In the Matter of:

ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH,

PROSECUTING PARTY,

and

PETER MAILLOUX,

COMPLAINANT,

v.

R & B TRANSPORTATION, LLC,

and

PAUL BEAUDRY,

RESPONDENTS.

ARB CASE NO. 07-084

ALJ CASE NO. 2006-STA-012

DATE: June 26, 2009

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Prosecuting Party:
Michael P. Doyle, Esq., *Counsel for Appellate Litigation, Office of the Solicitor, United States Department of Labor,* Washington, District of Columbia

For Respondents:
James F. Laboe, Esq., *Orr & Reno, P.A.*, Concord, New Hampshire

FINAL DECISION AND ORDER

Peter Mailloux filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA). He alleged that his former employer, R & B Transportation, LLC (R & B) violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified,[1] when it terminated his employment because he complained about a violation of a Department of Transportation (DOT) hours of service regulation.[2] The STAA protects from discrimination employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. After a hearing, a Labor Department Administrative Law Judge (ALJ) recommended that Mailloux be awarded back pay with interest and compensatory damages. We affirm the ALJ's decision as it is supported by substantial evidence.

BACKGROUND

Mailloux was hired in August 2004 to drive trucks for R & B, a commercial motor carrier located in New Hampshire engaged in transporting various products on the highways.[3] On December 17, 2004, while Mailloux was driving an assigned route in Florida, he called his R & B dispatcher and Paul Beaudry, owner of R & B.[4] Mailloux informed them that he could not complete his next assigned delivery back to Boston, scheduled to begin the next day, in the time designated without exceeding the maximum allowable driving hours that a DOT regulation prescribes.[5] In response, Beaudry told Mailloux that after he completed the assigned delivery, he was terminated.[6]

Mailloux completed the assigned delivery from Florida to Boston late and returned his truck to R & B in New Hampshire.[7] During his trip back to New Hampshire, Mailloux filed the aforementioned complaint with OSHA on December 20, 2004, alleging that R & B violated the

---

1 49 U.S.C.A. § 31105 (West 2008). The STAA has been amended since Mailloux filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). It is not necessary to decide whether the amendments are applicable to this complaint, because they are not relevant to the issues presented by the case and thus, they would not affect our decision.

2 *See* 49 U.S.C.A. § 395.3 (West 2008).

3 Hearing Transcript (HT) at 377; *see* Government's Exhibit (GX) 12, Jan. 9, 2006 OSHA Administrator's Findings at 1.

4 HT at 207-210.

5 HT at 207-210, 420, 423-424, 455; *see* 49 U.S.C.A. § 395.3.

6 HT at 209-210, 423-425.

7 HT at 212-216.

STAA when it retaliated against him by terminating his employment because he refused to drive over the maximum allowable driving hours.[8]

OSHA investigated the complaint, concluded that R & B had violated the Act, and ordered R & B to pay Mailloux back wages from December 26, 2004, through February 27, 2005, when Mailloux found new employment.[9] On January 31, 2006, R & B requested a hearing before one of the Labor Department's Administrative Law Judges.[10] After a hearing, the Administrative Law Judge (ALJ) issued her recommended decision on June 8, 2007.

The ALJ initially determined that Mailloux engaged in protected activity under the STAA, that R & B was aware of the protected activity, and that he suffered adverse employment action within the meaning of the STAA when he was terminated.[11] Finally, the ALJ concluded that Mailloux established a causal connection between his protected activity and his termination.[12] Although R & B contended that Mailloux was fired for legitimate, non-discriminatory business reasons, the ALJ concluded that the reasons R & B proffered for Mailloux's termination were pretext.[13] Accordingly, the ALJ recommended that Mailloux be awarded back pay with interest and compensatory damages as reimbursement for travel expenses associated with the litigation of his claim.[14]

The Administrative Review Board automatically reviews an ALJ's recommended STAA decision.[15] The Board "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."[16] Although 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, only R & B filed a brief.

---

8 HT at 218-222; GX 1.

9 *See* GX 12, Jan. 9, 2006 OSHA Administrator's Findings; *see also* HT at 227.

10 Administrative Law Judge's Exhibit (ALJX) 2.

11 Recommended Decision and Order (R. D. & O.) at 15; *see also* 49 U.S.C.A. § 395.3.

12 R. D. & O. at 19.

13 R. D. & O. at 19-20.

14 R. D. & O. at 21-22.

15 29 C.F.R. § 1978.109(c)(1) (2008).

16 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001).

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board her authority to issue final agency decisions under the STAA.[17] Under the STAA, we are bound by the ALJ's fact findings if substantial evidence on the record considered as a whole supports those findings.[18] Substantial evidence does not, however, require a degree of proof "that would foreclose the possibility of an alternate conclusion."[19] 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 . . . ."[20] Therefore, the Board reviews the ALJ's conclusions of law de novo.[21]

DISCUSSION

The Legal Standards

The STAA provides that an employer may not "discharge," "discipline," or "discriminate" against an employee-operator of a commercial motor vehicle "regarding pay, terms, or privileges of employment" because the employee has engaged in certain protected activity. The STAA protects an employee who makes a complaint "related to a violation of a commercial motor vehicle safety regulation, standard, or order;" who "refuses to operate a vehicle because . . . the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health;" or who "refuses to operate a vehicle because . . . the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition."[22]

To prevail on this STAA claim, Mailloux must prove by a preponderance of the evidence that he engaged in protected activity, that R & B was aware of the protected activity, that R & B

---

[17] Secretary's Order No. 1-2002, (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

[18] 29 C.F.R. § 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 Envtl. Servs. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

[19] *BSP Trans, Inc.*, 160 F.3d at 45.

[20] 5 U.S.C.A. § 557(b) (West 1996). *See also* 29 C.F.R. § 1978.109(b).

[21] *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

[22] 49 U.S.C.A. § 31105(a)(1).

took an adverse employment action against him, and that there was a causal connection between the protected activity and the adverse action.[23]

Analysis of the ALJ's Findings

The ALJ found that Mailloux engaged in protected activity under the STAA, and that R & B was aware of the protected activity, when Mailloux informed Beaudry on the phone that he could not complete his next assigned delivery without exceeding the maximum allowable driving hours prescribed by DOT regulations.[24] Moreover, the ALJ determined that Mailloux suffered adverse employment action within the meaning of the STAA when Beaudry terminated him during this same phone conversation.[25] Substantial evidence on the record as a whole supports the ALJ's factual findings.[26] Those findings are therefore conclusive.[27] Moreover, R & B does not challenge the ALJ's conclusions.[28] Therefore, we affirm the ALJ's findings.

Next, we consider whether R & B terminated Mailloux because he engaged in protected activity. The ALJ concluded that it did. We affirm.

Because Mailloux's termination coincided with his protected activity, plus the evidence established that R & B required its drivers to drive in excess of the regulatory requirements and that its drivers were not disciplined for hours of service violations, the ALJ concluded that Mailloux established a causal connection between his protected activity and his termination.[29] In making her determination, the ALJ relied, in part, on DOT enforcement reports and compliance reviews indicating that R & B (as well other trucking companies Beaudry was affiliated with that shared the same offices with R & B) had been cited for violations of the hours of service regulations before, during, and after Mailloux's employment with R & B.[30]

---

[23] *Regan v. National Welders Supply*, ARB No. 03-117, ALJ No. 2003-STA-014, slip op. at 4 (ARB Sept. 30, 2004)

[24] R. D. & O. at 15; *see also* 49 U.S.C.A. § 395.3.

[25] R. D. & O. at 15.

[26] *See* HT at 207-210, 420, 423-425, 455.

[27] 29 C.F.R. § 1978.109(c)(3).

[28] *See* R. D. & O. at 15 n.10.

[29] R. D. & O. at 19.

[30] R. D. & O. at 17-18; *see* GX 25, 28.

Hearsay and Character Evidence

R & B contends that the DOT enforcement reports and compliance reviews constituted inadmissible hearsay and character evidence that were not relevant to Mailloux's specific allegations.[31] In addition, R & B argues that as it contested all of the DOT citations, the enforcement reports and compliance reviews are not reliable indicators of actual violations.[32]

The DOL's STAA regulations specify that hearings will be conducted in accordance with the Rules of Practice and Procedure for Administrative Hearings.[33] Under these rules, hearsay evidence is inadmissible.[34] We review de novo the ALJ's decision to admit or exclude evidence as hearsay for abuse of discretion.[35] Also, "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except evidence of the character of a witness."[36] To reverse an evidentiary ruling, we must conclude that the ALJ abused his discretion and that the error was prejudicial.[37]

The ALJ noted that R & B objected to the admission of the DOT enforcement reports and compliance reviews, but she admitted them as an exception to the hearsay rule as they were "public records or reports or factual findings resulting from an investigation made pursuant to [the] DOT's statutory and regulatory authority" pursuant to the public records and reports hearsay exception at 29 C.F.R. § 18.803(a)(8)(iii).[38] Moreover, we note that at the hearing, the ALJ further stated that she admitted this evidence because it indicated that R & B and Beaudry were "aware" of the DOT hours of service regulations.[39] Thus, the ALJ held that this evidence did not constitute character evidence.[40] While "[e]vidence of other crimes, wrongs, or acts is not

---

31 Respondent's Brief at 18-19.

32 *Id*.

33 29 C.F.R. § 1978.106(a); *see also Wainscott v. Pavco Trucking, Inc.*, ARB No. 05-089, ALJ No. 2004-STA-054, slip op. at 9-10 (ARB Oct. 31, 2007).

34 29 C.F.R. § 18.802.

35 *Wainscott*, slip op. at 9; *Barber v. Planet Airways, Inc*., ARB No. 04-056, ALJ No. 2002-AIR-019, slip op. at 8 (ARB Apr. 28, 2006).

36 29 C.F.R. § 18.404(a).

37 *McEuin v. Crown Equip. Corp.*, 328 F.3d 1028, 1032 (9th Cir. 2003); *Wainscott*, slip op. at 9-10; *cf. Germann v. Calmat Co.*, ARB No. 99-114, ALJ No. 1999-STA-015, slip op. at 5 (ARB Aug. 1, 2002).

38 R. D. & O. at 17 n.15.

39 HT at 57, 64.

40 HT at 48.

admissible to prove the character of a person in order to show action in conformity therewith," "[i]t may . . . be admissible for other purposes, such as proof of motive, . . . intent, [or] . . . knowledge."[41] Thus, contrary to R & B's contention, the ALJ did not admit the DOT enforcement reports and compliance reviews indicating past or other violations to show that R & B violated the hours of service regulations in this case, but considered them only to the extent that they reflect R & B's knowledge of its obligations pursuant to the hours of service regulations.

Consequently, we hold that the ALJ did not abuse her discretion in admitting the DOT enforcement reports and compliance reviews for the purposes of establishing that R & B was aware that it did not comply with DOT hours of service regulations. Furthermore, contrary to R & B's contention that the DOT enforcement reports and compliance reviews are not reliable indicators of actual violations, the evidence the ALJ admitted also indicates that R & B paid penalties that the DOT imposed for violations of the regulations and the terms of the payments specifically indicated that the payments "constitute admission of the violation(s)."[42]

Pretext and the ALJ's Credibility Determinations

R & B further asserted that it terminated Mailloux because he did not comply with the hours of service requirements and missed assignments. The ALJ concluded that the legitimate, non-discriminatory business reasons R & B proffered for Mailloux's termination were pretext. After weighing the evidence, the ALJ determined that it did not support R & B's assertions that R & B required its drivers to comply with the hours of service requirements or disciplined its drivers who violated those regulatory requirements and missed assignments.[43] Furthermore, the ALJ found that there was no evidence that R & B ever discussed with or disciplined Mailloux or any other driver regarding missing assignments.[44]

Specifically, the ALJ discredited Beaudry's testimony that R & B required its drivers to comply with the hours of service regulations,[45] as she found it was undermined by the contrary DOT enforcement reports and compliance reviews and because Beaudry had inaccurately informed an OSHA investigator that R & B had never been "cited" for violations of the hours of service regulations.[46] R & B contends that the ALJ's discrediting of Beaudry's testimony is not

---

41 29 C.F.R. § 18.404(b).

42 HT at 388, 390; Respondent's Exhibits (RX) 25-26; GX 25, 28.

43 R. D. & O. at 19-20.

44 R. D. & O. at 20.

45 *See* HT at 391-394.

46 R. D. & O. at 17 n.14.

supported by the record, as Beaudry did not deny that R & B had ever been "cited" for such violations, but testified that R & B had contested all the citations it received for violations of the regulations.[47] Again, contrary to R & B's contention that the citations are not reliable indicators of actual violations, the evidence indicates that R & B paid penalties that the DOT imposed for violations of the regulations and the terms of the payments specifically indicated that the payments "constitute admission of the violation(s)."[48] Thus, we reject R & B's contention in this regard.

The ALJ also credited Mailloux's testimony that completing R & B's driving assignments required the drivers, in practice, to drive in excess of the regulatory requirements and that R & B would separate the drivers' log records from their toll receipts, making it difficult to confirm the drivers' compliance with the hours of service regulations.[49] The ALJ found this testimony of Mailloux's supported by similar testimony from Scott Hill, another R & B driver, and Heather Bagley, an R & B office employee.[50] On the other hand, the ALJ discredited the testimony of Trish Patrick, another R & B office employee and Beaudry's daughter, denying that she required Bagley to separate the drivers' log records and their toll receipts if they did not match.[51] The ALJ found this testimony of Patrick's was not credible, as she further admitted that she asked Bagley to place the drivers' Massachusetts toll receipts in a box, which the ALJ found bolstered what Mailloux, Hill, and Bagley described in their testimony.[52]

R & B notes that Mailloux provided conflicting testimony as to when he falsified his log records in the week preceding his termination.[53] Thus, R & B contends that the ALJ's crediting of Mailloux's testimony is not supported by the record and, therefore, is not reasonable. Furthermore, R & B asserts that the ALJ's weighing of Patrick's testimony is not supported by the record, as she did not specifically testify that toll receipts should be separated from the drivers' log records.

While R & B argues that the ALJ erred in making these specific credibility determinations, it does not address or challenge the ALJ's ultimate findings of fact that the evidence established that R & B required its drivers to drive in excess of the regulatory requirements and that its drivers were not disciplined for hours of service violations. The ARB

---

47 HT at 351-352, 378-379, 384.

48 HT at 386, 388, 390; RX 25-26; GX 25, 28.

49 R. D. & O. at 16-17; HT at 194-197, 199-200, 229-230.

50 R. D. & O. at 16-17; HT at 105-111, 114-116, 118-121; GX 16 at 12-13, 17.

51 HT at 449-452.

52 R. D. & O. at 17; HT at 451.

53 *See* HT at 203, 267-268, 270-272; RX 8 at 23.

generally defers to an ALJ's credibility determinations, unless they are "inherently incredible or patently unreasonable."[54] In weighing the testimony of witnesses, the ALJ as fact finder considers the relationship of the witnesses to the parties, the witnesses' interest in the outcome of the proceedings, the witnesses' demeanor while testifying, the witnesses' opportunity to observe or acquire knowledge about the subject matter of their testimony, and the extent to which their testimony was supported or contradicted by other credible evidence.[55] In situations where both parties provide substantial evidence for their positions, the ARB will uphold the findings of the ALJ.[56]

The ALJ found that, because Mailloux's termination coincided with his protected activity, there was a causal link between the two. Moreover, substantial evidence supports the ALJ's findings that R & B required its drivers to drive in excess of the regulatory requirements and that its drivers were not disciplined for hours of service violations. Contrary to R & B's contentions, the ALJ accurately found that Beaudry testified that, other than providing Mailloux a summary of his hours of service violations on one occasion, he never disciplined Mailloux for such violations.[57] Moreover, as the ALJ noted, Beaudry admitted that he did not have Mailloux's driver's log record indicating a violation of the hours of service regulations at the time that he terminated Mailloux.[58]

Consequently, the ALJ concluded that the legitimate, non-discriminatory business reasons R & B proffered for Mailloux's termination were pretext and, therefore, Mailloux established a causal connection between his protected activity and his termination.[59] Although R & B contends that the ALJ erred in reaching her conclusion, given that substantial evidence supports the ALJ's findings and the close temporal proximity between Mailloux's protected activity and the adverse action, we affirm the ALJ's conclusion.[60]

---

[54] *Negron v. Vieques Air Link, Inc*., ARB No. 04-021, ALJ No. 2003-AIR-010, slip op. at 5 (ARB Dec. 30, 2004).

[55] *Gary v. Chautauqua Airlines*, ARB No. 04-112, ALJ No. 2003-AIR-038, slip op. at 4 (ARB Jan. 31, 2006) (citations omitted).

[56] *Henrich v. Ecolab, Inc.*, ARB No. 05-030, ALJ No. 2004-SOX-051, slip op. at 14 (ARB June 29, 2006).

[57] HT at 280, 397-398; *see* R. D. & O. at 18.

[58] HT at 425-427; *see* R. D. & O. at 20 n.20.

[59] R. D. & O. at 19-20.

[60] *See BSP Trans, Inc.*, 160 F.3d at 45; *Timmons v. Franklin Elec. Coop.*, ARB No. 97-141, ALJ No. 1997-SWD-002, slip op. at 6 (ARB Dec. 1, 1998) (temporal proximity between protected activity and termination plus employer's failure to provide plausible explanation for firing sufficient to establish retaliatory discharge).

Remedies

Back Pay

A successful complainant under the STAA also is entitled to an award of back pay.[61] Back pay is awarded from the date of the retaliatory discharge. Back pay liability ends when the employer makes a bona fide, unconditional offer of reinstatement, or, in very limited circumstances, when the employee rejects a bona fide offer.[62] The successful STAA complainant is also entitled to pre- and post- judgment interest on a back pay award.[63]

A STAA complainant like Mailloux has a duty to exercise reasonable diligence to attempt to mitigate back pay damages.[64] But the employer bears the burden to prove that the complainant failed to mitigate. The employer can satisfy its burden by establishing that substantially equivalent positions were available to the complainant and he failed to use reasonable diligence in attempting to secure such a position.[65]

Additionally, under the STAA and the record before us, reinstatement would have been an appropriate remedy, but the ALJ noted that because Mailloux had found new employment, he did not seek reinstatement, but rather back pay plus interest from the date of his termination until when he obtained new employment.[66] Reinstatement to a complainant's former position with the same pay, terms, and privileges of employment is an automatic remedy under the STAA.[67] Reinstatement must be ordered unless it is impossible or impractical.[68] It is possible that the ALJ

---

[61] 49 U.S.C.A. § 31105(b)(3)(A)(iii).

[62] *Hobson v. Combined Transport, Inc.*, ARB Nos. 06-016, -053, ALJ No. 2005-STA-035, slip op, at 5 (ARB Jan. 31, 2008).

[63] *Murray v. Air Ride, Inc.*, ARB No. 00-045, ALJ No. 1999-STA-034, slip op. at 9 (ARB Dec. 29, 2000).

[64] *Hobson*, slip op. at 6.

[65] *Hobson*, slip op. at 6, citing *Dale v. Step 1 Stairworks, Inc.*, ARB No. 04-003, ALJ No. 2002-STA-030, slip op. at 4-5 (ARB Mar. 31, 2005).

[66] R. D. & O. at 21.

[67] *See* 49 U.S.C.A. § 31105(b)(3)(A)(ii); *Dickey v. West Side Transp., Inc.*, ARB Nos. 06-151, 150, ALJ Nos. 2006-STA-026, -027, slip op. at 8 (ARB May 29, 2008).

[68] *Assistant Sec'y & Bryant v. Bearden Trucking Co.*, ARB No. 04-014, ALJ No. 2003-STA-036, slip op. at 7-8 (ARB June 30, 2005); *Dale*, slip op. at 4-5.

assumed that it was unnecessary for her to order reinstatement because Mailloux had found new employment. Nevertheless, the ALJ erred in not awarding reinstatement.[69] But since neither party has raised the issue on appeal, we deem the issue of reinstatement waived.[70]

Mailloux testified that he began working for R & B in late August 2004.[71] The Assistant Secretary of Labor for OSHA, as the prosecuting party who filed a post-hearing brief in support of Mailloux's complaint, submitted that August 25, 2004, would be a reasonable starting date for the ALJ to use in calculating Mailloux's back pay award.[72] Because R & B did not challenge August 25, 2004, as Mailloux's starting date with R & B, nor address the issue of damages in their briefs before the ALJ, the ALJ calculated Mailloux's daily average wage rate with R & B using August 25, 2004, as his starting date until his termination on December 17, 2004.[73] After thereby calculating Mailloux's daily average wage rate, the ALJ awarded Mailloux back pay plus interest from December 17, 2004, until February 27, 2005, when he started his new job.[74]

On appeal, R & B asserts that the ALJ erred in calculating Mailloux's daily average wage rate with R & B and, therefore, his back pay award using August 25, 2004, as his starting date. R & B contends that the record establishes that August 7, 2005, was Mailloux's starting date with R & B, which if used would, in effect, reduce the ALJ's calculation of Mailloux's daily average wage rate with R & B. But Mailloux specifically testified that on the day that he started working for R & B, he received the Federal Motor Carrier Safety Regulations Pocket Book.[75] An exhibit in the record indicates that Mailloux signed off that he received the book on August 7, 2004.[76]

Besides, as the ALJ noted, R & B did not raise any issue regarding or argue the calculation of Mailloux's back pay award before the ALJ. Under our well-established precedent, we decline to consider issues or arguments that a party raises for the first time on appeal, and

---

69 *See Collins v. Vill. of Lynchburg, Ohio*, ARB No. 07-079, ALJ No. 2006-SDW-003, slip op. at 11 (ARB Mar. 30, 2009); *Rooks v. Planet Airways, Inc.*, ARB No. 04-092, ALJ No. 2003-AIR-035, slip op. at 10 (ARB June 29, 2006).

70 *Collins*, slip op. at 11; *Tipton v. Indiana Michigan Power Co.*, ARB No. 04-147, ALJ No. 2002-ERA-030, slip op. at 10 (ARB Sept. 29, 2006).

71 *Id.*; *see* HT at 179.

72 Prosecuting Party's Post-Hearing Brief at 22.

73 R. D. & O. at 21-22 nn.22, 23.

74 R. D. & O. at 21-22; *see* HT at 329-330.

75 HT at 182.

76 RX 16; HT at 234; *see* Respondent's Post Trial Brief at 3, 6, 14.

decline to do so here.[77] Therefore, as R & B has waived this argument on appeal and substantial evidence in the record as a whole supports the ALJ's recommended back pay award, we affirm that award.

Litigation Costs

A STAA complainant, such as Mailloux, who has prevailed on the merits may be reimbursed for litigation costs.[78] The ALJ awarded Mailloux, who proceeded pro se, costs as a fair and adequate reimbursement for his travel expenses associated with the litigation of his claim.[79] Since R & B does not object to the ALJ's award and because substantial evidence supports the ALJ's recommendation, we affirm that award.

CONCLUSION

Substantial evidence supports the ALJ's findings that Mailloux engaged in STAA protected activity and that R & B took adverse action against him because of that activity. Furthermore, substantial evidence supports the remedies that the ALJ recommended. Therefore, since R & B has violated the STAA, Mailloux is entitled to the remedies the ALJ awarded and the ALJ's R. D. & O. is **AFFIRMED**.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

---

[77] *Stephenson v. Yellow Transp.*, ARB No. 06-133, ALJ No. 2004-STA-058, slip op. at 4 (ARB Jan. 31, 2008); *Montgomery v. Jack-in-the-Box*, ARB No. 05-129, ALJ No. 2005-STA-006, slip op. at 8 (ARB Oct. 31, 2007); *Rollins v. Am. Airlines, Inc.*, ARB No. 04-140, ALJ No. 2004-AIR-009, slip op. at 4 n.11 (ARB Apr. 3, 2007 (corrected)); *Carter v. Champion Bus, Inc.*, ARB No. 05-076, ALJ No. 2005-SOX-023, slip op. at 7 (ARB Sept. 29, 2006).

[78] 49 U.S.C.A. § 31105(b)(3)(B) ("the Secretary [of Labor] may assess against the person against whom the order is issued the costs . . . reasonably incurred by the complainant in bring the complaint").

[79] R. D. & O. at 22.