



**Issue Date: 10 September 2020**

OALJ Case No.: 2020-STA-00015  
OSHA Case No. 5-1260-20-001

***In the Matter of:***

ARMONT NASH,  
*Complainant,*

v.

YRC FREIGHT,  
*Respondent.*

**ORDER OF DISMISSAL**

On or about October 5, 2019, Armont Nash (“Complainant”) filed a complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) alleging that YRC Freight (“Respondent”) violated the employee protection provisions of the Surface Transportation Assistance Act (“STAA” or “the Act”) when it terminated his employment on October 4, 2019 in retaliation for refusing to place a placard on the vehicle he was driving. 49 U.S.C. § 31105; 29 C.F.R. Part 1978. OSHA’s Regional Supervisory Investigator dismissed the complaint on October 17, 2019, finding no reasonable cause to believe Complainant engaged in any activity protected under the Act. Complainant filed objections to the findings on November 15, 2019 and requested a hearing before the Office of Administrative Law Judges (“OALJ”).

On February 4, 2020, I issued a *Notice of Hearing and Prehearing Order* (“Order”), setting the matter for hearing on June 17, 2020 in Chicago, Illinois. Given that Complainant appeared to be representing himself in this matter, and to facilitate an efficient prehearing process, the Order was specific about what each party was to do to prepare for the hearing. The Order initially instructed Complainant to file a detailed Pleading Complaint no later than February 26, 2020. Respondent was then given until March 13, 2020 to respond. The Order also compelled the parties to make their initial disclosures according to 29 C.F.R. § 18.50(c)(1)(i) within 30 days of the Order and conduct formal discovery according to 29 C.F.R. §§ 18.50-18.65. Complainant filed his Pleading Complaint on February 17, 2020 and Respondent filed its Response on March 13, 2020. I issued an order continuing the hearing on March 18, 2020 due to the unavailability of an essential witness and rescheduled the hearing to August 4, 2020.

On June 25, 2020, counsel representing Respondent filed *Motion to Dismiss for Lack of Prosecution or, in the Alternative, To Stay Proceedings and Compel Disclosures and Discovery Responses* (“Motion to Dismiss”) with supporting exhibits, seeking an order either dismissing

this action for Complainant's failure to prosecute the case or compelling Complainant to comply with his discovery obligations.<sup>1</sup>

When Complainant had not filed a response to the *Motion to Dismiss*, and the fourteen-day deadline for responding to motions provided for in 29 C.F.R. § 18.33(d) had expired, I issued *Order Granting Motion to Compel and to Continue Hearing* ("Order") on July 10, 2020.<sup>2</sup>

On August 13, 2020, Respondent's counsel filed *Notice of Failure to Comply With Court Order*. Counsel averred that Complainant had failed to meet any of the Court-ordered obligations and renewed its Motion to Dismiss.<sup>3</sup>

Complainant was advised that failure to comply with the Court's July 10, 2020 Order may result in the imposition of sanctions including, but not limited to, excluding evidence and prohibiting the support or opposition of designated claims or defenses. 29 C.F.R. § 18.57. Accordingly, on August 20, 2020, I issued *Order to Show Cause* giving Complainant fifteen (15) days from the date of the Order to show cause why his hearing request should not be dismissed for failing to obey an order to provide or permit discovery.<sup>4</sup> To date, Complainant has not responded.<sup>5</sup>

The regulations provide that failure to comply with an order, including a discovery order, may result in a decision against the non-complying party. 29 C.F.R. § 18.6(d)(2)(v). Additionally, this Court possesses the inherent power to dismiss a case on the grounds of abandonment if a party has failed to prosecute his or her case. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962). This power is "governed not by rule or statute but by

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<sup>1</sup> Counsel claimed that Complainant had failed to serve Initial Disclosures, serve timely responses to Respondent's written discovery requests, provide copies of the exhibits identified in the Pleading Complaint, or give dates and times he is available to be deposed in this matter. Additionally, Complainant had not provided the requested contact information to Respondent in order to be able to meet and confer.

<sup>2</sup> The Order required Complainant to serve his Initial Disclosures on Respondent and respond to the previously served written discovery requests not later than July 24, 2020. Complainant was also ordered to provide Respondent with copies of any exhibit identified in his Pleading Complaint and to immediately provide a contact telephone number and email address to my law clerk in order to facilitate communications with the court given the impact the coronavirus has had on regular mail. Additionally, Complainant was to contact Employer's counsel, Ross H. Friedman, Esq. and Kaiser Chowdhry, Esq., of Morgan, Lewis & Bockius, no later than July 22, 2020 to schedule a date and time to be telephonically deposed in this matter sometime between August 10, 2020 and August 26, 2020. The Order was served on Complainant by United Parcel Service mail at the address he listed in his initial OSHA complaint and was apparently delivered on July 14, 2020.

<sup>3</sup> Counsel also submitted that Respondent's Requests for Admission should be deemed as admitted pursuant to 29 C.F.R. § 18.63(a)(3). Given the resolution of this matter, I need not rule on this request.

<sup>4</sup> Due to the coronavirus pandemic, U.S. Postal Service mail and UPS/FedEx deliveries are not currently being regularly accepted at OALJ's offices in Washington, DC. I advised Complainant that instructions and requirements for filing via email are found on the OALJ website at [https://www.dol.gov/agencies/oalj/FILING\\_BY\\_EMAIL](https://www.dol.gov/agencies/oalj/FILING_BY_EMAIL). **Failure to follow these instructions and requirements may result in rejection of the email filing.**

<sup>5</sup> The Order was served on Complainant by United Parcel Service mail at the address he listed in his initial OSHA complaint and was apparently delivered on August 22, 2020.

the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Rose v. ATC Vancom, Inc.*, ARB No. 05-091, ALJ No 2005-STA-014, slip op. at 3 (ARB Aug. 31, 2006) (citing *Link*, 370 U.S. 630-31); *see also Belajonas v. Load One Inc.*, ARB No. 09-135, ALJ No. 2009-STA-027, slip op. at 2 (ARB Nov. 18, 2009) (citing *Kruml v. Patriot Express*, ARB No. 03-015, ALJ No. 2002-STA-007, slip op. at 4-5 (ARB Feb. 25, 2004).

The court has given Complainant multiple opportunities to respond to Respondent’s discovery requests. He was also cautioned that a failure to respond to discovery or the show cause order may result in dismissal of his claim. Nevertheless, Complainant has produced no responses to Respondent’s discovery requests nor has Complainant shown cause why his claim should not be dismissed for failure to obey an order or permit discovery. Accordingly, I find that Complainant has failed to respond to Respondent’s reasonable discovery requests, comply with orders of the court, and prosecute his claim. For these reasons, his complaint is dismissed.

**SO ORDERED:**

STEPHEN R. HENLEY  
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. § 1982.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1982.110(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, Division of Fair Labor Standards. *See* 29 C.F.R. § 1982.110(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. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).