



Issue Date: 16 November 2021

In the Matter of:

SHERVIS SMITH,
Complainant,

v.

**AKAL EXPRESS, INC. and
DALSHER SINGH,**
Respondents.

Case No. 2021-STA-00028
OSHA Case No.: 7-5880-21-014

**DEFAULT DECISION AND ORDER AGAINST
AKAL EXPRESS, INC. AND DALSHER SINGH**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act at 49 U.S.C. § 31105 and the implementing regulations at 29 C.F.R. Part 1978 (collectively, "STAA").

PROCEDURAL HISTORY

On November 12, 2020, Shervis Smith ("Complainant") filed a complaint with the Occupational Safety and Health Administration ("OSHA") alleging that Akal Express, Inc. and Dalsher Singh (collectively, "Respondents") violated the employee protection provisions of the STAA.

On February 22, 2021, OSHA dismissed the complaint, finding that it was unable to conclude that there is reasonable cause to believe a violation occurred because Complainant requested OSHA terminate its investigation.

On February 23, 2021, Complainant filed objections and a request for hearing before the Office of Administrative Law Judges.

On April 5, 2021, I issued a *Notice of Assignment and Preliminary Order* (“Preliminary Order”). The Preliminary Order, among other things, stated as follows:

Pleading Complaint. The Complainant shall file a Pleading Complaint with the undersigned and serve copies upon the Respondent within **14 days** from the date of this order. ...

Complaint Response. Within **14 days** of receipt of the Pleading Complaint, the Respondent shall file a Complaint Response with the undersigned and serve copies upon the Complainant. ...

Discovery.

Within **30 days** from the date of this order, and without awaiting a formal discovery request, the parties must provide to all other parties the documents and information set forth in 29 C.F.R. § 18.50(c)(1)(i), to the extent that they have not previously been exchanged.

Discovery shall begin immediately and must be completed within **140 days (20 weeks)** from the date of this order. No extensions of time will be granted absent extraordinary circumstances.

As soon as practicable after completion of discovery, the parties will consult as to whether settlement, hearing, or decision on the evidentiary record is appropriate, and inform the undersigned accordingly. If settlement is not possible, and no dispositive motions are anticipated, the parties shall file with the undersigned within **21 days** after the conclusion of discovery a **Joint Prehearing Statement** prepared in accordance with 29 C.F.R. § 18.80(c). The Statement must include a listing of any period during the subsequent **20 weeks** in which counsel are unavailable for hearing due to previously scheduled judicial proceedings or other good cause shown. Upon receipt of the Statement, the undersigned will issue an appropriate scheduling order with further direction to the parties.

Consequences of Failure to Comply. Failure to comply with the provisions of this Order may result in the imposition of sanctions including, but not limited to, the following: exclusion of evidence, dismissal of the claim, entry of a default judgment, or removal of the offending

representative from the case. 29 C.F.R. §§ 18.12(b), 18.35(c), 18.57 and 18.87.¹

The Preliminary Order was served on Respondents as follows:

Akal Express, Inc
12337 S. Summertree Circle
OLATHE KS 66062
{Hard Copy - Regular Mail}

Dalsher Singh
dalsher@akalexpress.com
13323 West 129th Street
OVERLAND PARK KS 66213
{Electronic - Regular Email}

On April 26, 2021, Complainant filed a Pleading Complaint.

On May 20, 2021, Respondents filed an untimely Complaint Response in the form of a letter denying all wrongdoing. Respondents' filing was sent to OALJ electronically from "akalexpress@gmail.com" and the letter was signed as follows:

Respectfully Submitted,
AKAL EXPRESS INCORPORATED,
13323 W 129TH ST
OVERLAND PARK, KS 66213
913-238-5599
BY: 
(RAJWINDER KAUR)

On June 1, 2021, Complainant served Respondents with interrogatories and requests for production.

On July 6, 2021, Complainant filed a *Motion for Entry of Default Judgment* ("Motion"), representing, in part, that Respondents have failed to provide initial disclosures or answers to interrogatories and requests for production, and requesting default judgment based on Respondent's failure to engage in the discovery process.

¹ Preliminary Order (emphasis in original).

Complainant supplemented the Motion on July 29, 2021 (“Supplemental Motion”) and September 14, 2021 (“Second Supplemental Motion”). Respondents did not respond to the Motion, Supplemental Motion, or Second Supplemental Motion.

On September 14, 2021, Complainant filed a *Pre-Hearing Statement*, stating that he was unable to submit a joint pre-hearing statement in compliance with the Preliminary Order because “Respondents are in default and have not since May 20, 2021 made any effort to participate in this proceeding and/or to communicate with the undersigned counsel.”

On October 7, 2021, I issued an *Order to Show Cause Directed to Respondents* (“Show Cause Order”), directing Respondents to “show cause within 10 days of the date of this Order as to why Complainant’s Motion should not be granted and why a default decision and order should not issue against Respondents pursuant to 29 C.F.R. § 18.57(b)(1)(vi).” The Show Cause Order was served on Respondents as follows:

akalexpress@gmail.com
Akal Express, Inc
12337 S. Summertree Circle
OLATHE KS 66062
{Electronic - Regular Email}

Dalsher Singh
dalsher@akalexpress.com
13323 West 129th Street
OVERLAND PARK KS 66213
{Electronic - Regular Email}

To date, Respondents have not responded to the Show Cause Order.

DISCUSSION

The Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges provide the following potential sanctions for failure to follow a Judge’s discovery order:

- (i) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the proceeding, as the prevailing party claims;

- (ii) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) Striking claims or defenses in whole or in part;
- (iv) Staying further proceedings until the order is obeyed;
- (v) Dismissing the proceeding in whole or in part; or
- (vi) Rendering a default decision and order against the disobedient party[.]²

Here, Respondents have not complied with the Preliminary Order by failing to provide initial disclosures pursuant to 29 C.F.R. § 18.50, failing to respond to Claimant's interrogatories and requests for production served pursuant 29 C.F.R. §§ 18.60 and 18.61, and failing to confer with Complainant or otherwise participate in the filing of a joint prehearing statement pursuant to 29 C.F.R. § 18.80. Although given an opportunity to do so, Respondents have not provided any explanation for their failure to comply. Respondents' noncompliance has resulted in the denial of Complainant's right to discovery and adjudication of his claims. Accordingly, pursuant to 29 C.F.R. § 18.57(b)(vi), a default decision and order against Respondents is an appropriate sanction.

REMEDIES AND DAMAGES

The STAA provides that when a violation of the employee protection provisions occurs, the judge shall issue an order that will require, where appropriate:

[A]ffirmative action to abate the violation; reinstatement of the complainant to his former position with the same compensation, terms, conditions, and privileges of the complainant's employment; payment of compensatory damages (backpay with interest and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney fees which the complainant may have incurred); and payment of punitive damages up to \$250,000.³

² 29 C.F.R. § 18.57(b)(1).

³ 29 C.F.R. § 1978.109(d)(1). See also 49 U.S.C. § 31105(b)(3); *Spinner v. Yellow Freight System, Inc.*, 90-STA-17 (Sec'y May 6, 1992); *Dickey v. West Side Transport, Inc.*, ARB Nos. 06-150, 06-151, ALJ Nos. 2006-STA-26 and 27 (ARB May 29, 2008).

Complainant has established, through Respondent's default, that his rights under the STAA have been violated. Therefore, he is entitled to the remedies and damages provided for in the STAA. However, I am unable to determine on the current record the appropriateness of any remedies or damages.

ORDER

Based on the foregoing, **IT IS ORDERED THAT:**

- 1) Default decision and order is hereby rendered against Respondents pursuant to 29 C.F.R. § 18.57(b)(vi).
- 2) The undersigned shall retain jurisdiction over this matter for the limited purpose of determining and assessing appropriate remedies and damages. To that end, within **30 days** of the date of this Order, Complainant shall file a proof of damages, setting forth the remedies and/or damages which Complainant seeks and is entitled. The proof of damages shall contain supporting explanations and documentation to allow the undersigned to properly evaluate the requested remedies/damages and determine the appropriateness of same.
- 3) Respondents shall have **30 days** within which to respond to Complainant's proof of damages.

THEODORE W. ANNOS
Administrative Law Judge

Washington, DC