



Issue Date: 05 November 2020

CASE NUMBER: 2020-STA-00059

In the Matter of:

JAMES PORTER,
Complainant

v.

ALTERNATIVE FUELS TRANSPORTATION, INC.
Respondent

ORDER STRIKING COMPLAINANT'S CLAIMS AND DISMISSING CASE

A telephonic hearing in the above-captioned matter was previously scheduled to be held before the undersigned at 9:30 a.m. on December 15, 2020 and continuing, as necessary, through December 17, 2020. (Notice of Telephonic Hearing.) Pursuant to 29 C.F.R. § 18.50(c)(1)(i), my Notice of Assignment and Preliminary Order issued July 15, 2020. On August 14, 2020, I issued an Order Granting Extension of Time which established that Initial Disclosures in this matter were due within twenty-one (21) days of that order. Thus, the Initial Disclosures were due on September 4, 2020 (*See* Order Granting Extension of Time). As of the date of this Order, two months later, the Complainant, Mr. Porter, has not filed his Initial Disclosures.

Additionally, on September 4, 2020, the Respondent served the Complainant with a set of interrogatories and a request for production of documents. (Exhibit A.) The Complainant's responses to these requests were due on October 5, 2020, and on October 16, 2020, by Declaration in Support of their Motion to Dismiss, the Respondent informed this tribunal of the Complainant's failure to respond. (Torrejon Declaration at ¶¶ 9-10.) The Respondent further informed this tribunal of the Complainant's unresponsiveness to their email communications inquiring about the status of his filings. (Torrejon Decl. at ¶¶ 8, 11; Exhibits C-D.) Accordingly, the Respondent moved for this tribunal to strike the Complainant's claims and dismiss this case with prejudice. (First Motion to Strike and Dismiss.)

By Order on October 21, 2020, I continued the hearing and directed the Complainant to serve his initial disclosures, answer the Respondent's interrogatories, and respond to the Respondent's request for production of documents by 4:30 p.m. on Tuesday, October 27, 2020. (Order to Compel at 2.) In this order, I also reminded the Complainant that though he was pro se, he was nonetheless obligated to comply with deadlines and otherwise follow court procedure. *Id.* The Order also placed the Complainant on notice that a failure to comply as directed would result in appropriate sanctions, including possible dismissal of his claim. *Id.* at 3

In addition to the written directives and warnings given to the Complainant in my Order to Compel, I previously verbally warned him in my August 13, 2020 conference call with parties that despite choosing to proceed with his claim pro se, he was not excused from following this tribunal's rules and procedures. (Conference Call Transcript at 6.) I further advised him that he was obligated to timely respond to email correspondences by the Respondent and requests by this Court. *Id.* at 19.

On October 28, 2020, Respondent's Counsel informed this tribunal that the Complainant failed to comply with my Order to Compel and renewed their motion to strike and dismiss this claim *with prejudice*. (Second Motion to Strike and Dismiss.)

Noting the Complainant's repeated unresponsiveness in this proceeding, despite written and verbal instructions and warnings detailing his obligations to follow court procedures, including the second opportunity I gave him to cure his unresponsiveness, all to no avail, I find the Respondent's Second Motion to Strike/Dismiss appropriate. Therefore, **I GRANT** the Respondent's Motion to Strike and Dismiss based upon the Complainant's failure to prosecute his claim, comply with discovery obligations, or respond to Respondent's correspondences and Orders of this Court.

Accordingly, **I HEREBY STRIKE** the Complainant's claims and **DISMISS** the case of *James Porter v. Alternative Fuels Transportation, Inc.*, 2020-STA-00059.

SO ORDERED

PATRICIA J. DAUM
Administrative Law Judge