



**Issue Date: 27 November 2018**

Case No.: 2018-STA-00068

***In the Matter of:***

GREGORY SZCZERBA,  
*Complainant,*

v.

CMM TRUCKING, LLC,  
THREE M TRUCKING, LLC,  
MARK A. SZCZERBA JR.  
*Respondents.*

**ORDER OF DISMISSAL**

This matter arises under the employee-protection provisions of the Surface Transportation Assistance Act of 1982 (“Act”), 49 U.S.C. § 31105, and the regulations of the Secretary of Labor published at 29 C.F.R. Part 1978.

Gregory Szczerba (“Complainant”) filed a complaint with the Occupational Safety and Health Administration (“OSHA”) on or about June 7, 2017 alleging Respondents CMM Trucking, Three M Trucking and Mark A. Szczerba, Jr. terminated his employment in retaliation for engaging in activity protected by the Act. On June 28, 2018, OSHA dismissed the complaint, finding “no reasonable cause to believe that a violation of the [Act] occurred.” (“Secretary’s Findings”). On July 19, 2018, Complainant timely filed objections to the Secretary’s Findings and requested a hearing before an administrative law judge. The matter was assigned to me and, pursuant to a notice issued on August 29, 2018, a hearing in this case is scheduled for December 4, 2018 in Milwaukee, Wisconsin.

On November 20, 2018, Complainant gave notice that he has exercised his right to pursue his claims in federal district court and attached a copy of the complaint filed in the United States District Court for the Eastern District of Wisconsin on November 19, 2018,<sup>1</sup> with confirmation of service upon respondents.<sup>2</sup> Under 49 U.S.C. § 31105(c), the United States District Court has assumed jurisdiction of this matter.<sup>3</sup>

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<sup>1</sup> Case No.: 2:18-cv-01821.

<sup>2</sup> Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint, and if the delay is not due to the bad faith of the employee, the employee may

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Gregory Szczerba on June 7, 2017 under the Surface Transportation Assistance Act is DISMISSED.

IT IS FURTHER ORDERED that the formal hearing scheduled for December 4, 2018 in Milwaukee, Wisconsin is hereby CANCELLED.

**SO ORDERED:**

STEPHEN R. HENLEY  
Chief Administrative Law Judge

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bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114(a) In this matter, more than 210 days have passed since Complainant originally filed his complaint with OSHA and there is no indication of bad faith on the part of Complainant.

<sup>3</sup> See *Stone v. Duke Energy Corp*, 432 F.3d 320 (4th Cir. 2005)(Sarbanes-Oxley case)