



**Issue Date: 30 September 2019**

CASE NO. 2019-STA-26

In the Matter of:

MARK RULO,  
Complainant

v.

SERVICE PLUS TRANSPORT, INC., and  
SARAH STORLIE and  
LIBBY STORLIE,  
Respondents

**ORDER DISMISSING THE COMPLAINT OF MARK RULO**

On August 23, 2019, I issued an “Order To Show Cause Why the Complaint of Mark Rulo Should Not Be Dismissed,” (“Order”). The Order, in relevant part, required complainant, Mark Rulo to tell me in writing the reasons, if any, his complaint in this matter, should not be dismissed and to address any reasons he wanted me to consider for his failure to participate in these proceedings, by September 13, 2019. The Order further provided that, “[i]f Mr. Rulo does not respond to his Order, his Complaint will be dismissed.” (*See* August 23, 2019 Order to Show Cause Why the Complaint of Mark Rulo Should Not Be Dismissed, incorporated herein by reference). To date, Mr. Rulo has failed to submit any response to the Order. As a result, for the reasons below and with nothing to consider or otherwise establish good cause to excuse his failure to participate in this proceedings, I grant respondents’ Service Plus Transport, Inc., Sarah Storlie and Libbie Storlie (collectively, “Respondent” or “Employer”) Motion to Dismiss complainant Mark Rulo’s Complaint, and dismiss the complaint of Mr. Rulo .

As background, this matter arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, and its implementing regulations at 29 C.F.R. Part 1978. On June 13, 2018, complainant Mark Rulo, filed a Complaint against Respondents with the Secretary of the U.S. Department of Labor, through the Occupational Safety and Health Administration (OSHA), alleging that on February 26, 2018, he was terminated by his employer in retaliation under the STAA, for making safety complaints and refusing to drive while taking prescribed medications. Following investigation, on February 25, 2019, OSHA found no reason to believe Respondents violated the STAA and dismissed the complaint. On March 5, 2019, Mr. Rulo, through then counsel, objected to OSHA’s findings and requested a hearing before the Office of Administrative Law Judges.

Complainant, Mark Rulo, was initially represented by counsel and during that time, met the requisite pre-hearing deadlines including the submission of his Initial Disclosures pursuant to 29 C.F.R. 18.50, and in accordance with my initial Notice of Hearing and Pre-hearing Order issued on April 18, 2019. On June 10, 2019, I granted Counsel for Complainant's Motion for Leave to Withdraw as Complainant's Counsel. Since that time, as I have received no notice to the contrary, it appears Mr. Rulo has not been represented by counsel.

29 C.F.R. § 18.21 (c) provides that “[w]hen a party has not waived the right to participate in a hearing, conference or proceeding but fails to appear at a scheduled hearing or conference, the judge may, after notice and opportunity to be heard, dismiss the proceeding or entire decision and order without further proceedings if the party fails to establish good cause for its failure to appear.”

On August 22, 2019, Respondents Moved to Dismiss Mr. Rulo's complaint citing his lack of participation in the claim, including a scheduled conference call with the parties on the same date. Although my August 23, 2019 Order outlined multiple instances in which Mr. Rulo failed to participate and I note, since that time has not provided any reasons for his lack of participation, I nevertheless include them again, as further support for the dismissal of Mr. Rulo's complaint here, and in accordance with 29 C.F.R. § 18.21 (c)

1. A conference call was scheduled with the parties to occur on August 22, 2019 at 10:00AM, Eastern Standard Time, (9:00 AM Central Time), pursuant to an “Order Directing the Parties, Including Mark Rulo and Respondents to Call-in and Participate in Status Conference Call,” I issued on August 20, 2019. The Order was issued **after** confirming the availability of the parties, **including Mr. Rulo** for that specific date and time. (emphasis added). While counsel for Respondents, timely called in, complainant, Mark Rulo did not. Nor did Mr. Rulo contact my office to notify me he would not participate or provide any explanation why he did not participate.

It was during the August 22, 2019 call that Employer Moved to Dismiss Mr. Rulo's instant whistleblower Complaint based on his lack of participation in the claim, as detailed further in its August 7, 2019 Status report submitted to the undersigned. The Employer's August 7, 2019, Status Report further cited 29 CFR § 18.21 in support of its request asking that I dismiss the complaint due to Mr. Rulo's lack of participation. Employer cited to other bases for its motion to dismiss, as detailed in its August 7, 2019 Status Report, incorporated here by reference, summarized during the August 22, 2019 conference call and in my August 23, 2019 Order. The reasons or bases for dismissal include:

2. Complainant either did not appear, or cancelled at the last minute, for three previously scheduled depositions including those noticed for (a) May 8, 2019 at 9:00 AM and cancelled at 8:21 AM on the same date due to a medical emergency; (b) May 15, 2019, where Mr. Rulo cancelled the day before due to a medical emergency involving his mother; and (c) May 29, 2019, a date requested by Mr. Rulo and for which he did not show up for the deposition. (See Respondent's Status Report at 2-3).

3. During the period of June 25 through June 27, 2019, Employer's counsel and Mr. Rulo communicated via email as to a resolution of the case. Mr. Rulo apparently spoke to Employer's counsel on June 27, 2019 agreeing to withdraw the appeal of his complaint, if Mr. Rulo received an apology. Employer's counsel drafted a stipulation or settlement and sent it to Mr. Rulo the same day, but Mr. Rulo did not ever return the stipulation. (See Respondent's Status Report at 3).

4. On July 25, 2019, I pre-arranged a conference call with the parties to address the status of the case. The time and date was **confirmed prior to the call with** all parties, including **Mr. Rulo**. (emphasis added). The call was scheduled for 1:00 PM Eastern Standard Time. Mr. Rulo did not timely call in. During the call, Employer's counsel left a message for Mr. Rulo with the call in-number to join the call. We waited until 1:15 PM and Mr. Rulo never called in to join the call. (See Respondent's Status Report at 3).

5. At 1:25 PM, on July 25, 2019, Mr. Rulo spoke to Employer's counsel saying he intended to withdraw his Complaint, if he received a letter of apology from Libbie Wagner. Employer's counsel said she told Mr. Rulo to draft the apology letter and she would share it with Respondent, which Mr. Rulo agreed to do. After several attempts to follow up with Mr. Rulo from July 30, 2019 to August 5, 2019, Employer's counsel has not heard from Mr. Rulo. (See Respondent's Status Report at 3-4).

6. During the August 22, 2019 conference call, it was noted that Mr. Rulo again did not join the call. (See Teleconference Transcript (when available), and to be incorporated herein). During the August 22, 2019 conference call and in its August 7, Status report, Employer further stated that Mr. Rulo's lack of participation has hindered its ability to prepare for the upcoming hearing<sup>1</sup>.

Additionally, it is important that I include, that after Mr. Rulo failed to call-in for the previously scheduled July 23, 2019 conference call with the parties, on July 26, 2019, I issued an Order directing that the parties, including Mr. Rulo, submit to me a written status report by August 7, 2019. While Respondents timely complied, Mr. Rulo to date, provided no such response.

Finally, as discussed above, Mr., Rulo never responded to the August 23, 2019 Order to Show Cause why his Complaint Should Not be Dismissed<sup>2</sup>.

In sum, Mr. Rulo missed multiple scheduled conference calls with the undersigned, certain deadlines and scheduled depositions by Respondents in this matter. My August 23, 2019 Order notified Mr. Rulo that his complaint would be dismissed if he did not provide reasons or

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<sup>1</sup> As a result, Employer asked that if the complaint is not dismissed, that the hearing deadlines be extended so they can prepare. I agreed to cancel the hearing and reschedule it if necessary, pending the outcome of its Motion to Dismiss. (See Teleconference Transcript).

<sup>2</sup> There is no indication that Mr. Rulo did not receive copies of the relevant Orders in this matter. To the contrary, there are signed certified mail receipts, correspondence was sent via overnight mail too and although not my normal practice, as a courtesy, some via email.

“good cause” for his failure to appear and participate in these proceedings. Lastly, Mr. Rulo was given until September 13, 2019, to submit any such response including the reasons he did not appear, meet certain deadlines, and otherwise participate, but to date has failed to do so. Having failed to establish good cause for his failure to appear and participate in these proceedings, Mr. Rulo’s Complaint is therefore dismissed, pursuant to 29 C.F.R. § 18.21 (c).

**ORDER**

Accordingly, have considered the record, Employer’s Motion, and applicable law, and for the reasons provided above, Employer’s Motion to Dismiss is **GRANTED**. It is further **ORDERED** that the Complaint of Mark Rulo is **DISMISSED**.

NATALIE A. APPETTA  
Administrative Law Judge