



**In the Matter of:**

**WILLIAM R. HICKERNELL,**

**ARB CASE NO. 08-084**

**COMPLAINANT,**

**ALJ CASE NO. 2008-SOX-025**

**v.**

**DATE: April 29, 2009**

**PENSKE TRUCK LEASING, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Petitioner:***

**William R. Hickernell, pro se, Richland, Pennsylvania**

**FINAL DECISION AND ORDER DISMISSING PETITION FOR REVIEW**

The Complainant, William Hickernell, filed a complaint with the Department of Labor's Occupational Safety and Health Administration alleging that the Respondent, Penske Truck Leasing, Inc., retaliated against him in violation of the whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX)<sup>1</sup> and its implementing

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<sup>1</sup> 18 U.S.C.A § 1514A (West 2002). Title VIII of Sarbanes-Oxley is designated as the Corporate and Criminal Fraud Accountability Act of 2002. Section 806 provides protection to employees against discrimination by companies with a class of securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and companies required to file reports under section 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(d), or any officer, employee, contractor, subcontractor, or agent of such companies because the employee provided information to the employer, a Federal agency or Congress relating to alleged violations of 18 U.S.C. 1341, 1343, 1344, or 1348, or any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders. In addition, SOX protects employees against discrimination when they have filed, testified in, participated in, or otherwise assisted in a

regulations.<sup>2</sup> On April 17, 2008, a Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Dismissing Complaint.

Hickernell filed a timely Petition for Review with the Administrative Review Board on April 29, 2008.<sup>3</sup> In response, the Board issued a Notice of Appeal and Briefing Schedule. The Board's order cautioned Hickernell that if he failed to file the initial brief on time, the Board could dismiss his appeal.

On April 17, 2009, the Board received Hickernell's Motion for Enlargement requesting an additional thirty days to file his opening brief. Before the Board responded to the Motion, Hickernell filed a motion to dismiss the extension and informed the Board that he had decided not to pursue his appeal by filing an opening brief. He stated that he wanted to close his case because in his opinion "there isn't anything constructive to be gained from further correspondence with the DOL."

Courts possess the "inherent power" to dismiss a case for lack of prosecution.<sup>4</sup> This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."<sup>5</sup> By refusing to file an opening brief, Hickernell has chosen not to prosecute his case. Accordingly, we **DISMISS** his petition for review.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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proceeding filed or about to be filed against one of the above companies relating to any such violation or alleged violation. 18 U.S.C.A. § 1514A (a)(1), (2).

<sup>2</sup> 29 C.F.R. Part 1980 (2007).

<sup>3</sup> 29 C.F.R. § 1980.110(a). The Administrative Review Board has jurisdiction to decide appeals from ALJ decisions under the SOX. *See* Secretary's Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board).

<sup>4</sup> *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962). *Accord Zahara v. SLM Corp.*, ARB No. 08-020, ALJ No. 2006-SOX-130, slip op. at 3-4 (ARB Mar. 7, 2008).

<sup>5</sup> *Link*, 370 U.S. at 630-631.