



In the Matter of:

HOWARD VINCENT KAROLY,

ARB CASE NO. 07-019

COMPLAINANT,

ALJ CASE NO. 2005-STA-010

v.

DATE: September 29, 2008

BRINK'S INCORPORATED,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER OF REMAND

This case arises under the employee protection section of the Surface Transportation Assistance Act (STAA) of 1982.¹ On September 16, 2004, Howard Vincent Karoly filed a complaint alleging that Brink's, Inc. terminated his employment in retaliation for engaging in activity protected by the STAA. The Occupational Safety and Health Administration (OSHA) investigated the complaint and found that there was insufficient evidence to support Karoly's allegations. Karoly requested a hearing on his complaint before an United States Department of Labor Administrative Law Judge (ALJ).

The ALJ scheduled a hearing on the complaint. On October 6, 2006, the ALJ issued an Order Vacating Hearing because "[c]omplainant's counsel informed [her] legal assistant that the parties have settled the issues in this case." The ALJ ordered the parties to submit a settlement agreement by November 13, 2006.

¹ 49 U.S.C.A. § 31105 (West 2007). The STAA has been amended since Karoly filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not determine whether the amendments are applicable to this case because they would not affect our review even if they were. Regulations implementing the STAA are found at 29 C.F.R. Part 1978 (2007).

Judy Wise, counsel for Karoly, sent a fax transmission, including an unsigned settlement agreement, to the ALJ on October 9, 2006. Wise indicated that the parties were having difficulty negotiating the terms of the agreement. On October 13, 2006, Wise sent a three-page fax transmission to the ALJ, indicating that Karoly requested the ALJ to dismiss his STAA complaint pursuant to a signed settlement agreement:

Attached is a fully [sic] executed copy of the “Notice of Voluntary Dismissal” in the above matter. A settlement agreement has been signed between the parties, and hopefully there will be no further problems. Thank you again for your patience in this matter.

This second transmission did not include a settlement agreement.

The ALJ issued an Order Dismissing Case (R. D. & O) on October 19, 2006, in which she stated the following:

This matter was scheduled for a hearing on October 12 and 13, 2006, in Fresno, California. I vacated the hearing in an October 6, 2006, order after my legal assistant was notified ... that the parties had settled the issues in this case. I have now received a Notice of Voluntary Dismissal signed by counsel for both parties which stipulates that this case should be dismissed with prejudice.

The ALJ recommended that the case be dismissed with prejudice, and she forwarded the record in this case to the Administrative Review Board (Board) pursuant to 29 C.F.R. § 1978.109(a).

The record we received did not contain a signed settlement agreement. On June 19, 2008, we issued an Order requiring the parties to submit “a copy of the settlement agreement signed by both parties, including the Complainant individually, and setting forth all the terms and conditions to which the parties have agreed.” We also informed the parties that “[f]ailure to comply within fifteen days of receipt of our order would result in the case being remanded to the ALJ.”

As of the date of this decision, neither party has provided the Board with a signed copy of the settlement agreement. We cannot terminate this proceeding on the basis of a settlement without approving the terms of the agreement negotiated by the parties.²

² 29 C.F.R. §§ 1978.111(d)(2), 1978.109(c) (2007).

Accordingly, we **VACATE** the R. D. & O. and remand the case for a hearing, completion by the parties of their settlement agreement, or any other action consistent with this order.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge