

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Pittsburgh, PA

Issue Date: 28 May 2024

OALJ NUMBER: 2023-STA-00064
OSHA NUMBER: 3-0100-59-05

In the Matter of:

JAMES BEAMON,
Complainant,

v.

KDX INC., CLD LOGISTICS, LLC,
DARIUS SHINE, AND CARL DIXON,
Respondents.

ORDER OF DISMISSAL

On October 10, 2022, Complainant James Beamon, filed a complaint against KDX, Inc., CLD Logistics, LLC, Darius Shine, and Carl Dixon (Respondents) under the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105. Complainant alleged that Respondents terminated him in retaliation for refusing to violate hours of services rules. The complaint was dismissed on July 12, 2023 following the Complainant's request to terminate the investigation and issue a determination as more than 60 days had passed since the filing of the complaint. On July 12, 2023, Complainant filed objections and requested a formal hearing before the Office of Administrative Law Judges (OALJ). The case was referred to the OALJ and thereafter assigned to me for adjudication.

This matter was originally scheduled for hearing on January 9, 2024 with a prehearing call scheduled for December 8, 2023 and thereafter, the hearing was rescheduled to June 10, 2024. On May 24, 2024, Complainant, by and through his Counsel, notified this office of his intent to file a lawsuit in the United States District Court pursuant to the "kickout" provisions of 49 U.S.C. § 31105(c). The email notification included a copy of the date-stamped copy of the complaint filed with the Northern District of Illinois pursuant to 29 C.F.R. § 1978.114(b), and copies sent to appropriate OSHA offices and investigator. 29 C.F.R. §1982.114 provides that if two hundred ten (210) days have passed since the filing of a Complaint with the Secretary, and there is no showing of delay due to the bad faith of the Complainant, a Complainant may bring an action in an appropriate Federal District Court.

Although there have been delays in this adjudication, I have reviewed the record and find that such delays were not motivated by a bad faith effort to delay proceedings before the Office of Administrative Law Judges. It has been over five hundred (500) days since the complaint was filed with the Secretary. Thus, more than two hundred ten (210) days have passed since the Complainant filed his Complaint with the Secretary and no final decision has issued. Accordingly, I find that Complainant has met the prerequisites for invoking his right to bring an action in Federal District Court seeking a de novo review.

As the Complainant has elected to proceed with his claim under STAA in the U.S. District Court, the Office of Administrative Law Judges no longer has jurisdiction over this matter.

ORDER

Accordingly, it is **ORDERED** that the hearing presently scheduled to begin on **June 10, 2024** is hereby **CANCELLED**, and the Complaint filed by James Beamon under the Surface Transportation Assistance Act (STAA), 49 U.S.C. § 31105, is **DISMISSED** with prejudice.

SO ORDERED.

PATRICIA J. DAUM
Administrative Law Judge