



**In the Matter of:**

**JOHN BRONSKI,**

**ARB CASE NO. 07-092**

**COMPLAINANT,**

**ALJ CASE NO. 2005-STA-038**

**v.**

**DATE: July 15, 2009**

**RISER FOODS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**John Bronski, *pro se*, Cleveland, Ohio**

***For the Respondent:***

**Patricia W. Henk, Esq., *Marcus & Shapira*, Pittsburgh, Pennsylvania**

**FINAL DECISION AND ORDER**

John Bronski filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA). He alleged that when his former employer, Riser Foods, Inc. (Riser), terminated his employment, it violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified.<sup>1</sup> The STAA protects from discrimination employees who report violations of

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2008). The STAA has been amended since Bronski 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

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 Bronski's complaint be dismissed.<sup>2</sup> We affirm.

## BACKGROUND

Riser is a commercial motor carrier whose primary facility is in Bedford Heights, Ohio. Bronski began driving Riser's trucks in 2001. He hauled groceries and perishable goods.<sup>3</sup>

Riser's dispatch rules provide that a driver is "dispatch ready" when he or she finishes the previous dispatch, returns to the dispatch window, and submits his or her completed trip sheet.<sup>4</sup> Thus, if a driver comes to the dispatch window and looks at the board that lists the upcoming delivery assignments, he or she must take the next assigned load.<sup>5</sup> The dispatch rules do not permit, for example, a driver to approach the dispatch window, look at the next assignment, and decide to go to lunch or on a break to avoid the next posted job.<sup>6</sup> If a driver becomes ill, he or she is to inform the dispatch immediately by phone or tractor CB.<sup>7</sup>

On November 19, 2004, Bronski was scheduled to work from 3:00 p.m. until 11:30 p.m.<sup>8</sup> Bronski began his shift on time and completed two assignments before returning to the dispatch window at approximately 8:15 p.m.<sup>9</sup> According to Robin McCoy and Michael Wapinsky, Riser transportation supervisors, Bronski looked at the upcoming assignments and asked if the posted job was the only assignment available.<sup>10</sup> McCoy testified that she told Bronski that it was the only available assignment and that he had to take it.<sup>11</sup> Wapinsky confirmed McCoy's

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this complaint, because they are not relevant to the issues presented by the case and thus, they would not affect our decision.

<sup>2</sup> *Bronski v. Riser Foods, Inc.*, ALJ No. 2005-STA-038 (June 29, 2007) (R. D. & O.).

<sup>3</sup> R. D. & O. at 2.

<sup>4</sup> Transcript (Tr.) at 57.

<sup>5</sup> Tr. at 110.

<sup>6</sup> Tr. at 64, 111.

<sup>7</sup> Tr. at 79.

<sup>8</sup> Tr. at 27.

<sup>9</sup> Tr. at 65-66.

<sup>10</sup> Tr. at 65-66.

<sup>11</sup> Tr. at 66.

testimony.<sup>12</sup> Bronski testified that he walked into the dispatch area with no intention of taking the next load, and that he informed McCoy at this time that he had a headache before asking if there were other trips.<sup>13</sup> McCoy and Wapinsky deny Bronski's claim that he informed them of a headache before looking at the next assignment.<sup>14</sup> The upcoming assignment was a trip to North Canton, Ohio, roughly a four-to-six hour assignment depending on the number of pallets in the truck.<sup>15</sup>

After this encounter, Bronski walked away and began writing on his trip sheet. McCoy testified that she asked Bronski whether he was filling out his sheet to go to lunch and then asked him to submit his sheet. According to McCoy and Wapinsky, Bronski ignored McCoy's requests, continued writing, and then left the dispatch area with his trip sheet.<sup>16</sup> Bronski testified that he felt he was going to vomit and needed to leave the office.<sup>17</sup> Bronski returned after 15-20 minutes, submitted his trip sheets, and informed McCoy either verbally or in writing that he was going home with a headache.<sup>18</sup>

Since Bronski refused to take the Canton trip, Wapinsky told him that he was off the schedule.<sup>19</sup> Shortly thereafter, Riser discharged Bronski for insubordination and for failing to complete his job duties.<sup>20</sup> Bronski had been warned previously for violating the dispatch policy.<sup>21</sup>

Bronski's OSHA complaint alleged that Riser violated the STAA by discharging him for refusing to drive because he was ill. OSHA determined that Riser did not violate STAA. Bronski requested a hearing before an ALJ. As noted, the ALJ recommended that we deny Bronski's complaint.

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<sup>12</sup> Tr. at 109.

<sup>13</sup> Tr. at 11, 28-30, 35.

<sup>14</sup> Tr. at 78, 116, 122-23.

<sup>15</sup> Tr. at 100, 102.

<sup>16</sup> Tr. at 66, 83, 109.

<sup>17</sup> Tr. at 12, 28-29, 36.

<sup>18</sup> Respondent's Exhibit (RX) 6; Tr. at 36, 72, 78, 115.

<sup>19</sup> Tr. at 24, 109-10, 115.

<sup>20</sup> Tr. at 7, 144.

<sup>21</sup> Tr. at 10, 38, 67, 69, 79, 83.

## JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated her jurisdiction to decide this matter to the Administrative Review Board (ARB).<sup>22</sup> The ARB automatically reviews an ALJ's STAA decision.<sup>23</sup> Under the STAA, the Board is bound by the ALJ's factual findings if substantial evidence on the record considered as a whole supports those findings.<sup>24</sup> 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."<sup>25</sup> 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 . . . ."<sup>26</sup> Therefore, we review the ALJ's conclusions of law de novo.<sup>27</sup>

## DISCUSSION

The ALJ's decision thoroughly and fairly recites the relevant facts underlying this dispute. He found that Bronski had not demonstrated, as he must, that he engaged in activity that the STAA protects or, alternatively, that Riser was aware of protected activity when it discharged Bronski.<sup>28</sup> We have reviewed the record and find that substantial evidence on the record as a whole supports the ALJ's factual findings. Those findings are therefore conclusive. The ALJ

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<sup>22</sup> See Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 49 U.S.C.A. § 31105(b)(2)(C).

<sup>23</sup> 29 C.F.R. § 1978.109(a) (2007).

<sup>24</sup> 29 C.F.R. § 1978.109(c)(3); *BSP Transp., Inc. v. United States 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).

<sup>25</sup> *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)).

<sup>26</sup> See 5 U.S.C.A. § 557(b) (West 1996); see also 29 C.F.R. § 1978.109(b).

<sup>27</sup> *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

<sup>28</sup> R. D. & O. at 4-6.

applied the correct legal standard and relevant case law to those findings. Therefore, we adopt and attach the ALJ's Recommended Decision and Order and **DENY** Bronski's complaint.<sup>29</sup>

**SO ORDERED.**

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

**WAYNE C. BEYER**  
**Chief Administrative Appeals Judge**

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<sup>29</sup> The ALJ's decision can be found online by entering 2005-STA-00038 into the search box at <http://www.oalj.dol.gov/> or directly by visiting the following link: [http://www.oalj.dol.gov/Decisions/ALJ/STA/2005/BRONSKI\\_JOHN\\_v\\_RISER\\_FOODS\\_INC\\_2005STA00038\\_\(JUN\\_29\\_2007\)\\_094443\\_CADEC\\_SD.PDF](http://www.oalj.dol.gov/Decisions/ALJ/STA/2005/BRONSKI_JOHN_v_RISER_FOODS_INC_2005STA00038_(JUN_29_2007)_094443_CADEC_SD.PDF).