



**Issue Date: 27 September 2022**

OALJ Case No: 2022-STA-00019  
OSHA Case No.: 5-4760-21-177

*In the Matter of:*

**ROBERT MICELI,**  
*Complainant,*

*v.*

**BM TRANSPORT, INC.,**  
*Respondent.*

**ORDER DISMISSING COMPLAINT FOR  
A FAILURE TO PROSECUTE**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (“STAA”), 49 U.S.C. § 31105, and the regulations promulgated at 29 C.F.R. Part 1978. Complainant Robert Miceli is appealing a final determination issued by the Occupational Safety and Health Administration on December 23, 2021, dismissing a September 29, 2021, complaint alleging retaliation by Respondent BM Transport, Inc. in violation of the STAA. The Office of Administrative Law Judges docketed the above captioned case on January 19, 2022.<sup>1</sup>

On August 12, 2022, counsel representing the Respondent filed *Motion to Compel*, with supporting exhibits (Ex. A-D), seeking an order from the tribunal compelling Complainant to comply with his discovery obligations. Complainant did not file a response and I issued an order granting the Motion on August 29, 2022.

The order required Complainant to serve his responses to Respondent’s Blended Discovery Requests no later than September 5, 2022. In addition, no later than August 31, 2022, Complainant was to provide a contact telephone number and email address to my law clerk in order to facilitate communications with the tribunal.

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<sup>1</sup> On June 14, 2022, I granted a motion to withdraw filed by Complainant’s then counsel. To date, no one has entered an appearance on behalf of Complainant, who appears to remain self-represented.

Additionally, Complainant was to contact Respondent's counsel no later than September 1, 2022 in the event Respondent wished to depose Complainant, such deposition to be held between September 6, 2022 and September 8, 2022. The deposition could be taken telephonically or virtually and was limited to one day of up to four (4) hours. 29 C.F.R. §§ 18.64(b)(4); (d)(1).<sup>2</sup>

On September 6, 2022, Respondent filed *Motion To Dismiss*, submitting that Complainant did not comply with the August 29, 2022 discovery order. Accordingly, Respondent moves to dismiss the proceeding as allowed under 29 C.F.R. § 18.57(b)(1)(v).

Given Complainant's lack of communication with opposing counsel and this Tribunal, and his refusal to comply with his basic discovery obligations, I issued *Order To Show Cause* ("OTSC") on September 12, 2022. Complainant was ordered to show cause in writing within ten (10) days of the date of the order why his complaint should not be dismissed for a failure to prosecute.<sup>3</sup> Complainant was specifically warned that failing to respond could be treated by the tribunal as a failure to prosecute and might result in dismissal of the case without further notice.<sup>4</sup>

The September 22, 2022 deadline for responding to the OTSC has expired and Complainant has not filed a response, asked for an extension of time to do so, or otherwise requested appropriate relief. At this time, it appears Complainant does not want to proceed with his case.

The STAA implementing regulations do not specifically address a party's failure to prosecute its case. However, the Rules of Practice and Procedure grant the tribunal "all powers necessary to conduct fair and impartial proceedings" including the power to "[t]erminate proceedings through dismissal or remand when not inconsistent with statute, regulation, or executive order." 29 C.F.R. § 18.12(b)(7).

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<sup>2</sup> Normally, a party who wants to depose a person by oral questions must give reasonable written notice of no fewer than fourteen days. 29 C.F.R. § 18.64(b)(1). However, given Complainant's recalcitrance with regard to his discovery obligations, the tribunal waived the minimum notice requirement.

<sup>3</sup> Given the impact the coronavirus has had on receiving regular mail, Complainant was told to file his response with the undersigned using the email address: [OALJ-Headquarters-DC@dol.gov](mailto:OALJ-Headquarters-DC@dol.gov)

<sup>4</sup> Complainant was served a copy of the OTSC by UPS and email at the email and mail addresses in the case file. According to UPS tracking, the package sent to the Johnston, RI address was delivered on September 15, 2022 while the package mailed to Hollywood, FL was returned to sender. The tribunal did not get an undeliverable or bounced message for the OTSC emailed to Complainant.

The tribunal finds Complaint has failed to prosecute his case. Accordingly, pursuant to 29 C.F.R. § 18.12(b) and 20 C.F.R. § 1978.115, this matter is dismissed with prejudice.

**SO ORDERED:**

**STEPHEN R. HENLEY**  
Chief Administrative Law Judge