



**In the Matter of:**

**KENNETH MCDOWELL,**

**ARB CASE NO. 04-095**

**COMPLAINANT,**

**ALJ CASE NO. 2004-STA-32**

**v.**

**DATE: July 28, 2005**

**EAGLE EXPRESS LINES, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Kenneth McDowell, *pro se*, Chicago Heights, Illinois**

*For the Respondent:*

**Drew C. Rhed, Esq., Appel & Appel, Ltd., Lansing, Illinois**

### **FINAL DECISION AND ORDER**

This case arises under the employee protection provision of the Surface Transportation Assistance Act, 49 U.S.C.A. § 31105 (STAA) (West 2004), and implementing regulations, 29 C.F.R. Part 1978 (2004). On December 14, 2003, Kenneth McDowell filed a complaint with the Secretary of Labor alleging that his employer, Eagle Express Lines, Inc., violated § 31105 when it fired him on June 12, 2003. On April 29, 2004, a Labor Department Administrative Law Judge (ALJ) issued a Recommended Order Granting Eagle Express's Motion to Dismiss McDowell's complaint for untimeliness.

On May 5, 2004, the Board issued a Notice of Review and Briefing Schedule permitting the parties to submit briefs in support of or in opposition to the ALJ's order. The Board received postal cards indicating that both parties had received the briefing notice. Neither party responded to the Notice of Review.

The Administrative Review Board “shall issue the final decision and order based on the record and the decision and order of the administrative law judge” in cases arising under § 31105. 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001).

Under the STAA, the ARB is bound by the ALJ’s findings of fact if supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *Lyninger v. Casazza Trucking Co.*, ARB No. 02-113, ALJ No. 01-STA-38, slip op. at 2 (ARB Feb. 19, 2004). In reviewing the ALJ’s conclusions of law, the ARB, 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 2005). Therefore, we review the ALJ’s conclusions of law de novo. *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991); *Monde v. Roadway Express, Inc.*, ARB No. 02-071, ALJ Nos. 01-STA-22, 01-STA-29, slip op. at 2 (ARB Oct. 31, 2003).

The Act limits the time for filing a complaint pursuant to § 31105 to 180 days. “[A]n employee alleging discharge, discipline, or discrimination of subsection (a) of this section . . . may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred.” 49 U.S.C.A. § 31105(c)(1). The 180th day after Eagle Express terminated McDowell’s employment was December 9, 2003. Accordingly, the ALJ’s ruling that McDowell’s December 14, 2003 complaint was filed late is correct as a matter of law, and we **DISMISS** the complaint with prejudice.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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