



**Issue Date: 19 March 2019**

Case No.: 2019-STA-00013

In the Matter of:

FERNANDO D. WHITE,  
Complainant,

v.

EBE TRANSPORTATION, LLC,  
Respondent,

and

TRANSWER LOGISTICS, LLC,  
Respondent.

**DECISION AND ORDER GRANTING RESPONDENT'S MOTION TO DISMISS**

**ORDER DISMISSING CLAIM FOR ABANDONMENT**

This matter arises from a complaint filed under the provisions of Section 31105 of the Surface Transportation Assistance Act of 1982, U.S. Code, Title 49, § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 ("STAA") and is governed by the implementing Regulations found in the Code of Federal Regulations, Title 29, Part 1978. Per 29 CFR §1978.107, the proceeding will be held in a manner consistent with the procedural rules set forth in federal regulations at 29 CFR Part 18, Subpart A (29 CFR §18.10 to §18.95).

On January 21, 2019, Respondents EBA Transportation and Transwer Logistics filed a response to Complainant's appeal and moved to dismiss the complaint. They stated that they "agree with the department's initial decision to dismiss the claims stated by Mr. White." In support of the request to dismiss the Complaint, Respondents provided argument and copies of documents and e mails as exhibits. On February 15, 2019, and Order was issued by the court for Complainant to show cause, in writing only, why this matter should not be dismissed for failure to establish a prima facie case. Complainant was ordered to show cause, in writing to the court with a copy to each respondent at the addresses listed at the end of this Order, by March 15, 2019. Complainant did not respond.

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, found in 29 C.F.R., Part 18, provide the standard to be applied on a Motion for Dispositive Action. See 29 C.F.R. 18.70. A party may make a motion to dismiss “part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness.” Id. at (a). If there is a situation not covered by “these rules, or a governing statute, regulation, or executive order” the Federal Rules of Civil Procedure apply. See 29 C.F.R. § 18.10; see also *Ahluwalia v. ABB, Inc.*, 2007-SOX-44, \*1, \*2 (ARB Sept. 24, 2007) (for application of pre-2015 amendment 29 C.F.R. § 18.1, which mirrors the language found in 18.10). An Administrative Law Judge must dismiss the matter once they make a determination that subject matter jurisdiction is lacking. 29 C.F.R. § 18.70(a).

The Administrative Procedure Act, 5 U.S.C. §556 and federal regulations at 29 CFR §18.12 task the Administrative Law Judge with “all powers necessary to the conduct of fair and impartial proceedings.”

In this case, the Complainant has not complied with the court’s Order to Show Cause and has not responded to the show cause order. The administrative file indicates that the Complainant has essentially abandoned his claim before the Office of Administrative Law Judges. In this matter, Respondent’s Motion to Dismiss is therefore GRANTED.

After review of the administrative file, it is hereby **ORDERED** that the proceedings in the above captioned matter are cancelled, Respondent’s Motion to Dismiss is **GRANTED**, and the matter is **DISMISSED** with prejudice.

**SO ORDERED.**

Dana Rosen  
Administrative Law Judge

DR/mjw  
Newport News, Virginia