdraw, providing his client’s “last known address” and phone number. My staff attempted to then contact Complainant by telephone to arrange a conference call, but the number had been disconnected. I then issued an order to communicate to this office by any means and in any format his intention to continue with his case. I directed him to respond within 14 days of receiving the order. I warned him that his failure to respond could result in my determination that he has abandoned his complaint and a decision to dismiss it.

¹ 49 U.S.C. § 31105.

² 29 C.F.R. Part 1978.

The order was sent to the address that Complainant had provided and at which he had received prior orders. It was delivered on 29 Apr 16. Complainant has failed to respond in any way. I find that Complainant has abandoned his complaint and it is dismissed.³

In view of the foregoing, the hearing scheduled on **4 Aug 16** in **Chicago, Illinois** is hereby **CANCELLED**.

ORDERED this 5th day of July, 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 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.

³ *Bowens v. Infrastructure*, ARB No. 08-073, ALJ No. 2008-STA-17 (ARB Mar. 30, 2009); *Tevepaugh v. J & B Express Trucking*, ARB No. 07-099, ALJ No. 2006-STA-50 (ARB Nov. 29, 2007).

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).