



In the Matter of:

CHRIS MENTER,

ARB CASE NO. 05-104

COMPLAINANT,

ALJ CASE NO. 2004-STA-061

v.

DATE: October 24, 2007

NORTH COUNTY TRANSPORT,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

Chris Menter filed a complaint under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended, 49 U.S.C.A. § 31105 (West 2007), and its implementing regulations, 29 C.F.R. Part 1978 (2007), alleging that his former employer, North County Transport (NCT), violated the STAA by disciplining him because he refused to drive a truck with unsafe tires. After a hearing, a United States Department of Labor (DOL) Administrative Law Judge (ALJ) found that NCT had not violated the STAA and dismissed Menter's complaint. The Administrative Review Board automatically reviews an ALJ's recommended STAA decision. 29 C.F.R. § 1978.109(c)(1).

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction to decide this matter by authority of 49 U.S.C.A. § 31105(b)(2)(C)¹ and 29 C.F.R. § 1978.109(c)(2006). Under the STAA, the Administrative Review Board is bound by the ALJ's factual findings if substantial evidence on the record considered as a whole supports those findings. 29 C.F.R. §

¹ Congress has amended the STAA since Menter filed his complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

1978.109(c)(3); *BSP Transp., Inc. v. U.S. 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 Secretary's designee, 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).

DECISION

The ALJ found that Menter failed to prove that he engaged in protected activity under § 31105 (a)(1)(B)(i),(ii) and (a)(2) of the STAA since he did not prove that the condition of his tires violated safety regulations or that a reasonable person would have believed the condition of the tires were such that the truck was unsafe to drive. R. D. & O. at 7–10. Moreover, even if he had engaged in protected activity, Menter “failed to show that [NCT] terminated him from its employ.” R. D. & O. at 13. Therefore, the ALJ recommended that Menter's complaint be dismissed. *Id.*

The ALJ's decision thoroughly and fairly recites the relevant facts underlying this dispute. We have reviewed the record and find that substantial evidence on the record as a whole supports the ALJ's findings. Those findings are therefore conclusive. 29 C.F.R. § 1978.109(c)(3). The ALJ's decision is in accordance with law. Accordingly, we adopt and attach the ALJ's R. D. & O. and **DENY** Menter's complaint.

SO ORDERED.

DAVID G. DYE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge