



Issue Date: 19 April 2019

Case No.: 2016-STA-00079

In the Matter of

ALEXANDER KOROLEV
Complainant

v.

SAM'S MOVING AND OVERSEAS SHIPPING
Respondent

ORDER DISMISSING CLAIM DUE TO ABANDONED

This matter arises out of a complaint filed by Mr. Alexander Korolev (“Complainant”) against Sam’s Moving and Overseas Shipping (“Respondent”) pursuant to the Surface Transportation Assistance Act of 1982 (the Act), as amended, 49 U.S.C. § 31105 (formerly 49 U.S.C. § 2305), and its implementing regulations, 29 C.F.R. part 1978. In accordance with 29 CFR § 1978.107(b), a hearing in this matter is to commence expeditiously.

Procedural History

On April 19, 2015, the Complainant filed a complaint with OSHA alleging that a violation of the Surface Transportation Assistance Act (“STAA”).

On August 15, 2016, OSHA dismissed the complaint finding no protected activity.

On September 10, 2016, Complainant filed his appeal to the Office of Administrative Law Judges.

On January 31, 2019, Chief Judge Henley issued to Complainant a Notice of Docketing and Order Requiring Submission of Statement of Intent to Proceed

On February 6, 2019, Complainant wrote to the Office of Administrative Law Judges indicating an intent to proceed and renewed his request for a formal hearing.

On February 15, 2019, the undersigned was assigned this case.

On February 21, 2019, the undersigned issued a Notice of Assignment and Conference Call scheduling a prehearing conference call for 9:00 a.m., March 11, 2019. The Tribunal sent

this Notice to the addresses contained on Complainant's correspondence and in the administrative file.

On March 11, 2019, the parties did not call to participate in the prehearing teleconference as required in February 21, 2019 Notice. Neither party is represented by counsel.

On March 13, 2019, the Tribunal issued an Order to Show Cause and informed the parties that a failure to respond to the Order would be interpreted as that party having no objection to the case being dismissed.

On March 18, 2019, the parties were served copy of the March 13, 2019 Order to Show Cause.¹ The Tribunal gave the parties to April 12, 2019 to respond to this Order. As of the date of this Order, neither party has responded to the Tribunal's Order.

Discussion

The record shows that Notice of Assignment and Conference as well as the Order to Show Cause issued to the Complainant and Respondent were properly mailed to the parties' last known addresses. *See* 29 C.F.R. § 18.30. Per 29 C.F.R. § 18.12(b)(7) a request for hearing may be dismissed upon its abandonment by the party who filed it. A complaint may be dismissed where the complainant is determined to have abandoned it. *Bowens v. Infrastructure*, ARB No. 08-073, ALJ No. 2008-STA-17 (ARB Mar. 30, 2009); *Somerson v. Eagle Express, Inc.*, ARB Case No. 06-023, ALJ Case No. 2004-STA-12 (Nov. 30, 2006). It may similarly be dismissed where the complainant refuses to comply with the judge's orders. *See Dickson v. Butler Motor Transit*, ARB No. 02-098, ALJ No. 01-STA-039, Slip Op. at 4 (ARB July 25, 2003). The Administrative Review Board has also held with respect to a complaint filed under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1998) that it is proper to dismiss a complaint on the grounds of abandonment where the complainant has failed to provide a new mailing address and telephone number or respond to an order to show cause. *McCrum v. Westinghouse Radiological Services, Inc.*, 89-ERA-42 (Sec'y Apr. 9, 1992). The Administrative Review Board has acknowledged in STAA cases the "inherent power" of the triers-of-fact to dismiss a case upon their own initiative. *Claypoole v. U.S. Xpress Enterprises*, ARB No. 10-064 (Apr. 26, 2011) citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962).

In view of the Complainant's failure to respond to both the Notice of Assignment and Conference Call and Order to Show Cause, and given the Tribunal has received no communication from the Complainant, the Tribunal finds that a dismissal under 29 C.F.R. § 18.12(b) on grounds of abandonment to be the proper course of action in this case.

Accordingly, Claimant's complaint is hereby **DISMISSED**. OSHA's August 15, 2016 determination regarding Mr. Korolev's complaint is reinstated.

¹ Complaint Alexander Korolev's copy was sent via UPS tracking number 1ZW0Y2350193648513 and Respondent Sam Collin's copy of the order was sent via UPS tracking number 1ZW0Y2350190846126.

SO ORDERED.

Cherry Hill, New Jersey

SCOTT R. MORRIS
Administrative Law Judge