



In the Matter of:

PHIL P. TUGGLE,

ARB CASE NO. 03-081

COMPLAINANT,

ALJ CASE NO. 03-STA-008

v.

DATE: May 28, 2004

ROADWAY EXPRESS, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Phil P. Tuggle, pro se, Southaven, Mississippi

For the Respondent:

William P. Dougherty, Esq., Young & Perl, PLC, Memphis, Tennessee

FINAL DECISION AND ORDER OF REMAND

This case arises from a complaint Phil P. Tuggle (Tuggle) filed alleging that his employer, Roadway Express, Incorporated (Roadway), violated the employee protection (whistleblower) provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982¹ when it removed him from Roadway's seniority list and terminated his employment. In a recommended order dated March 7, 2003 (R. O.), a Department of Labor Administrative Law Judge (ALJ) granted Roadway's Motion for Approval of Adjudicatory Settlement and to Dismiss Complaint. We reverse the ALJ's decision to dismiss Tuggle's complaint and remand this case for a hearing on its merits.

¹ 49 U.S.C.A. § 31105 (West 1997).

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(2003). *See also* Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

Under the STAA, the Administrative Review Board is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. United States Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Env'tl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

In reviewing the ALJ's conclusions of law, the Board, as the designee of the Secretary, acts with "all the powers [the Secretary] would have in making the initial decision . . ." 5 U.S.C.A. § 557(b) (West 1996). *See also* 29 C.F.R. § 1978.109(b). Therefore, the Board reviews the ALJ's conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

BACKGROUND

Roadway employed Tuggle to drive its trucks. On July 3, 2001, prior to a run scheduled later that day, Tuggle met with Roadway management officials to discuss problems he had with his co-driver. After the meeting, Tuggle called in sick. Roadway informed Tuggle later that day, through a union official, that his employment was terminated. Ten days later Tuggle filed a grievance against Roadway pursuant to a collective bargaining agreement. Then, on September 11, 2001, while his grievance was still pending, Tuggle filed this STAA action, claiming that Roadway terminated his employment because he refused to drive while ill on July 3.

On September 21, 2001, Tuggle and Roadway settled his grievance. The settlement provided that Roadway would reinstate Tuggle on September 29. Roadway agreed that the time Tuggle had been off from work would be considered a suspension without pay, and Tuggle agreed that Roadway did not owe him back pay. Thereafter, when the Department of Labor initially denied Tuggle's STAA complaint, he requested a hearing pursuant to 29 C.F.R. § 1978.105.

Upon Roadway's motion, the ALJ dismissed Tuggle's STAA complaint. He found that since the facts at issue in the grievance and STAA proceedings were the same, and that since Tuggle's union and Roadway had dealt adequately with these factual issues and the settlement was "fair, regular and free of procedural infirmities" and not repugnant to the purpose and policy of the Act," he would defer to the outcome of the grievance

arbitration proceedings and, thus, grant Roadway's motion to dismiss the complaint pursuant to 29 C.F.R. § 1978.112 (c). R.O. at 3-4.

ISSUE

Did the ALJ err in deferring to the settlement agreement?

DISCUSSION

The Department of Labor's implementing regulations permit an employee who files a STAA complaint to seek remedies pursuant to grievance arbitration proceedings in collective bargaining agreements. 29 C.F.R. § 1978.112(a). While stating that the Secretary's jurisdiction to adjudicate STAA complaints is independent of the jurisdiction of other agencies or bodies, the regulations allow the Secretary to defer to the outcome of those other proceedings. 29 C.F.R. § 1978.112(c). The decision to defer to the outcome of an arbitration must be made on a case-by-case basis and only where it is clear that the arbitration "dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act." *Id.*

The ALJ noted that other ALJs and this Board have dismissed STAA complaints after the complainants had lost their grievance arbitrations. *E.g., Porter v. Greyhound Bus Lines*, ARB No. 98-116, ALJ No. 96-STA-23 (ARB June 12, 1998). He then stated that "[i]t seems axiomatic that a complainant who would be bound by an adverse grievance arbitration finding ... would also be bound by an agreed upon settlement achieved during the grievance process as long as the requirements of § 1978.112 are met." R. O. at 3. As noted, the ALJ held that Tuggle's settlement agreement met the requirements of section 1978.112(c). Thus, he deferred to the settlement agreement as also determinative of Tuggle's STAA complaint.

But section 1978.112(c) also provides that if a STAA complainant has initiated proceedings in another forum (such as Tuggle's grievance under the collective bargaining agreement) and "if such other actions . . . are dismissed without adjudicatory hearing thereof, such dismissal will not ordinarily be regarded as determinative of the [STAA] complaint." 29 C.F.R. § 1978.112(c). Here, Tuggle's grievance was settled. Thus, his STAA rights were not adjudicated. Therefore, the settlement cannot determine Tuggle's STAA complaint. *See Germann v. Calmat Co.*, ARB No. 99-114, ALJ No. 99-STAA-15, slip op. at 4-5 (ARB Aug. 1, 2002) ("Under judicial and administrative precedent, this Board defers to the outcome of another preceding *only if the tribunal has given full consideration* to the parties' claims and rights under the STAA.") (emphasis added), *aff'd Calmat Co. v. United States Dep't of Labor [Germann]*, 364 F.3d 1117, 1125-1126 (9th Cir. 2004); *Scott v. Roadway Express, Inc.*, ARB No. 99-013, ALJ No. 98-STA-8, slip op. at 9 (ARB July 28, 1999).

As a result, we conclude that the ALJ's decision to defer to the settlement agreement of Tuggle's grievance as also determinative of Tuggle's complaint filed under the Act was error. Consequently, we reverse the ALJ's decision to dismiss Tuggle's STAA complaint and remand the case for a hearing on the merits.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge