



**Issue Date: 08 September 2020**

**CASE NO.: 2020-STA-108**

In the Matter of:

**ADRIANO BUDRI,**  
Pro Se Complainant,

v.

**FIRSTFLEET, INC.,**  
Respondent.

**ORDER OF DENIAL**

This proceeding arises under the Surface Transportation Assistance Act of 1982 and the regulations promulgated thereunder.<sup>1</sup> 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 sixth 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 and fired him on 17 Feb 17, citing an unreported accident, damaged property, and untimely delivery of cargo.

Complainant’s initial complaint on 20 Mar 17 raised his termination as the retaliatory adverse action by Respondent. After it was dismissed by the Occupational Safety and Health Administration (OSHA) an Administrative Law Judge (ALJ) found Complainant failed to show any of his alleged protected activity contributed to his termination.<sup>2</sup> The Administrative Review Board (ARB)<sup>3</sup> and the Fifth Circuit<sup>4</sup> affirmed and the Supreme Court denied *certiorari*.<sup>5</sup>

Complainant’s second OSHA complaint raised different adverse activity, alleging that Respondent reported negative information about him to Tenstreet, a company that provides data

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

<sup>2</sup> ALJ No. 2017-STA-86 (Feb. 2, 2018).

<sup>3</sup> ARB No. 18-0025 (Jun. 19, 2018).

<sup>4</sup> 764 Fed. Appx. 431 (5th Cir. 2019) (per curiam).

<sup>5</sup> 140 S.Ct. 386, 2019 U.S. LEXIS 6383, 2019 WL 5150521 (2019).

about truck drivers to potential employers. After both OSHA and the same ALJ dismissed the complaint as untimely,<sup>6</sup> the ARB summarily affirmed the dismissal.<sup>7</sup>

In the meantime, Complainant filed an action in Federal District Court that resulted in a dismissal and a reprimand for engaging in frivolous litigation.<sup>8</sup> The Fifth Circuit dismissed his appeal for his failure to comply with its order.<sup>9</sup>

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, since Tenstreet's maintenance of the information provided by Respondent did not constitute a continuing adverse action by Respondent. I dismissed the complaint as untimely<sup>10</sup> and the ARB<sup>11</sup> and the Fifth Circuit affirmed and admonished Complainant.<sup>12</sup>

After it was dismissed by OSHA, I found Complainant's fourth complaint failed to allege any newly identified actionable adverse activity and dismissed it. I also dismissed it in the alternative because of his repeated and willful noncompliance with procedural rules and orders.<sup>13</sup> The ARB denied his petition for review.<sup>14</sup>

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. After affording Complainant an opportunity to submit new matters, I found he had identified nothing that was not barred by *res judicata* and issue preclusion, noted that his complaint was frivolous, and denied the claim on 4 Aug 20.<sup>15</sup> The ARB affirmed on 17 Aug 20.<sup>16</sup> Complainant filed a supplemental motion with the ARB, arguing that the Administrative Law Judges in his cases were without jurisdiction because they were not validly appointed. The ARB rejected that argument.<sup>17</sup>

Complainant filed the current complaint on 6 Aug 20, two days after I denied his fifth complaint. OSHA denied the claim the same day it was filed. Complainant objected and filed a lengthy argument that all ALJ proceedings to date were invalid because of the absence of a constitutional appointment. Complainant's argument was considered by the ARB, which nonetheless affirmed the denial of his complaint. This latest complaint alleges no issues that have not already been

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<sup>6</sup> ALJ No. 2018-STA-33 (Jun. 26, 2018).

<sup>7</sup> ARB No. 18-0055 (Mar. 25, 2019) (per curiam).

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

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

<sup>10</sup> ALJ No. 2019-STA-71 (Dec. 26, 2019).

<sup>11</sup> ARB No. 20-0021 (Jan. 7, 2020) (per curiam).

<sup>12</sup> *Budri v. Admin. Rev. Bd.*, 20-60073, 2020 WL 5049130, at \*1 (5th Cir. Aug. 25, 2020).

<sup>13</sup> ALJ No. 2020-STA-37 (Jun. 18, 2020).

<sup>14</sup> ARB No. 20-0047 (Jun. 30, 2020) (per curiam).

<sup>15</sup> ALJ No. 2020-STA-90 (Aug. 4, 2020).

<sup>16</sup> ARB No. 2020-61 (Aug. 17, 2020).

<sup>17</sup> ARB No. 2020-61 (Aug. 20, 2020).

fully considered and therefore requires no further filings from Complainant or Respondent. The complaint is denied.

**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.

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](mailto: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).