



Issue Date: 28 July 2020

CASE NO.: 2020-STA-90

In the Matter of:

ADRIANO BUDRI,
Pro Se Complainant,

v.

FIRSTFLEET, INC.,
Respondent.

RULING ON MOTION TO RECUSE AND ORDER TO SHOW CAUSE

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.

BACKGROUND

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

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

Complainant's termination.² The Administrative Review Board (ARB) affirmed the dismissal on that basis,³ the Fifth Circuit issued an affirmance of the dismissal,⁴ and the Supreme Court denied *certiorari*.⁵

In the meantime, Complainant filed a second complaint with OSHA, alleging 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 dismissed the complaint and the same ALJ also 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 then summarily affirmed the dismissal for untimeliness.⁷

However, in the interim, Complainant had filed an action against Respondent in Federal District Court. That led the ARB to vacate its previous affirmance as it had lacked the jurisdiction to issue a ruling.⁸ The Magistrate Judge recommended dismissal of his complaint, noting that the case had already been considered by the Fifth Circuit.⁹ The District Court adopted the recommendation and reprimanded Complainant, ordering him to obtain authorization before filing any additional civil action.¹⁰ Complainant's appeal of that ruling to the Fifth Circuit was dismissed for his failure to comply with its order.¹¹

Once again in the meantime, Complainant filed his third complaint to OSHA. He alleged as new an adverse action that Respondent provided Tenstreet information that continued to be maintained by Tenstreet as of 12 Jun 17, 15 Jan 18, 25 Oct 18, and 29 Aug 19. OSHA dismissed the complaint, Complainant objected, and the case was referred to me. I found Complainant was essentially revisiting his earlier unsuccessful argument that Tenstreet's maintenance of the information provided by Respondent constitutes a continuing adverse action by Respondent. I dismissed the complaint as untimely,¹² and the ARB affirmed.¹³

Complainant then filed his fourth complaint with OSHA. He alleged that he had received notice that negative or derogatory information that Respondent had provided to Tenstreet, LLC on or about 12 Jun 17 would remain on his driver's report. OSHA dismissed the complaint. On 8 Mar 20, Complainant objected to the OSHA findings and requested a

² ALJ No. 2017-STA-86 (Feb. 2, 2018).

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 ARB No. 18-0055 (Jul. 30, 2019) (per curiam).

⁹ 2019 U.S. Dist. LEXIS 188251, 2019 WL 5587181 (N.D. Tex. Sep. 20, 2019).

¹⁰ 2019 U.S. Dist. LEXIS 187025, 2019 WL 5578975 (N.D. Tex. Oct. 29, 2019).

¹¹ No. 19-11203, 2019 U.S. App. LEXIS 39315, 2019 WL 8645418 (5th Cir. Dec. 18, 2019).

¹² ALJ No. 2019-STA-71 (Dec. 26, 2019).

¹³ ARB No. 20-0021 (Jan. 7, 2020) (per curiam).

hearing before the Office of Administrative Law Judges (OALJ). The case was referred to OALJ and assigned to me.

Given Complainant's history and in light of COVID-19's impact on case management, I gave the parties specific directions on how, what, and when to file with my office. I also ordered Complainant to file a detailed Bill of Particulars to help him explain how his fourth complaint alleged anything not already considered in his previous dismissed complaints. Complainant responded with a flurry of documents, the vast majority of which were filed contrary to my specific directions. Included in his filings was his announcement that he would file a fifth OSHA complaint if he was dissatisfied with the outcome of the current adjudication.

Ultimately, 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.¹⁴ The ARB then denied his petition for review.¹⁵ Complainant's appeal to the Fifth Circuit is pending.

As he had promised, Complainant filed his fifth 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.

DISCUSSION

Recusal

I initially note that a number of Complainant's filings throughout the course of this litigation have alleged that my rulings (along with the decisions of other various judges and bodies) have been arbitrary, capricious, and otherwise unfair. Complainant's formal motion cites as the primary basis for his motion my failure to allow him to engage in discovery and participate in a full hearing, along with general allegations that he has been deprived of due process.

The applicable rules of practice provide that

(a) *Disqualification on judge's initiative.* A judge must withdraw from a proceeding whenever he or she considers himself or herself disqualified.

¹⁴ ALJ No. 2020-STA-37 (Jun. 18, 2020).

¹⁵ ARB No. 20-0047 (Jun. 30, 2020) (per curiam).

(b) *Request for disqualification.* A party may file a motion to disqualify the judge. The motion must allege grounds for disqualification, and include any appropriate supporting affidavits, declarations or other documents. The presiding judge must rule on the motion in a written order that states the grounds for the ruling.¹⁶

The burden is on the party alleging bias by the presiding administrative law judge to support that allegation. Generally, that requires proof of an extra-judicial source of bias and citing unfavorable rulings and possible legal errors is insufficient.¹⁷

Complainant's motion does not proffer any evidence of, or even allege, any extra-judicial source of bias. Indeed, I have had no relationship, interactions, or contacts with either party or counsel beyond those related to this case and documented in the administrative file. Thus, Complainant's motion for recusal for bias is based solely on his position that the unfavorable decisions and orders I have issued in the case are wrong and therefore evidence that I must be biased against him. I have no interest in the case or either party other than in providing both sides a fair opportunity to develop the record in accordance with the rules of procedure and issuing a decision in accordance with the substantive law. Complainant's motion is denied.

Complainant's letter to OSHA indicates that what he really seeks is a more complete and favorable investigation of his fourth complaint. Complainant is not entitled to re-litigate previously denied whistleblower claims by simply filing a new administrative complaint. Indeed, OSHA determined that he had not alleged any new adverse actions and accordingly dismissed his complaint.

Nonetheless, if Complainant alleges adverse activity that has not been previously considered, he is entitled to have his claim fully 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. The denial of his previous complaints, for whatever reason, do not deprive him of that right. However, as a predicate, he must at least allege adverse actions taken by Respondent against him that have not been previously considered and that are not barred by his failure to file a timely complaint.

Given the unique nature of this case, Complainant is ordered to file a document identifying the things he now alleges Respondent did that constitute adverse action against him that have not previously alleged. He is also ordered to state on what date and how he became aware of those new adverse actions. Given the narrow and specific nature of my order, Complainant must limit his response to no more than three pages. He is

¹⁶ 29 C.F.R. § 18.16.

¹⁷ *Powers v. Paper, Allied-Industrial, Chemical & Energy Workers Intl. Union (PACE)*, ARB No. 04-111, ALJ No. 2004-AIR-19, slip op. at 17 (ARB Aug. 31, 2007) (citations omitted).

specifically ordered not to submit any legal arguments, case citations, evidence, or anything other than the information described above. *Complainant is specifically cautioned and warned that if he nevertheless once again begins 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.*

Claimant must respond to this order no later than five business days after receipt.

So ORDERED at Covington, Louisiana.

PATRICK M. ROSENOW
Acting District Chief Administrative Law Judge