



In the Matter of:

AURELIO QUINTERO,

ARB CASE NO. 00-066

COMPLAINANT,

ALJ CASE NO. 00-STA-31

DATE: October 26, 2000

**COCA COLA BOTTLING COMPANY
OF NORTH AMERICA,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Daniel B. Gilmore, Esq., *Miller & Martin LLP, Chattanooga, Tennessee*

FINAL DECISION AND ORDER

Aurelio Quintero filed a complaint with the Secretary of Labor, on November 30, 1999, alleging that the Coca Cola Bottling Company ("Respondent") violated the employee protection provisions of the Surface Transportation Assistance Act ("STAA"), 49 U.S.C. §31105 (1994), by reassigning him to a lower paying, non-driving position within the company. On February 1, 2000, the Regional Administrator of the Occupational Safety and Health Administration rendered a decision on behalf of the Secretary of Labor finding that Quintero had not engaged in any activity protected by the STAA. Quintero objected to that determination and the matter was referred to an Administrative Law Judge ("ALJ"). The ALJ held a hearing on May 31, 2000. After considering the evidence and testimony presented at that hearing, the ALJ concluded that Quintero had not engaged in any activity protected by the STAA. Therefore, by Recommended Decision and Order dated July 7, 2000, the ALJ recommended that Quintero's complaint be dismissed with prejudice.

The decision of the ALJ is now before the Administrative Review Board pursuant to the automatic review procedures under 29 C.F.R. §1978.109 (c) (1) (1999). Section 1978.109 (c) (2) permits both parties to file a brief in support of their respective positions within thirty days of the issuance of the ALJ's decision. Respondent filed a brief on August 14, 2000; Quintero did not.

The relevant facts in this case are not in dispute. In 1999, Quintero was employed by Respondent as a truck driver in Respondent's interstate trucking operation. Interstate trucking operations are subject to the driver qualification requirements under the Federal Motor Carrier Safety Regulations, 49 C.F.R. §391 *et seq.* Among other things, those regulations state:

A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so and . . . has on his/her person the original, or a photographic copy, of the medical examiner's certificate that he/she is physically qualified to drive a commercial motor vehicle.

49 C.F.R. §391.41 (a).

During an audit of its drivers' personnel files in February of 1999, Respondent discovered that the medical certificate it had on file for Quintero had expired on August 20, 1998. When Respondent advised Quintero that his medical certificate had expired, Quintero renewed the certificate on February 22, 1999. However, Respondent then directed Quintero to submit a medical certificate showing that he was physically qualified to operate a commercial vehicle between August 20, 1998 and February 22, 1999. Quintero was unable to comply. Given the fact that Quintero had operated the vehicle unlawfully between August 1998 and February 1999, Respondent gave him the option of either transferring to a non-driver position or resigning and reapplying for a driving position at a later date. Quintero opted to transfer.

As the ALJ correctly pointed out in his recommended decision, the STAA protects employees from being discharged in retaliation for complaining about or giving testimony "relating to a violation of a commercial motor vehicle safety regulation, standard, or order." In our view, the STAA is not a shield that employees can use to immunize themselves against the consequences of their failure to adhere to motor vehicle safety regulations. Instead, the STAA, among other things, is intended to protect employees who expose the motor vehicle safety violations of their employers. Inasmuch as Quintero has not engaged in activity protected by the STAA, we conclude that the STAA is inapplicable to this case and concur with the ALJ's recommendation that the complaint should be dismissed with prejudice.

SO ORDERED.

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member

RICHARD A. BEVERLY

Alternate Member