



Issue Date: 07 June 2021

CASE NO.: 2019-STA-00045

In the Matter of:

**JOYCE BEASLEY-ALI,
f/k/a JOYCE BUCHANAN,
Complainant,**

v.

**POWE, INC.,
L&S TRUCKING,
LASHOAN POWE, an individual, and
SAMUEL BROWN, an individual,
Respondents.**

DECISION AND ORDER DISMISSING COMPLAINT

This case arises under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. § 31105 (STAA), and its implementing regulations at 29 C.F.R. Part 1978 (Jul. 27, 2012), filed by Complainant Joyce Beasley-Ali (Complainant) against Respondents, Powe, Inc., L&S Trucking, LaShoan Powe, and Samuel Brown (Respondents).

Complainant initiated this action when she filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) on December 20, 2016. In her OSHA complaint, Complainant alleged that Respondents violated the STAA when they berated her to complete her assigned dispatch regardless of the hours of service available to do so. Additionally she alleges Respondents terminated her employment in retaliation for Complainant refusing to drive when she was fatigued. After completing an investigation, OSHA dismissed Complainant's complaint on May 20, 2019. Complainant requested a hearing before the Office of Administrative Law Judges (OALJ).

Complainant was previously represented by counsel. On December 17, 2020, the Court allowed counsel to withdraw. At that time, the Court advised Complainant regarding proceeding *pro se*. A telephone hearing was held on February 25, 2021. Complainant Exhibits (CX) 1–11 and 13–18 were admitted. Respondent offered Respondent Exhibits (RX) 1–7. However, because Complainant did not timely receive the exhibits and had been unable to review all the exhibits, the Court granted Complainant's request that the hearing be continued until April 5, 2021. The Parties were advised that all exhibits had to be filed and exchanged no later than March 22, 2021.

A telephone hearing was held on April 5, 2021. RX 1–7 were admitted into evidence. Complainant, Samuel Brown and Lashaon Powe testified. Over the next few days the Court received a large number of audio file recordings and snapshots from Complainant. There was no indication that any of the exhibits had been exchanged by the March 22, 2021 deadline or had ever been served on Respondents as required by the Court. (Tr 122). Due to trouble listening to some of the files the Court ordered Complainant to have the exhibits transcribed and served on Respondents and refiled with the Court. This has not occurred. The Court did review the files as best as it could. Most deal with what happened after Complainant was terminated, such as who took her to the hospital, the workers’ compensation claim, and other insurance issues. However, the audio file titled “Sam violating my rights” appears to be a recording made just prior to Complainant’s termination and is helpful to the Court in determining the facts leading up to the termination. That audio file is admitted as CX–19 and a complete transcription follows later in this decision. The audio files titled “Talking with Shawn day she was woken up” and “convo with Shawn taking Joyce to hospital” are helpful as they show the demeanor of the parties at the relevant time. These audio files are admitted as CX–20 and CX–21.

EVIDENCE PRESENTED

Complainant’s Testimony

Complainant has been a commercial truck driver for 25 years but had not been working the year before November 2016. She went to a temp agency in Kentucky and was connected with Brown. Brown hired her as a driver and went to Kentucky and brought her back to Memphis, Tennessee. She stayed at Brown’s house that night. The next morning she went for her drug test. There she met Powe who paid for the drug test. She then returned to the yard where Brown gave her a driving test. (Tr 9–14).

Complainant was given an assignment to deliver a load to Florida. Nothing eventful happened on the trip to Florida. Brown and Powe called her, and she felt she was being babysat even though she was an experienced driver. During the trip, Complainant told Brown “I was going to take a break. And he was like, well go ahead and take your break.” (Tr 15).

On the return trip from Florida, the truck needed fuel. Due to problems with the fuel card, Complainant had to sit for hours. When Complainant returned to Memphis, she intended to stop at the Pilot truck stop to sleep and shower. Powe told her she needed to return to the yard as he needed the paperwork. The Pilot truck stop is about two miles from the yard. (Tr 32).

Complainant returned to the yard but Powe was not there. Complainant fell asleep in the truck. She woke when Powe pounded on the door and she gave him the paperwork. Powe told her to back in and take a nap. (Tr 17).

At some point Complainant became aware that two loads needed to be transported to Arkansas. The following conversation took place:

Joyce Beasley-Ali (hereinafter, J): Hello
Sam Brown (hereinafter, S): Joyce, quick question.
J: Yeah?

S: (inaudible) do you want to help me with one? Do you want one of them? Do you want both of them? Do you want to do one today and then one Monday? What do you want to do?

J: I mean where are they picking up?

S: I'm looking that up right now. They're picking up on (inaudible) Arkansas somewhere to drop off.

J: Where at in Arkansas?

S: I don't know, I'm just looking at the thing now.

J: I'm tired. I ain't had no sleep, I ain't slept yesterday, I ain't slept today. I'm tired. I can't function. I can't.

S: Ah, well. (Inaudible).

J: I need to wash my ass. I ain't had no shower; none of that! I'm tired!

S: We've got to—

(Talking over each other)

J: I didn't know they meant for right now.

S: They've got to be dropped off by 10 o'clock tonight

J: Well somebody should have said that because I specifically told Shawn that I've had no sleep. He told me to back in there and go to sleep. That's why I backed in there. I'm tired. I can only stay up so long before I just start going to sleep behind the wheel.

S: Okay, well how much rest do you need

J: I just drove five hours, I'm tired!

S: Okay well I'll tell you what we're gonna do. I'll deliver both of these loads, but you're gonna take that trailer (inaudible) and I'll deliver them both myself. I'll do them. And you don't even have one.

J: I'm tired.

S: Uh, (inaudible) right around the corner, Joyce, because guess what. You're tired because you made yourself tired.

J: What is you—I'm not going nowhere. I'm tired and I'm going down to go to sleep.

(Talking over each other)

J: You don't tell me— *Call Ended*

(CX-19).

Complainant went into the terminal and called Powe:

P: Hello? Hello? Joyce?

J: Now, what's the issue? What's the problem? I'm pissed. I (inaudible) step up in the truck, so I'm mad.

P: What- Where you at?

J: I'm sitting inside the terminal.

P: Inside the terminal at, um, (inaudible)? Are you at (inaudible) or.. where you at?

J: I'm inside the terminal. The office. What, do you think I'm going to stand outside? Cause he's locked the truck with my stuff in it. You're not going to run me. Like I told him, I am tired. He come in here (inaudible), he should have left those loads where they were unless he was going to do them. No.

P: Yeah, yes.

J: That's the reason I went and (inaudible) the other day because he went and got th loads and didn't even tell me and I would've been up all night trying to get up to Pennsylvania. No. He don't do business right. I don't have time for that. Everything he's said, he's lied about. I don't have time for that.

P: Okay. Alright then. We're going to get something figured out for you.

J: I want to get my stuff out the truck. And like I told him --

P: I'm going to come back up there. I'm going to come back up there.

J: -- sleep right now.

P: I'm going to come back up, okay? I'm on my way back up there. Give me a minute, I'll be up there.

J: There were warning signs, this is what I get. I should've ran on day one.

P: I'll be there to talk to you. (Might have said "I'll get them to talk to you," it wasn't super clear.

Call Ended

(CX-20).

LaShoan Powe's Testimony

Powe is the owner of Powe, Inc. Powe runs loads through SDR Trucking in the Memphis yard. Samuel Brown is a contractor who runs under Powe's DOT authority. Complainant is not an employee of Powe. (Tr 68, 88).

Powe has never requested that Complainant alter her log books. The times entered on Complainant's log books appear legal. (Tr 71, 103).

On Friday November 18, 2016, a broker had two loads going from Memphis to Arkansas that had to be delivered no later than Monday morning. The deliveries could have been made any time over the weekend. Powe offered the loads to Brown. Brown knocked on Complainant's truck door and asked Complainant if she wanted one of the loads. She said "yes." (Tr 69, 70). If Complainant did not want the load all she had to do was say she did not want the run. But she agreed to take the load. (Tr 85).

Powe never fired Complainant. Brown said Complainant was fired for insubordination and for cussing him out. (Tr 71).

Samuel Brown's Testimony

Brown is the owner of L&S Trucking. He is an independent contractor and runs under Powe's DOT authority and insurance. Brown hired Complainant to drive a truck that he leased from Powe. Brown gets paid through Powe and Complainant gets paid by Brown. (Tr 125).

Complainant's first driving assignment with L&S was a delivery to a Walmart in Florida. There was some problem with refueling the truck in Georgia. While there, Complainant stated someone had blocked her in and she had gone to sleep. Brown never instructed Complainant to falsify her log books. He never saw her log books for this trip. (Tr 115-17, 133). As far as Brown knew Complainant was still within her hours for driving when she returned to Memphis. (Tr 120).

On November 17, 2016, Powe told Brown he had two loads to go from Memphis to Arkansas that had to be delivered over the weekend. Brown knock on Complainant's truck door and asked if she wanted to do the delivery. She agreed and Brown told Powe he would take the loads. (Tr 111, 134). Complainant never said she was fatigued or out of hours. (Tr 137).

The loads had to be loaded and picked up that day. So Brown asked Complainant to follow him around the corner because both trailers needed to be loaded. Brown drove his truck and delivered the trailer. He parked his truck back at the yard and was going to drive Complainant's truck and deliver that trailer. He did not know where Complainant was and thought she had gone. As he was walking from the back side of the building Complainant came running behind him cussing him out - "you sorry mother blah, blah, blah" and "fat mother." Complainant stated she wanted her stuff and he told her she would have to wait until he got back as he had to take the trailer around the corner to be loaded. Complainant blocked the door and prevented Brown from getting inside the truck. (Tr 112, 140). He did not fire Complainant because she did not want to

take the loads to Arkansas. He fired her for insubordination and disrespect and for cussing him out. (Tr 121).

Affidavit of LaKeshia Gordon (CX 7).

After Complainant was fired by Brown, Complainant was yelling that she needed to get her “s**t” out of the truck. Brown responded by telling her to leave him alone, that she was fired and to leave the premises. Complainant said she was not going anywhere until you give me my stuff you “fat f**k.” Shortly thereafter a physical altercation occurred between Complainant and Brown.

WHISTLEBLOWER PROTECTION UNDER THE STAA

The STAA prohibits an employer from discharging or discriminating against an employee because the employee has engaged in certain protected activity. The employee protection provisions of the STAA at issue in this case are these:

- (a) Prohibitions: (1) A person may not discharge an employee or discipline or discriminate against an employee regarding pay, terms, or privileges of employment because: (A)(i) the employee, or another person at the employee’s request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding....

49 U.S.C. § 31105(a)(1)(A)(i).

Congress amended the STAA on August 3, 2007, to incorporate the legal burdens of proof set forth in the Wendell H. Ford Aviation and Investment and Reform Act for the 21st Century (AIR-21), 49 U.S.C. § 42121(b). Pub. L. 110-53, 9/11 Commission Act of 2007, 212 Stat. 266 § 1536; *Smith v CRTS International, Inc.*, No. 11-086, 2013 WL 2902809, *2 fn.1 (ARB Jun. 6, 2013); 49 U.S.C. § 31105(b). In order to prove a STAA violation, Complainant must show, by a preponderance of evidence: (1) that she engaged in protected activity; (2) that Respondent took an adverse employment action against her, and; (3) that her protected activity was a contributing factor in the adverse action. *Williams v. Dominos Pizza*, ARB No. 09-092, ALJ No. 2008-STA-052, slip op. at 5 (ARB Jan. 31, 2011). If Complainant establishes that “the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer’s decision,” then she has met element (3). 77 FR 44127 (Jul. 27, 2012); *Benjamin v. Citationshares Management, LLC*, No. 12-029, 2013 WL 6385831 (ARB Nov. 5, 2013). “If the employee does not prove one of these elements, the entire complaint fails.” *Coryell v. Arkansas Energy Services, LLC*, No. 12-033, 2013 WL 1934004, *3 (ARB Apr. 25, 2013).

Here, if Complainant successfully proves that her discharge amounted to an adverse employment action and that her protected activity was a contributing factor in the decision to discharge her, then Respondents may nonetheless avoid liability if they demonstrates by clear and convincing evidence that the adverse employment action was the result of events or decisions independent of protected activity. 49 U.S.C. § 42121(b)(2)(B)(iv); 29 C.F.R. § 1979.109(a). Clear and convincing evidence is “evidence indicating that the thing to be proved is highly probable or reasonably certain.” *Coryell v. Arkansas Energy Services, LLC*, No. 12-033, 2013 WL 1934004,

*3 (ARB Apr. 25, 2013), quoting *Warren v. Custom Organics*, No. 10-092, 2012 WL 759335, *5 (ARB Feb. 29, 2012); *Klosterman v. E.J. Davies, Inc.*, No. 12-035, 2013 WL 143761 (ARB Jan. 9, 2013).

I find that Complainant did not engage in protected activity during the trip to Florida. Nothing eventful happened except that Brown and Powe called her and she felt she was being babysat even though she was an experienced driver. During the trip, Complainant told Brown she was going to take a break and he told her to go ahead and take the break. Certainly, nothing occurred that could be considered “berating.” The recorded phone conversations (CX 18–20), although made the next day, do not depict Brown and Powe as individuals that would “berate” an employee. There is nothing to indicate that the fueling card problem or the return to the yard from Pilot involved protected activity. I specifically find that neither Brown nor Powe told Complainant to falsify her driver’s logs.

I do find that Complainant engaged in protected activity when she told Brown she was fatigued and could not make the trip to Arkansas. I further find that Complainant suffered an adverse employment action when Brown terminated her employment.

The issue is whether the protected activity was a contributing factor to the adverse employment action. Complainant must establish that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer’s decision.

When Complainant returned from Florida she went to the Pilot truck stop located two miles from the yard. Powe told her to return to the yard with the paperwork. At the yard Complainant fell asleep in the truck to be awakened by Powe to get the paperwork. Powe told her to back in and take a nap.

Powe had two loads that needed to be delivered to Arkansas sometime over the weekend. The trailers needed to be loaded around the corner of the yard. Powe asked Brown if he wanted to deliver the loads. Brown knocked on the truck door where Complainant was sleeping and asked if she wanted to take one of the loads. Complainant said she would. Brown then told Powe that he would take the loads.

The trailers needed to be moved around the corner of the yard to be loaded. When Complainant told Brown she was tired, he did not get angry or threaten to fire or discipline Complainant. Brown told Complainant “Okay well I’ll tell you what we’re gonna do. I’ll deliver both of these loads, but you’re gonna take that trailer (inaudible) and I’ll deliver them both myself. I’ll do them. And you don’t even have one.” At this point there is nothing hostile, berating, or intimidating in Brown’s voice and there is no violation for Brown to tell Complainant to shuttle the trailer around the corner to be loaded. *See eg. Stauffer v. Wal-Mart Stores, Inc.*, ARB No. 00-062, ALJ No. 1999-STA-21 (ARB July 31, 2001).

Brown proceeded in his truck to have the trailer loaded. Complainant, rather than follow Brown, went into the terminal and called Powe. Complainant told Powe she was “pissed” and “mad.” There was nothing hostile, berating, or intimidating in Powe’s voice during the conversation.

Brown returned to the yard with his truck and was going to take Complainant's truck and trailer to be loaded. As he was walking from the back side of the building Complainant came running behind calling him a "sorry mother blah, blah, blah," "fat mother," and "fat f**k," and cussed him out. Complainant stated she wanted her stuff and he told her she would have to wait until he got back as he had to take the trailer around the corner to be loaded. Complainant blocked the door and prevented Brown from getting inside the truck. (Tr 112, 140). A struggle ensued and at that point Complainant was fired.

I find that Brown did not fire Complainant because she said she was too tired to take the loads to Arkansas. Complainant's protected activity, alone or in combination with other factors, did not affect in some way Brown's decision to terminate Complainant. He fired her for insubordination and disrespect and for cussing him out. (Tr 121).

ORDER

The complaint of Joyce Beasley-Ali is hereby **DISMISSED**.

SO ORDERED.

LARRY W. PRICE
Administrative Law Judge

LWP/KRS/jbc
Newport News, VA

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 the administrative law judge's decision.

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. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, the

Associate Solicitor, Division of Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

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).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the system for online filing has become mandatory for parties represented by counsel. Parties represented by counsel must file an appeal by accessing the eFile/eServe system (EFS) at <https://efile.dol.gov/EFIELDOLGOV>.

Filing Your Appeal Online

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at login.gov (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your login.gov username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at <https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf> and/or the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>. Existing EFSR system users will not have to create a new EFS profile.

Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed with the Board.

You are still responsible for serving the notice of appeal on the other parties to the case and for attaching a certificate of service to your filing. If the other parties are registered in the EFS system, then the filing of your document through EFS will constitute filing of your document on those registered parties. Non-registered parties must be served using other means. Include a certificate of service showing how you have completed service whether through the EFS system or otherwise.

Filing Your Appeal by Mail

Self-represented (pro se) litigants may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W., Room S-5220,
Washington, D.C., 20210

Access to EFS for Other Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

<https://efile.dol.gov/support/boards/request-access-an-appeal>

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.