



Issue Date: 05 August 2020

CASE NO.: 2020-STA-90

In the Matter of:

ADRIANO BUDRI,
Pro Se Complainant,

v.

FIRSTFLEET, INC.,
Respondent.

AMENDED ORDER OF DENIAL

This proceeding arises under the Surface Transportation Assistance Act of 1982 and the regulations promulgated thereunder.¹ 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.

This is the fifth iteration of litigation brought by Complainant concerning the termination of his employment with Respondent. Respondent hired Complainant as a commercial truck driver on 25 Jan 17. Citing an unreported accident in which Complainant tore a door off of a trailer, a failure to deliver a time sensitive order, and a failure to properly secure a load that resulted in cargo damage, Respondent fired Complainant on 17 Feb 17. That has thus far resulted in three and half years of OSHA complaints, OSHA dismissals, objections, OALJ motions, OALJ dismissals, appeals, and affirmances of the dismissals.

Complainant’s initial complaint on 20 Mar 17 was dismissed by the Occupational Safety and Health Administration (OSHA) and an Administrative Law Judge (ALJ) based on Complainant’s failure to show any of the alleged protected activity contributed to Complainant’s termination.² The Administrative Review Board (ARB) affirmed the

¹ 49 U.S.C. § 31105 (herein the Act); 29 C.F.R. Part 1978.

² ALJ No. 2017-STA-86 (Feb. 2, 2018).

dismissal on that basis,³ the Fifth Circuit issued an affirmance of the dismissal,⁴ and the Supreme Court denied *certiorari*.⁵

Complainant's second OSHA complaint alleged that Respondent had taken additional adverse action against him by reporting negative information about him to Tenstreet, a company that provides data about truck drivers to potential employers. OSHA and then the same ALJ dismissed the complaint, finding that the new OSHA complaint was untimely and no protected activity contributed to the newly alleged adverse action.⁶ The ARB summarily affirmed the dismissal for untimeliness.⁷

Complainant's action in Federal District Court was dismissed and he was reprimanded for engaging in frivolous litigation.⁸ The Fifth Circuit dismissed his appeal for his failure to comply with its order.⁹

Complainant's third OSHA complaint alleged as a new adverse action that Tenstreet continued to maintain and release information previously provided by Respondent. OSHA dismissed the complaint and I found that Complainant was essentially revisiting his earlier unsuccessful argument and that Tenstreet's maintenance of the information provided by Respondent did not constitute a continuing adverse action by Respondent. I dismissed the complaint as untimely¹⁰ and the ARB affirmed.¹¹

Complainant's fourth OSHA complaint alleged that he had received notice that negative or derogatory information that Respondent had provided to Tenstreet on or about 12 Jun 17 would remain on his driver's report. OSHA dismissed the complaint. I determined that Complainant had failed to allege any newly identified actionable adverse activity and dismissed his complaint. I also dismissed it in the alternative because of his repeated and willful noncompliance with procedural rules and orders.¹² The ARB denied his petition for review¹³ and his appeal to the Fifth Circuit is pending.

³ ARB No. 18-0025 (Jun. 19, 2018).

⁴ 764 Fed. Appx. 431 (5th Cir. 2019) (per curiam).

⁵ 140 S.Ct. 386, 2019 U.S. LEXIS 6383, 2019 WL 5150521 (2019).

⁶ ALJ No. 2018-STA-33 (Jun. 26, 2018).

⁷ ARB No. 18-0055 (Mar. 25, 2019) (per curiam).

⁸ 2019 U.S. Dist. LEXIS 187025, 2019 WL 5578975 (N.D. Tex. Oct. 29, 2019).

⁹ No. 19-11203, 2019 U.S. App. LEXIS 39315, 2019 WL 8645418 (5th Cir. Dec. 18, 2019).

¹⁰ ALJ No. 2019-STA-71 (Dec. 26, 2019).

¹¹ ARB No. 20-0021 (Jan. 7, 2020) (per curiam).

¹² ALJ No. 2020-STA-37 (Jun. 18, 2020).

¹³ ARB No. 20-0047 (Jun. 30, 2020) (per curiam).

Complainant filed his fifth and current complaint with OSHA on 1 Jul 20, the day after the ARB affirmed the denial of his fourth complaint. OSHA issued its denial the same day, finding that he had failed to allege any new adverse actions. Complainant again objected and requested a hearing. The case was received by this office on 24 Jul 20 and is once again pending before me. On 27 Jul 20, Complainant filed a Motion for Recusal.

The next day, 28 Jul 20, I denied the motion for recusal¹⁴ and instructed Complainant that he was not entitled to re-litigate previously denied whistleblower claims by simply filing a new administrative complaint. However, I also advised him that if he alleges adverse activity that has not been previously considered, he is entitled to have his claim adjudicated on the merits of whether he timely complained of the adverse action, whether it in fact occurred, and whether any protected activity contributed to that adverse action.

However, Complainant has a protracted history of repetitive filing of complaints that failed to allege any new legally recognized adverse action. He also has made clear his intent to continue filing OSHA complaints as long as he believes a ruling has treated him unfairly. As a result, and to make more efficient use of judicial resources, I ordered Complainant to first file a document identifying the things he now alleges Respondent did that constitute heretofore unalleged adverse actions. I also cautioned him that if he once again began filing multiple motions and submitting documents in violation of this order, his complaint may again be denied because of his repeated violations of court orders.

Complainant filed his response to my order on 29 Jul 20, the day after I issued it.¹⁵ Complainant also filed, contrary to my order:

- A motion for judicial notice that he has the right to procedural due process;
- A motion for judicial notice of the status of his District Court complaint;
- Copies of the website reporting his case and Respondent's handbook;
- A motion and related argument for equitable tolling and estoppel;
- A motion to add a named additional respondent;
- A motion to conduct discovery;
- A letter inquiring as to recusal standards; and
- An amended recusal motion.

¹⁴ Complainant subsequently moved for reconsideration of my denial of his recusal motion and then filed another motion on the issue. He cited no new evidence not previously available, change in law, or manifest factual or legal error. The basis for his motion remained the same as when he initially filed it and his Motion for Reconsideration and Supplemental Motion are denied.

¹⁵ Complainant also filed a supplemental table as an appendix.

The threshold question is whether Complainant has alleged any new adverse action. His reply to my order states:

Complainant replies the order to show cause, and showing identification of the things that constitute adverse action. *Two social media web sites* specialized in insurance business have *published adverse actions and having been provided such information by* Daniel Matthew Humphreys as *FIRSTFLEET's Fleet Manager* in one bad faith affidavit and containing perjured statements and addressed to the Administrative Law Judge Larry W. Price *in the first administrative proceeding*... [on] which the ALJ Larry W. Price relied and published in his ALJ's Recommended D & O for dismissal. ... As consequence of these adverse actions, Two social media web sites published such adverse actions against the complainant and who had not a unique opportunity to take an oral deposition ... from ... Humphreys. ... Also, the *two social 2 media web sites published* that complainant has been "banned" from one customer and also being a flagrant adverse action against the complainant and *having as origin the same bad faith affidavit*. ... Also, *TENSTREET has provided 05 consumer investigation reports* ... and TENSTREET's attorney ... disclosed supplemental post termination employment information and provided from FIRSTFLEET to TENSTREET and showing newly and additional adverse employment actions against the complainant. In this fifth consumer investigation report and dated on 31 Oct 2019, the TENSTREET's attorney has disclosed the supposed unreported accident and *matching with the bad faith affidavit and perjured statements provided from ... Humphreys in the first administrative proceeding*....¹⁶

The tabular summary submitted by Complainant cites the fact that he was terminated for protected activity as the adverse action and states that he became aware of that protected activity when he viewed the websites in March and June 2020. He also revisited his arguments concerning equitable tolling and that the period related to his termination has yet not begun to run.

Complainant's current OSHA complaint alleges what was essentially the same adverse action that he alleged in his four previous OSHA complaints and District Court action. His reply to the show cause order clearly identifies Respondent's statements to Tenstreet and/or to the Department of Labor as the alleged adverse action. Complainant alleges nothing in his current complaint that was not alleged and fully adjudicated in his four prior complaints. Those allegations are barred by *res judicata* and issue preclusion and the complaint consequently fails to state a claim upon which relief can be granted.

¹⁶ Complainant's reply to show cause (emphasis added).

Complainant has repeatedly expressed his frustration at being denied the opportunity to engage in discovery, to prove his factual allegations as they relate to Respondent's retaliatory actions, and to attack the credibility of the witnesses against him. However, in order to engage in discovery, he must first at least allege a claim upon which relief can be granted. He has repeatedly failed to do so and his current complaint reflects either his continued inability to understand the law or his disregard for it. It may be an adverse action for Respondent to communicate to a third-party such as Tenstreet. However, it is not a new adverse action for Tenstreet or an insurance or business website to republish that information, even if Complainant believes that the republication caused him damage or otherwise would have encouraged an employee to refrain from protected activity.

Administrative Law Judges have inherent authority to control the whistleblower cases before them.¹⁷ The right of access to the courts "is neither absolute nor unconditional."¹⁸ "Conditions and restrictions on each person's access are necessary to preserve the judicial resource for all other persons. Frivolous and vexatious law suits threaten the availability of a well-functioning judiciary to all litigants."¹⁹ In response, some courts "have foreclosed the filing of designated categories of cases or subjected a vexatious litigant to a 'leave of court' requirement with respect to future filings."²⁰

Complainant has repeatedly filed what under the law is essentially the same complaint and had it denied by five separate adjudicative authorities. While his fourth complaint was pending, he announced that if he was dissatisfied with the result, he would simply file a fifth. True to his word, he filed this complaint within a day of the ARB's affirmance of the denial of his fourth complaint.

¹⁷ See *Saporito v. Fla. Power & Light Co.*, ARB Nos. 09-0009, -10 (ARB Feb. 28, 2011); see also *Blodgett v. Tenn. Dept. of Env't. & Conservation*, ARB No. 03-0138 (ARB Mar. 22, 2004).

¹⁸ *Cofield v. Ala. Pub. Serv. Comm'n*, 936 F.2d 512, 516 (11th Cir.1991) (quoting *In re Green*, 669 F.2d 779, 785 (D.C. Cir. 1981)).

¹⁹ *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008).

²⁰ *Saporito v. Fla. Power & Light Co.*, ARB Nos. 09-0072, -128-29, -141, slip op. at 8 (ARB Apr. 29, 2011) (citing *In re Martin-Trigona*, 9 F.3d 226, 228-29 (2nd Cir. 1993)).

Nonetheless, in order “to be fair and allow appropriate access,”²¹ I allowed Complainant the opportunity to establish that his latest complaint alleged something beyond that included in his four previously denied complaints. He was unable to do so. Whether a result of his good faith inability to comprehend the law or his disregard for the law and motivation to harass Respondent and frustrate the adjudicative process, this complaint is frivolous and is denied.²²

So ORDERED at Covington, Louisiana.

PATRICK M. ROSENOW
Acting District Chief Administrative Law Judge

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 issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

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.

²¹ *Id.*, slip op. at 8.

²² As with the previous complaint, Complainant's filing of additional unauthorized motions also warrants dismissal of the complaint for noncompliance with my orders.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

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).

