



**Issue Date: 02 May 2018**

*In the Matter of*  
**DAVID JONES**  
Complainant

v.

Case No: **2017 STA 00068**

**VIRTUAL EXPRESS, INC.**  
Respondent

**DECISION AND ORDER**  
**ORDER OF DISMISSAL**

I initially set this Surface Transportation Assistance Act case for hearing December 13, 2017 in Miami. However, all mail for the Respondent was returned and I did not perfect service and this case was rescheduled to March 26, 2018.

The parties were advised to seek legal counsel.

I ordered, in part:

1. On or before December 1, 2017, the parties *shall* exchange, by facsimile, hand delivery, or overnight mail to be delivered before that day's close of business, pre-hearing submissions containing the following information:
  - A. A simple statement of the issues to be decided and the relief or remedy sought.
  - B. The name and address of each witness the party expects to call. Expert witnesses must be designated on the witness list with a brief statement concerning the field of expertise and topics of proposed testimony. Any testifying expert must have submitted a written report, which is to be exchanged with the other pre-hearing submissions. See generally Fed. R. Civ. P. 26.
  - C. Copies of all documents that the party expects to offer into evidence.
    1. The parties should pre-mark and exchange copies of exhibits, along with an exhibit list. Each page of multi-page exhibits should be numbered.

2. After the parties exchange documents that they will proffer, the parties are directed to stipulate as to authenticity and content all documents which they mutually agree should be made a part of the record. Each of the stipulated documents must be properly marked prior to hearing for identification, using Exhibit numbers, page and line numbers, where appropriate.
3. Exhibits should be date stamped and copies should be provided for all parties. I prefer that the exhibits be placed into a binder. Any exhibits that are difficult to manage (large items or non-documentary evidence such as machinery or equipment), should be photographed for the record.
4. Any exhibits that will be in dispute should be accompanied by a memorandum of law.
5. The parties will meet to consider stipulations to crucial elements of the case or to findings of fact.

D. Failure to timely comply with this order may result in the exclusion of the testimony of witnesses not identified, the exclusion of documents not served on the opposing party, or other appropriate sanctions.

2. ALL DISCOVERY WILL BE TERMINATED BY MARCH 1, 2018.
3. Failure to timely comply with this order may result in the exclusion of the testimony of witnesses not identified, the exclusion of documents not served on opposing party, or other appropriate sanctions.

Neither party complied with my Order.

29 CFR § 18.12, proceedings before administrative law judge sets forth in part.

(b) Authority. In all proceedings under this part, the judge has all powers necessary to conduct fair and impartial proceedings, including those described in the Administrative Procedure Act, 5 U.S.C. 556. Among them is the power to:

(7) Terminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order.

Because both of the parties have failed to comply, I considered that this claim was abandoned and under the rules I could dismiss this case for abandonment.

However, because the parties do not have lawyers, On March 22, 2018, I granted the parties the right to respond and to explain why I should not dismiss this case. The return date was April 23, 2018. The parties did not reply.

After having been fully advised in this matter, I enter the following:

The claim is **DISMISSED**.

**DANIEL F. SOLOMON  
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, 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).

