



In the Matter of:

MICHAEL J. FOLEY,

ARB CASE NO. 04-080

COMPLAINANT,

ALJ CASE NO. 2004-STA-14

v.

DATE: October 27, 2004

J. B. HUNT TRANSPORTATION, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Respondent:

Melissa A. Maravich, Esq., Burch, Porter & Johnson, Memphis, Tennessee

FINAL DECISION AND DISMISSAL ORDER

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 1997). On February 18, 2004, a Department of Labor Administrative Law Judge (ALJ) issued an Order to Show Cause as to why the Respondent's Motion to Dismiss should not be granted on the ground that the Complainant had failed to file a complaint alleging the nature of his protected activities and each and every violation claimed against the Respondent, as well as the relief sought. On March 10, 2004, through his attorney, the Complainant, in response to the Order to Show Cause, filed a request "to withdraw his claim with prejudice." On March 23, 2004, the ALJ issued a Recommended Decision and Order Approving Withdrawal of Claim and Dismissing Case. See 29 C.F.R. § 1978.111(c) (2004) (a complainant may file a written withdrawal with the ALJ at any time before the findings or order become final).

Pursuant to 29 C.F.R. § 1978.109(a), the ALJ's decision and the record were forwarded to the Administrative Review Board for automatic review and to issue a final decision. Pursuant to 29 C.F.R. § 1978.109(c)(2), the Board issued a Notice of Review and Briefing Schedule, directing the parties within thirty days from the date of the ALJ's Recommended Order to file with the Board briefs in support of or in opposition to the

Recommended Order. The Board requested that a party that decided not to file a brief, to inform the Board by letter, telephone, or facsimile. On April 22, 2004, counsel for the Respondent submitted a Response agreeing with the decision of the ALJ and submitting that the matter should be dismissed. The Board has not received a response from the Complainant.

Pursuant to 29 C.F.R. § 1978.109(c)(1), the Board is required to issue a final decision and order based on the record and the decision and order of the ALJ. Accordingly, the Board has reviewed the record and the ALJ's Recommended Order of Dismissal and determined that the recommended order should be approved and that the complaint should be and hereby is **DISMISSED**.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge