



**Issue Date: 20 June 2018**

**CASE NO.: 2018-STA-27**

IN THE MATTER OF

**RANDALL R. WURST,**  
**Complainant**

v.

**TOTAL METAL RECYCLING INC.,**  
**MIDWEST TRANSPORTATION, LLC,**  
**Respondent**

**ORDER OF DISMISSAL**

This proceeding arises under the employee protective provisions of the Surface Transportation Assistance Act (STAA),<sup>1</sup> and the regulations promulgated thereunder.<sup>2</sup> 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 their terms and conditions of employment because the employee refused to operate a vehicle when such operation would violate a regulation, standard, or order of the United States related to commercial motor vehicles.

Complainant filed his initial complaint with the Occupational Safety and Health Administration (OSHA) on 30 Nov 17, alleging that that Respondent discharged him in retaliation for reporting workplace violence and an associated injury. OSHA dismissed the claim as failing to establish any protected activity under the Act. On 17 Jan 18, Complainant, through counsel, filed his objection and request for a de novo hearing.

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<sup>1</sup> P.L. 103-272 at 49 U.S.C. § 31105.

<sup>2</sup> C.F.R. Part 1978.

I conducted an initial scheduling conference call and established a litigation schedule, setting hearing for 17 Dec 18. Employer filed a Motion to Dismiss for failure to state a claim upon which relief could be granted and complainant filed his opposition. Before I issued a decision on the motion, Complainant's counsel filed a Motion to Dismiss with prejudice, noting that the matter had been resolved and each party would bear their own respective attorney fees and costs. Accordingly, the request to withdraw objections to the OSHA findings is granted. Those findings dismissing the complaint are reinstated and will become the final order of the Secretary.<sup>3</sup>

In view of the foregoing, the hearing scheduled on **17 Dec 18** in **St. Louis, MO** is hereby **CANCELLED**.

**ORDERED** this 20<sup>th</sup> day of June, 2018, at Covington, Louisiana.

**PATRICK M. ROSENOW**  
**Administrative Law Judge**

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<sup>3</sup> 29 C.F.R. § 1978.111(c).