



**In the Matter of:**

**CHARLES HARRIS,**

**ARB CASE NO. 04-175**

**COMPLAINANT,**

**ALJ CASE NO. 04-STA-37**

**v.**

**DATE: January 31, 2007**

**C & N TRUCKING,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Complainant:***

**Charles Harris, *pro se*, Middleburg, North Carolina,**

**FINAL DECISION AND ORDER**

Charles Harris filed a complaint under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 1997), alleging that his employer, C & N Trucking, terminated his employment because he refused to drive a truck that was unsafe. On September 9, 2004, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) denying Harris's complaint. The R. D. & O. is now before the Administrative Review Board (ARB) pursuant to 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1)(2006).

**STANDARD OF REVIEW**

Under the STAA, the ARB is bound by the factual findings of the ALJ if they are 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). 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 Envtl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *McDede v. Old Dominion Freight Line, Inc.*, ARB No. 03-107, ALJ No. 03-STA-12, slip op. at 3 (ARB Feb. 27, 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 1996). 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).

## DISCUSSION

To prevail on a claim under the STAA, the complainant must prove by a preponderance of the evidence that he engaged in protected activity, that his employer was aware of the protected activity, that the employer discharged, disciplined, or discriminated against him, and that there is a causal connection between the protected activity and the adverse action. *BSP Trans, Inc. v. United States Dep’t of Labor*, 160 F.3d 38, 45 (1st Cir. 1998); *Yellow Freight Sys., Inc. v. Reich*, 27 F.3d 1133, 1138 (6th Cir. 1994); *Schwartz v. Young’s Commercial Transfer, Inc.*, ARB No. 02-122, ALJ No. 01-STA-33, slip op. at 8-9 (Oct. 31, 2003).

In this case, the ALJ found that Harris failed to prove that he engaged in protected activity on February 5, 2003, when he spoke to Norman Hughes, the owner of C & N, and informed him that he would not complete a scheduled delivery because his assigned vehicle was not safe to drive. R. D. & O. at 2, 8-9. The ALJ found that Harris was credible in his belief that the truck was unsafe to drive but also found that Harris presented no proof that the truck was unsafe to drive. *Id.* at 3, 6, 8. The ALJ also found credible Hughes’s testimony that he examined the truck and explained to Harris that there was no reason to remove it from service. *Id.* at 8-9. The ALJ concluded that Harris had not proven protected activity under the refusal to drive provisions of the STAA, a necessary element of his case.<sup>1</sup> The ALJ denied Harris’s complaint. *Id.*

We have reviewed the record and find that substantial evidence on the record as a whole supports the ALJ’s findings. His findings are therefore conclusive. 29 C.F.R. § 1978.109(c)(3). In his thorough, well-reasoned discussion, the ALJ applied the correct

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<sup>1</sup> 49 U.S.C.A. § 31105(a)(1)(B).

legal standard to his findings.<sup>2</sup> Therefore, we adopt the ALJ's decision, attach and incorporate the R. D. & O., and **DENY** Harris's complaint.

**SO ORDERED.**

**DAVID G. DYE**  
**Administrative Appeals Judge**

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

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<sup>2</sup> On page 5 of the R. D. & O., the ALJ incorrectly cites to 49 C.F.R. § 396.17 instead of 49 C.F.R. § 396.13. However, it clear from the language he quotes that it was his intent to declare § 396.13 as applicable to this case.