

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
Washington, DC

Issue Date: 29 September 2023

OALJ Case No: 2023-STA-00089
OSHA Case No.: 301007413

In the Matter of:

ANTHONY L. NICHOLS,
Complainant,

v.

AUSTIN BRIDGE & ROAD, LP,
Respondent.

NOTICE OF DOCKETING AND ORDER OF DISMISSAL

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.

On or about November 14, 2022, Complainant filed a complaint with the Department of Labor’s Occupational Safety and Health Administration (“OSHA”) alleging Respondent terminated his employment on or about June 15, 2022 in retaliation for reporting Hours of Service violations. OSHA dismissed the complaint by letter dated March 22, 2023. Complainant timely appealed and the Office of Administrative Law Judges (“OALJ”) docketed the case on April 13, 2023.¹

On September 28, 2023, a member of my staff contacted Complainant’s counsel, who advised that Complainant had exercised his right to pursue his claim in federal district court, providing a copy of the complaint filed in the United States District Court for the Northern District of Texas on June 13, 2023,² with

¹ The delay between the date of docketing and this Notice is the result of miscommunication among OALJ staff and not the fault of the parties.

² Case No.: 3:23-cv-01318-B.

confirmation of service upon Respondent.³ Under 49 U.S.C. § 31105(c), the United States District Court has assumed jurisdiction of this matter.⁴

Accordingly, it is hereby ORDERED that the complaint before the Office of Administrative Law Judges filed by Anthony Nichols pursuant to the Surface Transportation Assistance Act is DISMISSED.

SO ORDERED:

STEPHEN R. HENLEY
Chief Administrative Law Judge

³ 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.

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