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

Issue Date: 12 February 2024

OALJ Case No: 2024-STA-00037
OSHA Case No.: 301000391

In the Matter of:

TYSON EUTSEY,
Complainant,

v.

DELANO BROTHERS TRUCKING LLC,
Respondent.

ORDER GRANTING REQUEST TO WITHDRAW APPEAL

On or about July 5, 2022, Complainant filed a complaint with the Department of Labor's Occupational Safety and Health Administration ("OSHA") alleging he was terminated on May 19, 2022 after refusing to pick up an additional trailer, claiming it would result in exceeding the limitations on hours of service, a violation of 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. OSHA dismissed the complaint by letter dated January 27, 2023. Complainant, representing himself, appealed the dismissal and the Office of Administrative Law Judges ("OALJ") docketed the above-referenced case on February 2, 2023. However, due to a miscommunication among OALJ staff, a Notice of Docketing ("NOD") was not issued until January 18, 2024.

As some eighteen months had elapsed since he was fired in July 2022, the tribunal surmised that it might not be in Complainant's best interest to continue with this case, considering Delano Brothers Trucking has been out of service since August 4, 2023, according to the Federal Motor Carrier Safety Administration website.[1] Additionally, it appeared Complainant already had obtained a judgment against the above named Respondent in the Superior Court of New Jersey - Burlington County on similar grounds as alleged here.[2] In other words, once a court

[1] *See* Delano Brothers Trucking LLC Company Snapshot https://safer.fmcsa.dot.gov/query.asp?searchtype=ANY&query_type=queryCarrierSnapshot&query_param=USDOT&query_string=3081094 (last visited Jan. 16, 20).

[2] *Eutsey v. Delano Brothers Trucking, LLC et al.*, BUR-L-1874-22 (June 6, 2023).

has issued a final judgment on a claim, the legal doctrine of res judicata may prevent a party from re-litigating that same claim in the same or a different forum.

Accordingly, and given his self-represented status, the January 18, 2024 NOD included an *Order Requiring Mootness Certification* ("Order"), giving Complainant 10 days to notify the tribunal that he wanted to continue to prosecute his case in this forum.[3] Complainant was specifically advised that the tribunal would treat a failure to respond as a request to withdraw the appeal.[4] Complainant was served a copy of the NOD at the email address he used to initially file his appeal with OALJ.[5]

To date, Complainant has not filed a response to the Order or requested an extension of time to do so or communicated with the tribunal in any way. Accordingly, and consistent with the January 18, 2024 Order, the tribunal finds Complainant's failure to respond as a request to withdraw his objections to the OSHA findings.

Discussion

The rules governing withdrawal of STA appeals provide that "[a]t any time before the . . . findings and/or order become final, a party may withdraw objections to the . . . findings and/or order by filing a written withdrawal" with the administrative law judge, who shall then determine whether to affirm any portion of the findings or preliminary order or approve the withdrawal. 29 C.F.R. § 1978.111(c).

As no final decision has been issued in this matter, Complainant's request to withdraw his objections is hereby approved.[6] Consistent with the regulations, the

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[3] *See* 29 C.F.R. § 1978.111(c).

[4] Complainant was directed to file the mootness check with the tribunal by email at OALJ-Headquarters-DC@dol.gov and that questions could be directed to law clerk Tessa Zavislan at Zavislan.tessa.m@dol.gov.

[5] To be clear, the directive was not predicated on the type of mandatory claims-processing rule discouraged by the ARB in *Moreb v. Kery, Inc*., ARB No. 2023-00048 (ARB De. 14, 2023) but the tribunal's inherent authority to control and manage its own docket and preserve the efficiency of the judicial process. *See, e.g., G. Heilman Brewing Co., Inc. v. Joseph Oat Corp*., 871 F.2d 648, 652 (7th Cir. 1989).

[6] As an alternative basis to dismiss, the tribunal finds Complainant has failed to prosecute his case. While the STAA nor its implementing regulations specifically address a party's failure to prosecute its case, the OALJ 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).

When determining whether dismissal is warranted, there are several factors the ALJ may consider, including: (1) prejudice to the other party, (2) the amount of interference with the judicial process, (3) the culpability, willfulness, bad faith or fault of the litigant, (4) whether the party was warned in advance that dismissal of the action could be a sanction for failure to cooperate or non-compliance, and (5) whether the efficacy of lesser sanctions were considered. *See Ho v. Air Wisconsin Airlines*, ARB No. 2020-0027, ALJ No. 2019-AIR-00009, slip op. at 4 (ARB June 30, 2021) (citing *Howick v. Campbell-Ewald Co*., ARB No. 2004-0065, ALJ No. 2004-STA-00007, slip op. at 8 (Nov. 30, 2004)). I now consider each of the *Ho* factors.

Prejudice to the Other Party. Given the delay in this case rests with OALJ, this factor weighs against dismissal.

The Amount of Interference with the Judicial Process. The public's interest in expeditious resolution of litigation always favors dismissal. *Sec. & Exch. Comm'n v. Wu*, No. 11-CV-04988-JSW, 2016 WL 4943000, slip op. at 5 (citing *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002); *see generally* 29 C.F.R § 18.10 ("[OALJ procedural rules] should be construed to secure the just, speedy, and inexpensive determination of every proceeding."). When a tribunal's order is ignored, the public's interest in expeditious resolution of litigation and the tribunal's need to manage its docket favors default. *Wu*, No. 11-CV-04988-JSW, 2016 WL 4943000, slip op. at 7 (citing *Adrianna Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir. 1990)). Complainant was to respond in writing to the Tribunal's January 18, 2024 by January 29, 2024. He has not. Litigants must comply with a presiding judge's orders and cooperate in the pre-hearing process so that cases can move forward expeditiously and efficiently. That has not happened here, and this factor weighs heavily in favor of dismissal.

The Culpability, Willfulness, Bad Faith or Fault of the Litigant. Disobedient conduct "not outside the control of the litigant" is sufficient to show willfulness, bad faith, or fault warranting default. *Wu*, No. 11-CV-04988-JSW, 2016 WL 4943000, slip op. at 8 (citing *Stars' Desert Inn Hotel & Country Club v. Hwang*, 105 F.3d 521, 525 (9th Cir. 1997)). To date, Complainant has not provided an explanation either for his failure to communicate with or respond to the Tribunal's order, weighing in favor of dismissal.

Whether the Party Was Warned in Advance That Dismissal of the Action Could Be a Sanction for Failure to Cooperate or Non-Compliance. Complainant was specifically warned that failure to comply with my order could result in the dismissal of his claim. This factor weighs heavily in favor of dismissal.

Whether the Efficacy of Lesser Sanctions Was Considered. I have considered the lesser sanction of proceeding to hearing but with limitations on the evidence Complainant could introduce. However, this would not further the "just, speedy, and inexpensive determination of [this] proceeding." 29 C.F.R. § 18.10(a). Additionally, it has been more than eighteen months since Complainant started this case by filing his OSHA complaint on July 5, 2022, and it would be unreasonable to delay the proceeding even further given Complainant's failure to comply with the Tribunal's Order. Having considered the lesser sanctions, I find nothing short of dismissal with prejudice is appropriate.

The Public Policy Favoring Disposition of Cases on Their Merits. This factor weighs against dismissal.

Accordingly, if on appellate review, the court finds error in this tribunals' determination that Complainant has withdrawn his appeal, the tribunal further finds that Complainant has failed to

January 27, 2023 Findings Determination becomes the final order of the Secretary. The above-captioned matter is hereby DISMISSED.

SO ORDERED.

STEPHEN R. HENLEY
Chief Administrative Law Judge

prosecute his case and, pursuant to 29 C.F.R. §§ 18.12(b) and 18.57(b) and 29 C.F.R. § 1978.115, this matter is DISMISSED with prejudice.