



In the Matter of:

RON HAUBOLD,

ARB CASE NO. 08-025

COMPLAINANT,

ALJ CASE NO. 2000-STA-035

v.

DATE: February 27, 2009

KTL TRUCKING COMPANY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

BACKGROUND

KTL Trucking Company was engaged in transportation operations and maintained a place of business in Largo, Florida. Its employees operated commercial motor vehicles in interstate commerce principally to haul general merchandise. Ron Haubold worked as a truck driver for the Respondent from January 1999 to April 9, 1999, when the Respondent discharged him.

Haubold filed a complaint on February 7, 2000, with the Department of Labor's Occupational Safety and Health Administration (OSHA). Haubold alleged that KTL discharged him for making a late delivery and for refusing to drive in violation of the "the Federal Motor Carrier Safety Regulations." This, he claims, violated the employee protection provisions of Section 405 of the Surface Transportation Assistance Act (STAA).¹

¹ 49 U.S.C.A. § 311105 (West 2007). The STAA has been amended since Haubold 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

OSHA investigated the complaint. As a result of the investigation, OSHA's Regional Administrator in Denver, Colorado, Gregory J. Baxter, determined that the February 7, 2000 complaint was untimely filed and that Haubold was not entitled to relief from the requirement that STAA claims be filed within 180 days after the alleged violation occurs. The Regional Administrator also found that an earlier complaint that Haubold filed on April 12, 1999, with the Department of Transportation "does not constitute an effective filing of a STAA claim." Haubold objected to OSHA's findings and requested a hearing.

A Department of Labor Administrative Law Judge (ALJ) scheduled a hearing for May 30, 2000. Prior to the hearing, however, a Chapter 7 trustee notified the ALJ that KTL had filed, in November 1998, a petition for reorganization under Chapter 11 of the United States Bankruptcy Code, the effect of which, the trustee asserted, was to stay the proceedings before the ALJ pursuant to the automatic stay provision of Section 362 of the Bankruptcy Code.² The Chapter 7 trustee also advised that the Bankruptcy Court converted the case to a liquidation proceeding under Chapter 7 of the Bankruptcy Code, and, in accordance with the Bankruptcy Court's order, KTL had ceased operations on November 12, 1999. The ALJ issued an "Order to Show Cause Why Matter Should Not Be Dismissed," to which Haubold did not respond. Subsequently, the ALJ issued a "Recommended Decision and Order Dismissing Complaint."

The Administrative Review Board (ARB or Board) reviewed the ALJ's recommended decision pursuant to the automatic review provisions of the STAA.³ The ARB held that "the automatic stay continues until the bankruptcy case is closed, dismissed, or discharge is granted or denied, or until the bankruptcy court grants some relief from the stay."⁴ The ARB thus did not approve the ALJ's recommendation that the complaint be dismissed and remanded the case to the ALJ. The ARB instructed that the case "will remain on the [ALJ's] docket until the bankruptcy case is closed, dismissed, or discharge is granted or denied or until the bankruptcy court lifts the stay and the ALJ may then continue the proceedings to resolve the matter before him."⁵

On November 6, 2007, the ALJ issued an "Order to Show Cause Why Case Should Not Be Dismissed." The ALJ indicated, "By August 10, 2000 order, the [ARB]

his complaint, they would not affect our decision.

² 11 U.S.C.A. § 362.

³ 29 C.F.R. § 1978.109(a).

⁴ *Haubold v. KTL Trucking Co.*, ARB No. 00-065, ALJ No. 2000-STA-035, slip op. at 3 (ARB Aug. 10, 2000).

⁵ *Id.* at 4.

directed that I hold this matter on my docket pending certain therein-specified eventualities. I have no knowledge to date that any of those specified eventualities have occurred.” The ALJ afforded the parties fifteen days within which to respond. In his November 29, 2007 Recommended Order of Dismissal, the ALJ indicated that he had received no response to the show cause order, and given that the time for filing a response had expired, he ordered that the matter be dismissed.

This case is before the ARB pursuant to the STAA’s automatic review provisions.⁶ On December 13, 2007, the Board issued a Notice of Review and Briefing Schedule, informing the parties of their right to file briefs in support of or in opposition to the ALJ’s Recommended Order of Dismissal. Neither party filed a brief. For the following reasons, we again remand the case to the ALJ.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions under the STAA and its implementing regulations.⁷ The ARB is required to issue “a final decision and order based on the record and the decision and order of the administrative law judge.”⁸ The Board is bound by the ALJ’s factual findings if those findings are supported by substantial evidence on the record considered as a whole.⁹ The Board reviews questions of law de novo.¹⁰

DISCUSSION

The Board stated in its initial decision remanding this case to the ALJ that the case “will remain on the [ALJ’s] docket until the bankruptcy case is closed, dismissed, or discharge is granted or denied or until the bankruptcy court lifts the stay and the ALJ may then continue the proceedings to resolve the matter before him.”¹¹ Review of the docket

⁶ “The [ALJ’s] decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee.” 29 C.F.R. § 1978.109(a).

⁷ Secretary’s Order 1-2002 (Delegation of Authority and Responsibility to the Administrative Review Board), 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. Part § 1978 (2005).

⁸ 29 C.F.R. § 1978.109(c)(1).

⁹ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep’t of Labor*, 160 F.3d 38, 46 (1st Cir. 1998).

¹⁰ *See Yellow Freight Sys., Inc. v. Reich*, 8 F.3d 980, 986 (4th Cir. 1993).

¹¹ Slip op. at 4.

sheet in the bankruptcy case,¹² of which we take judicial notice, confirms that the case is ongoing. Thus, the ALJ has prematurely removed the case from the docket, in contravention of the bankruptcy stay and our remand order.

Accordingly, we **REMAND** this case to the ALJ where it will remain on the docket until the bankruptcy case is closed, dismissed, or discharge is granted or denied or until the bankruptcy court lifts the stay and the ALJ may then continue the proceedings to resolve the matter before him.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

¹² Bankruptcy Petition #: 98-39559-bjh7 in the United States Bankruptcy Court, Northern District of Texas (Dallas).