

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 16 June 2020

OALJ Case No.: 2020-STA-00026
OSHA Case No. 5-05460-19-027

In the Matter of:

DAIVIN REDMOND,
Complainant,

v.

NESTLE FOODS,
Respondent.

ORDER OF DISMISSAL

On or about December 11, 2018, Daivin Redmond (“Complainant”) filed a complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”) alleging that Nestle Foods (“Respondent”) violated the employee protection provisions of the Surface Transportation Assistance Act (“STAA” or “the Act”) when it terminated his employment on November 16, 2018 in retaliation for reporting concerns about safety issues with the trucks he was assigned to drive, for refusing to drive over his hours, for reporting workplace violence, and for contacting the U.S. Department of Transportation. 49 U.S.C. § 31105; 29 C.F.R. Part 1978. After investigating, OSHA’s Regional Supervisory Investigator dismissed the complaint on December 2, 2019, finding any protected activity engaged in by Complainant was not a factor in Respondent’s decision to terminate his employment. Complainant filed objections to the findings 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”). 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. When Complainant had not filed a response, I issued an *Order to Show Cause* on April 10, 2020, compelling Complainant to show cause why further orders should not be issued against him as a disobedient party under 29 C.F.R. § 18.57(b).

However, on June 15, 2020, Complainant’s newly-retained counsel gave notice that Complainant has exercised his right to pursue his claims in federal district court and attached a

copy of a complaint filed in the United States District Court for the Northern District of Illinois on June 12, 2020.¹ Under 49 U.S.C. § 31105(c), the United States District Court has assumed jurisdiction of this matter.²

Accordingly, it is hereby ORDERED that the STAA complaint Daivin Redmond filed with the Department of Labor on or about December 11, 2018 is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

¹ Case No.: 1:20-cv-03444. Under the enforcement provisions of the Act, if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint, and if the delay is not due to the bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114(a) In this matter, more than 210 days have passed since Complainant originally filed his complaint with OSHA and there is no indication of bad faith on the part of Complainant.

² See *Stone v. Duke Energy Corp*, 432 F.3d 320 (4th Cir. 2005) (Sarbanes-Oxley case)