



**In the Matter of:**

**ROBERT A. ANDERSON,**

**ARB CASE NO. 07-115**

**COMPLAINANT,**

**ALJ CASE NO. 2007-STA-024**

**v.**

**DATE: February 27, 2009**

**GRAYHOUND TRASH REMOVAL,  
INCORPORATED,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Robert A. Anderson, *pro se*, Temple Hills, Maryland**

***For the Respondent:***

**Lillian L. Machado, Esq., *Furey, Doolan & Abell, LLP*, Chevy Chase, Maryland**

**FINAL DECISION AND ORDER**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended.<sup>1</sup> Grayhound Trash

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2008); *see* 29 C.F.R. Part 1978 (2008). Congress has amended the STAA since Anderson 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 decide here whether the amendments would apply to this case, because even if the amendments applied, they are not at issue in this case and thus would not affect our decision.

Removal, Incorporated, hired Robert A. Anderson as a mechanic/driver. On September 14, 2006, he drove to a job site to pick up portable toilets, but complained to his supervisor that his trailer had no operating lights. Anderson stated that en route, he had stopped and tried to locate a power plug for the lights. The supervisor, claiming that Anderson had disappeared from the job and had not responded via two-way radio, fired him. Anderson Complaint dated September 6, 2006; OSHA Letter dated February 13, 2007.

Anderson filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA), alleging that Grayhound fired him for refusing to drive an unsafe vehicle in violation of the STAA.<sup>2</sup> OSHA denied Anderson's complaint on February 13, 2007. He filed objections to the denial and timely requested a hearing.<sup>3</sup>

The Administrative Law Judge (ALJ) issued a Notice of Hearing on March 16, 2007, setting the date for June 4, 2007, and ordering Anderson and Grayhound to comply with each other's discovery requests and submit pre-hearing statements.

In May 2007, Grayhound moved to dismiss Anderson's complaint because he had failed to appear for a scheduled deposition, answer interrogatories, respond to document requests, or serve a pre-hearing statement. Alternatively, Grayhound asked the ALJ to compel Anderson to comply with discovery.

On June 1, 2007, the ALJ cancelled the hearing and ordered Anderson to respond to Grayhound's motions by June 11, 2007. On June 10, 2007, Anderson requested a continuance until he was able to obtain the services of an attorney, but did not address Grayhound's motions. Instead, Anderson submitted a copy of his initial complaint to OSHA.

On July 17, 2007, the ALJ granted Grayhound's motion to compel discovery and ordered Anderson to respond to Grayhound's discovery requests by August 3 and be available for a deposition. The ALJ warned Anderson that the sanction for failure to cooperate in discovery included dismissal of his complaint.

On August 3, 2007, Anderson again requested an extension of time to acquire an attorney. Grayhound opposed Anderson's request and asked the ALJ to dismiss his complaint because Anderson had not complied with the ALJ's July 17, 2007 discovery order. Grayhound added that Anderson's failure to retain counsel over the past four months was "due to his inexcusable neglect."

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<sup>2</sup> 49 U.S.C.A. § 31105(A)(1)(B)(i).

<sup>3</sup> By letter dated March 1, 2007, the Chief Administrative Law Judge informed Anderson that his handwritten request for a de novo hearing indicated his intent to object to OSHA's findings pursuant to 29 C.F.R. § 1978.105.

On August 21, 2007, the ALJ denied Anderson's request for an extension of time and ordered him to show cause within ten days why his complaint should not be dismissed because of his refusal to comply with the discovery orders. Anderson did not respond to the ALJ's show cause order. On September 5, 2007, Grayhound filed another motion to dismiss Anderson's complaint on the grounds that he had "shown total disregard and contempt" for the ALJ's orders.

On September 7, 2007, the ALJ issued a Recommended Decision and Order (R. D. & O.) denying Anderson's complaint for failure to cooperate in discovery pursuant to 29 C.F.R. § 18.6(d)(2)(v).<sup>4</sup>

The case is now before the Administrative Review Board (ARB) pursuant to the STAA's automatic review provisions.<sup>5</sup> The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."<sup>6</sup> We review an ALJ's imposition of sanctions for abuse of discretion.<sup>7</sup>

The ARB issued a Notice of Review and Briefing Schedule reminding the parties of their right to submit a brief in support of or in opposition to the ALJ's R. D. & O. Grayhound submitted a brief in support of the ALJ's decision, noting that the ALJ properly exercised sound discretion in dismissing Anderson's complaint because of his "repeated and blatant failure to comply with her orders." Anderson did not respond.

As already noted, Department of Labor regulations permit an ALJ to "take such action . . . as is just," including dismissing a complaint, when a party fails to comply with a discovery order, or "any other order" of the ALJ.<sup>8</sup> To hold otherwise would render the

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<sup>4</sup> Section 18.6(d)(2)(v) provides in relevant part that if a party fails to comply with a subpoena or discovery order, the ALJ may take such action as is just, including but not limited to rendering a decision against the non-complying party. 29 C.F.R. § 18.6(d)(2)(v).

<sup>5</sup> 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

<sup>6</sup> *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

<sup>7</sup> *See, e.g., Berg v. Swift Transp.*, ARB No. 07-046, ALJ No. 2006-STA-013, slip op. at 2 (Feb. 28, 2007) (citation omitted) ("Dismissal as a sanction for failure to prosecute is a matter within the sound discretion of the administrative law judge."); *Dickson v. Butler Motor Transit*, ARB No. 02-098, ALJ No. 2001-STA-039, slip op. at 4 (ARB July 25, 2003) (ALJ acted within his discretion in dismissing STAA complaints after complainant repeatedly ignored the ALJ's discovery and other orders).

<sup>8</sup> 29 C.F.R. § 18.6(d)(2)(v); *Matthews v. LaBarge, Inc.*, ARB No. 08-038, ALJ No. 2007-SOX-056, slip op. at 3 (ARB Nov. 26, 2008).

discovery process meaningless and vitiate an ALJ's duty to conclude cases fairly and expeditiously.<sup>9</sup>

The record here shows that the ALJ afforded Anderson adequate opportunity to comply with her discovery orders and warned him about the consequences of failing to respond. Anderson did not explain to the ALJ why he needed almost six months to obtain representation. Nor did he offer any excuse for failing to appear at a scheduled deposition in May 2007. With his second request for more time, Anderson submitted a copy of his original complaint, but did not respond to Grayhound's discovery motions. Further, Anderson did not respond to the ALJ's August 21, 2007 show cause order.

Because Anderson failed to obey the ALJ's orders and did not demonstrate good cause, the ALJ did not abuse her discretion in denying Anderson's complaint. Accordingly, we **DISMISS** Anderson's complaint.

**SO ORDERED.**

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

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

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<sup>9</sup> *Matthews*, slip op. at 3.