

**U.S. Department of Labor**

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**Issue Date: 15 October 2019**

CASE NO.: 2019-STA-00015

*In the Matter of:*

**DOUGLAS ARLEDGE,**  
*Complainant,*

vs.

**CONCRETE PLACING  
COMPANY,**  
*Respondent.*

APPEARANCES:

DOUGLAS ARLEDGE  
*Self-Represented Litigant  
For the Complainant*

JOSEPH D. MALLET, Esq.  
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*For the Respondent*

Before: Christopher Larsen  
Administrative Law Judge

**DECISION AND ORDER DENYING CLAIM**

This is a claim under the employee-protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. section 31105 ("STAA").

I held a hearing in this case in Boise, Idaho, on August 13, 2019. The Complainant, Douglas Arledge, appeared on his own behalf as a self-represented litigant. Attorney Joseph D. Mallet appeared for Respondent. At the hearing, I heard testimony from Mr. Arledge, Pablo Duarte, and Toby "Tom" Ferguson, the Vice President of Respondent (TR 132:2-25, 152:2-4). I also received in evidence

Complainant's Exhibits 1 through 6 and Respondent's Exhibits 1 and 2.<sup>1</sup> I gave both parties a full and fair opportunity to present testimony and evidence. The findings and conclusions which follow are based on a complete review of the entire record in light of the arguments of the parties. Although I do not discuss every exhibit in the record below, I carefully considered each in arriving at this decision.

In *Smith v. Sysco Foods of Baltimore*, ARB No. 03-134, ALJ No. 2003-STA-32 (ARB Oct. 19, 2004), the Administrative Review Board observed that in a claim under 49 U.S.C. section 31105,

Under this burden-shifting framework, the complainant must first establish a prima facie case of discrimination. That is, the complainant must adduce evidence that he engaged in STAA-protected activity, that the respondent employer was aware of this activity, and that the employer took adverse action against the complainant because of the protected activity. Evidence of each of these elements raises an inference that the employer violated the STAA.

*Smith, supra*, slip op. at \*2. The Board added, "Furthermore, we note that though Smith was pro se, the burden of first establishing, and ultimately proving, the necessary elements of a whistleblower claim is no less for pro se litigants than it is for litigants represented by counsel. *Young v. Schlumberger Oil Field Services*, ARB No. 00-017, ALJ No. 2000-STA-25, slip op. at 10 (ARB Feb. 28, 2003)." *Id.*, slip op. at 4.

In this case, I conclude the Claimant, Mr. Arledge, did not adduce evidence 1) that he engaged in protected activity or 2) that the employer took adverse action against him because of the protected activity. At the close of his case, Respondent moved for dismissal (TR 121:1 – 130:18). I now conclude Mr. Arledge is not entitled to relief under 49 U.S.C. section 31105, and grant the Motion.

#### 1. No Evidence of Protected Activity

At the hearing, Mr. Arledge testified he worked as a truck driver for Concrete Placing Company. He had been hired on or about August 29, 2018, and was so employed on September 13, 2018 (TR 30:1-9, 30:24 – 31:2). At the hearing, I asked him to describe the "protected activity" that entitled him to claim the benefit of STAA:

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<sup>1</sup> The parties did not comply with the Pre-Hearing Order requiring them to mark exhibits jointly, but instead introduced documentary exhibits at the hearing. Attached as an Appendix to this Decision and Order, immediately following the Notice of Appeal Rights, is an index of the exhibits I received in evidence at the hearing.

Q: Okay. Okay. Now I know from some of the things you've said here today, and from things you said on the phone at times when we've talked about this case, that you feel you engaged in some protected activity because you were witness to an accident. Is that right?

A: I wasn't a witness to an accident. I came upon an accident.

Q: Okay. When did that happen?

A: That was on 9/13.

...

Q: Okay. And how did you come upon the accident? What were you doing?

A: I was hauling waste up to the dump site. And I noticed there was a – traffic was backed up. And so, I set my brakes on my truck, and I just waited like everybody else did.

Q: Okay.

A: And when they go ahead – went ahead and released us to go, you keep moving forward. I proceeded forward and I didn't move very far when I saw an individual standing by the side of the road, on the same side of the road where the truck was wrecked.

And when I – when I first noticed him, I knew – I knew it was one of the drivers that was dispatched to haul waste that was living at the Wilderness Inn. And his name was Donald Slater. And when I seen him, he was standing next to the road, and he just kind of had both of his arms outstretched, and he was looking up at the sky, and he had a little small peen hammer, just a little hammer in his left hand.

And the first thing I thought was, I see this wrecked semi, and the first thing that went through my mind was, "What the" – I'm sorry – "What the F are you doing with that little hammer?" It ain't gonna – it just – it just was – I couldn't understand.

And when I drove by him, my passenger window was down. And I yelled at him. I yelled at him, tried to get his attention,

everything, and he didn't know me from Adam. I mean he knew me – he didn't – he wasn't – he wasn't coherent.

And I proceeded up – up the grade, went to the dump site. When I got to the dump site, I didn't even dump my load yet. I got it all ready to go, had it pulled forward, backed up, but I didn't dump it yet because I was still a little bit shaken. And I called my immediate supervisor in Boise. And his name is – the only – only thing I know him by is Bo, the one that hired me.

Q: Okay.

A: But I called up him in Boise, and I said, "There was a wreck." And he goes, "There was a wreck?" And I go, "There was a wreck. And I – I seen Slate standing out by the side of the road, next to the – on the same – by – a little ways away from the wrecked semi." And I said, "He was just standing there with both hands up, and he had a little ball-peen hammer in his left hand, and he didn't know me from nobody."

I go, "What do you want me to do?" And he says, "A wreck? I didn't know." He had no clue that a wreck just happened. And – and he said – there's really bad reception up there. But up on the dump site, you can get your call through pretty good. So, I said to him – or – or he says to me, he says, "I'll get right back with you."

So I waited up on the dump site for, I don't know, anywhere from half an hour to 45 minutes, somewhere in there, and he never got back with me. So, I went ahead and left. And as I was going back down the grade, I noticed everything was cleaned up. Every – there was – everything was gone. And he didn't get back to me.

I did ask him up on the dump site, I said, "Do you want me to drop my trailer? Do you want me to bobtail it and take him to the doctor, or what do you want me to do?" That's when he said he'd get back to me. I forgot that part.

Q: Mm-hmm.

A: But anyway, I – when I left and I was going back down the grade, everything was cleaned up. And so, I just figured, he never got back to me, so, they just must have took care of – you know –

Q: Okay.

A: – I just went about my day.

Q: Okay. Let me ask you a couple of questions now before we go any further. When you came upon the accident scene, and you first saw Mr. Slate, you said he was standing by the side of the road. Was he standing near the truck?

A: Yes, sir. I'd say he was about maybe 50 yards, something like that, away from the truck.

Q: Okay. And the truck was a Concrete Placing Company truck?

A: Yes, sir.

Q: Okay. And was anybody else in the truck?

A: I didn't see anybody.

Q: Was any other vehicle involved in the accident?

A: No, sir. . . .

. . .

Q: Okay. So, this appeared to be a single-vehicle accident then?

A: Yes, sir.

. . .

Q: Okay. And what part of the truck, if any, appeared damaged to you?

A: Oh, the whole thing. The cab, the – the trailer. It was – it was all a mess. I mean, on the cab, the passenger side door was open. It was – it was a pretty bad wreck.

Q: Okay. Okay.

A: I mean, by my – from what I seen, the exit was out through the passenger's side.

Q: Okay.

A: You know, I mean, that's from what I seen. The way it was, you know, up against the embankment.

Q: Okay. The truck was against an embankment.

A: The – the cab, yes, sir.

Q: So, the driver's side door was against the embankment.

A: No. Yes – yes, sir. It was –

Q: Okay.

A: – kind of – I believed it was blocked. I mean, I didn't –

Q: No, I understand.

A: I had to keep moving because the – the road, the grade is really narrow.

Q: Mm-hmm.

A: You've got to be – you got to be – you know, you just can't be looking.

...

Q: Okay. Okay. So, you came back down the grade, the truck is gone, and Mr. Slate is gone, the trooper's car is gone.

A: Yeah.

Q: And traffic is flowing –

A: Yeah.

Q: – as if nothing had happened.

A: Yes, sir.

Q: Okay. So what happens next?

A: I just go ahead and keep on about my day. I got my regular three loads for the day. And nobody ever got back to me.

(TR p. 32, line 1 - p. 38, line 11).

Mr. Arledge testified he returned to the Wilderness Inn that evening, where he was staying with a group of other Concrete Placing Company employees, including Andrew Cullison, Pablo Duarte, and Mr. Slate. Mr. Arledge and Mr. Cullison shared a room. Mr. Arledge entered the room to find Mr. Cullison there, and Mr. Cullison volunteered to Mr. Arledge that he had been involved in a wreck that day. Mr. Arledge recalled he had seen Mr. Slate at the site of a wreck that day.<sup>2</sup> Mr. Cullison left the room, and “said something about moving in with Pablo Duarte and Donald Slate on the way out the door.” After Mr. Cullison left, Mr. Arledge locked the door to take a shower. Before he got in the shower, he heard a knock at the door and answered it. Mr. Cullison was there, accompanied by Mr. Duarte and Mr. Slate. Mr. Cullison asked if he could retrieve his belongings from the motel room. Mr. Arledge testified he agreed, but then Mr. Cullison struck him, and a fight between the four men ensued (TR 39:5 – 44:20).<sup>3</sup> The police appeared, arrested Mr. Arledge, and took him to the County Jail, where he remained for the next thirteen days (TR 51:17-24).

In *Ulrich v. Swift Transportation Corp.*, ARB No. 11-016, ALJ No. 2010-STA-41, slip op. at 3 (ARB Mar. 27, 2012), the sole issue before the Administrative Review Board was “whether [the driver] engaged in protected activity by filing a complaint related to a violation of a regulation, standard, or order under § 31105(a)(1)(A) (the complaint clause).” The driver in that case, Thomas A. Ulrich, Sr., had retrieved a trailer in Phoenix, Arizona. He saw from the Bill of Lading that the load had originated in Nogales, Mexico. He also saw the weight listed on the Bill of Lading was 39,451.28 pounds, while the weight listed on the computer dispatch was only 33,656 pounds. When he retrieved the trailer, Mr. Ulrich noticed it had a tin seal, rather than a high-security seal. He left the yard with the trailer, but stopped at a gas station about four miles away, where he overheard two other truckers discussing a drug bust that had occurred involving his employer’s equipment. Unable to reach his dispatcher, Mr. Ulrich instead called 911 and reported the weight discrepancy to the police, saying “[i]t could be drugs. It could be people. It could be explosives.” Mr. Ulrich argued this report to the police was protected activity for purposes of STAA, but the Administrative Review Board held otherwise:

Viewing all of the evidence of record, we affirm the ALJ’s conclusion that Ulrich failed to prove that he engaged in protected activity under the complaint cause. First, the record

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<sup>2</sup> I asked Mr. Arledge “When Mr. Cullison told you, ‘I was in a wreck today,’ did you think he was lying to you?” Mr. Arledge replied, “I didn’t really know what to think . . . I mean, I was thinking – like I said, it was a fourteen-and-a-half-hour day. I was tired. I seen everybody. Everybody was okay. So, you know, I had to say it, but my concern right then was I had to get my rest. I had to get up and I had to do my job” (TR 49:4-12).

<sup>3</sup> Mr. Arledge’s testimony on this point varies from CX 1, the police report of the incident, which he offered in evidence. In that report, the police conclude Mr. Arledge himself was the aggressor.

supports the ALJ's finding that Ulrich was not objectively reasonable in believing that Ulrich's trailer contained explosives, drugs, or people. D. & O., at 11. It is undisputed that Ulrich had no direct evidence whatsoever that there were explosives, drugs, or people in his trailer. He made giant leaps of logic from facts that indicated very little. For example, Ulrich discovered a weight discrepancy, but the ALJ found and the record supports that weight discrepancies are a common occurrence in the trucking industry. . . . It is undisputed that Ulrich's truck complied with all federal and state standards at the time he departed the Swift yard on August 23, 2008. . . . Another fact cited by Ulrich to support his concern about the presence of explosives, people, or drugs was the tin seal on his trailer rather than a high security seal. While there was some evidence that the trailer should have had a high security seal, there was no evidence that the tin seal had been tampered with or manipulated. . . . Finally, neither that the load originated in Mexico nor that Ulrich allegedly heard a conversation between two drivers about a drug bust with Swift trucks serve to make Ulrich's belief about drugs, explosives, or people in his truck reasonable.

*Ulrich, supra*, slip op. at 4-5.

In this case, Mr. Arledge is even one step further removed from a complaint "related to a violation of a commercial motor vehicle safety regulation, standard, or order" that Mr. Ulrich was. Mr. Arledge never expressly testified at the hearing that he suspected Mr. Slate, rather than Mr. Cullison, had been driving the wrecked company truck that Mr. Arledge saw. Neither did he expressly testify he believed Mr. Slate was too impaired, for any reason, to have operated the company truck safely. Perhaps he was hoping I would draw that inference from his testimony, but he never directly asked me to, or suggested I should. Taken at face value, his complaint was a report to a superior that he had seen a company truck that had been involved in an accident, that he had seen Mr. Slate standing near the truck, and that he had concluded Mr. Slate was behaving strangely. This is not a complaint "related to a violation of a commercial motor vehicle safety regulation, standard, or order." It is an eyewitness report of facts Mr. Arledge observed personally, and it is a report uncontradicted by any other witness or any documentary evidence. At the hearing, Employer did not dispute so much as a word of Mr. Arledge's report. Such a report does not comprise protected activity under 49 U.S.C. section 31105.

But even if Mr. Arledge in fact entertains more nefarious suspicions – that Mr. Slate was the "real" driver of the wrecked vehicle, that Mr. Slate was too impaired to drive the vehicle safely, that Mr. Slate's impaired condition caused the



accident, that Mr. Cullison confessed to having wrecked the vehicle as part of a grand conspiracy to cover up the truth, and that every other witness who testified at the hearing is participating in the same grand conspiracy – they do not transform his report into “protected activity.” Like Mr. Ulrich’s, such suspicions are not objectively reasonable, based on what Mr. Arledge actually knows. Mr. Arledge did not see the accident happen. Mr. Arledge has no personal knowledge of who was driving the vehicle when the accident occurred, and there is no other evidence to suggest Mr. Slate was the driver. Mr. Arledge does not know why Mr. Slate behaved as he did when Mr. Arledge drove past him and shouted to him through an open window. Mr. Arledge does not know why Mr. Cullison would have identified himself as the driver involved in the accident. And at the time, Mr. Arledge admittedly had no reason to doubt what Mr. Cullison had told him. Like Mr. Ulrich, Mr. Arledge represented himself at his hearing, and like Mr. Ulrich, his arguments deserve fair consideration. But his unfounded suspicions – if in fact he has them – would not make his showing any stronger.

I conclude Mr. Arledge’s report and description of the accident scene does not comprise “protected activity” under 49 U.S.C. section 31105 (*see* TR p. 129:1 – 130:18).

## 2. No Evidence of Adverse Employment Action

Early in the hearing, I asked Mr. Arledge if Respondent had terminated him:

Q: Were you a truck driver?

A: Yes, sir.

Q: And I understand you were terminated.

A: Yes, sir.

Q: When were you terminated?

A: That one is – I really don’t know. To be honest with you, Your Honor, I don’t know if it was – I don’t know – they – they put out a piece of paper saying I was terminated long after the incident happened.

(TR 30:8-16).

Questioned more closely, Mr. Arledge acknowledged he did not return to work after his release from the County Jail, and although he contacted Respondent, had not been told he was terminated:

Q: I understand. So, you were released on your own recognizance after 13 days. So, do you go back to the Wilderness Inn then?

A: No. I was – I went back to Nampa, Idaho.

Q: Why?

A: I was prohibited from – that was one of the conditions, not to go back on State Highway 12.

Q: Oh.

A: That was one of the conditions of the Judge, not to go back on State Highway 12 –

Q: Okay.

A: – and go to the Wilderness Inn.

Q: So, did you – did you call Bo or anybody else at Capital – I'm sorry, Concrete Placing, and tell them that the Judge had ordered you not to go back to the work site?

A: Yeah. I called Bo.

Q: Okay.

A: Yeah, yeah.

Q: How soon after you were released?

A: It was almost immediately afterwards.

Q: Okay. And did he say anything to you about, "You're not working for us anymore," or –

A: Nope, nothing.

Q: What did he say?

A: He just said, "I wasn't there." That – that was –

Q: Well, I understand he wasn't there, but you're telling me, "I – I can't go back to the work site," and he says, "I wasn't there?"

A: Yeah. Basically, he said, "You're on your own."

Q: Okay. Anything else you can remember that he told you in that conversation –

A: No.

Q: – in particular?

A: I wasn't notified I was fired or anything like that.

(TR 54:20 – 56:5). In fact, the first time Mr. Arledge learned he had been “terminated” was after he filed his claim:

Q: Okay. Okay. When did you find out that you had – that your employment had been terminated? Was that while you were still in jail?

A: No, sir. They never told me I was – I found out when they sent me a copy of my employee – on their – let's see, pre-discovery or what – <sup>4</sup>

(TR 53:22 – 54:2). After his release from County Jail, Mr. Arledge *assumed* he was no longer employed by Respondent:

Q: Okay. But let me try this again. This is what I don't understand. You're released from jail on your own recognizance. You told him you can't go back to work. You called Bo and you tell him you can't go back to work. And you go back to Nampa. Now you're at home in Nampa. You're not going to work. I presume you're not getting paid.

A: No, sir.

Q: Did you think you were still employed there, or did you assume you were no longer working?

A: I kind of figured –

Q: Okay.

A: – I wasn't employed. You know –

Q: Okay.

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<sup>4</sup> Here, Mr. Arledge appears to refer to RX 2, the “Termination Sheet,” which Respondent introduced into evidence, and accordingly would have shown him before the hearing. Later, Mr. Ferguson would testify Respondent completed such a sheet whenever an employee stopped working, not exclusively when Respondent had fired the employee (TR 142:4-18).

A: – I mean – I mean, when he initially told me – when I called him up when I got to the county jail, you know, after I got my phone card –

Q: Mm-hmm.

A: – and he goes – I told him what happened, and he goes, “I wasn’t there.”

(TR 57:12 – 58:5).

Mr. Arledge, then, did not show Respondent terminated him. He showed that he never returned to work after being released from County Jail. He has not shown an adverse employment action.<sup>5</sup>

### ORDER

Because Mr. Arledge adduced no evidence at the hearing that he engaged in protected activity, or that he suffered any adverse employment action, his claim is dismissed.

SO ORDERED.

CHRISTOPHER LARSEN  
Administrative Law Judge

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<sup>5</sup> Mr. Arledge’s testimony is consistent with the later testimony of Mr. Ferguson, the Vice President of Respondent (TR 132:2-25). I asked Mr. Ferguson whether he was the person who decided to terminate Mr. Arledge’s employment with Respondent. He replied, “Your Honor, I didn’t look at it as a – as a – a termination. I – I did not feel – until I had – I had a chance to sit down, and he came to see me, and explain to me the reason I should put him back in a truck on the interstate from what I had known, I – I – I was not comfortable in making that decision.” He agreed he “had lost contact” with Mr. Arledge and wasn’t particularly interested in re-establishing it (TR 150:8-25). On direct examination, Mr. Ferguson had testified he had not sent Mr. Arledge a letter telling him he had been fired. “I – that’s not a practice of our company. I knew the Plaintiff (sic) was in jail. I knew he had assaulted two of our employees. That’s the information I had. At that point, I had to do what I feel is best for the other employees at Concrete Placing. I felt it best not to pursue him” (TR 144:14-21). He further testified that if Mr. Arledge had “come back in and tried to plead his case” for continued employment, Mr. Ferguson would at least have heard him out; but Mr. Arledge never did (TR 144:22 – 146:11),

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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.

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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, 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).

**APPENDIX**  
**EXHIBITS RECEIVED IN EVIDENCE AT THE HEARING**

Complainant's Exhibits

- CX 1                      Order of Dismissal, Idaho County District Court  
Case No. CR 25-18-1999  
(One page)
- CX 2                      Idaho Vehicle Collision Report dated 9/25/2018  
(Five pages)
- CX 3                      Concrete Placing Co., Inc., Drug/Alcohol Testing Policy  
Signed by Mike Burke on 7-19-2005  
(Three pages)
- CX 4                      Blueline Services "Results of DOT Controlled Substance  
Test"  
Signed by Dr. Stanley Callister on 9/18/2018  
(One page)
- CX 5                      Concrete Placing Co. Employee Handbook  
(Eleven pages)
- CX 6                      Concrete Placing Company, Inc., timecard  
Completed by Doug Arledge on 9/13/2018  
(One page)

Respondent's Exhibits

- RX 1                      "Investigation Narrative" and Fax Cover Sheet  
(Three pages)
- RX 2                      Concrete Placing Co., Inc., Termination Sheet  
(One page)