



In the Matter of:

JOHN F. BESS,

COMPLAINANT,

v.

J.B. HUNT TRANSPORT, INC.,

RESPONDENT.

**ARB CASE NOS. 08-034
08-069**

ALJ CASE NO. 2007-STA-034

DATE: August 26, 2009

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

John F. Bess filed a complaint under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (West 2008), and its implementing regulations, 29 C.F.R. Part 1978 (2007). He alleged that his employer, J.B. Hunt Transport, Inc., violated the STAA when it terminated his employment on December 11, 2006, after he refused to drive an unsafe truck. *See* 29 U.S.C.A. § 31150(a)(1)(B)(ii).

On January 7, 2008, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) concluding that Hunt had violated the STAA. The ALJ reinstated Bess to his former position as a driver with the same terms, privileges, and conditions of employment, and awarded back pay of \$40,000.00 and continuing at the weekly rate of \$770.00 until reinstatement. The ALJ also awarded compensatory damages of \$5,425.00 for mental and emotional distress and medical expense. *Bess v. J.B. Hunt Transp., Inc.*, 2007-STA-034, slip op. at 38 (ALJ Jan. 7, 2008).

On automatic appeal to the Administrative Review Board (ARB) pursuant to 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1), the ARB issued a Notice of Review and Briefing Schedule in the merits decision, ARB No. 08-034, on January 11, 2008, advising the parties of their right to file a brief in support of or in opposition to the ALJ's decision. Hunt responded on February 6, 2008, opposing the ALJ's conclusion that Hunt had violated the STAA on the grounds that substantial evidence did not support the ALJ's findings of fact. Bess did not respond.

On February 12, 2008, Bess's attorneys filed a fee petition with the ALJ seeking a total of \$28,070.00. Hunt's attorney opposed the fee petition and raised multiple objections. However, on March 14, 2008, Bess's attorney sent a letter to the ALJ, stating:

I am pleased to report that the respondent has fully and completely satisfied all of its obligations pursuant to your Recommended Decision and Order, has corrected Mr. Bess'[s] USIS report, and has paid Mr. Bess'[s] attorney's fees and costs as requested. In turn, Mr. Bess has released all of his claims against the respondent.

Therefore, I respectfully request that this matter be dismissed with prejudice, be retired from the DOL's active docket, and placed amongst the causes ended.

March 14, 2008 Letter to ALJ.

In a March 19, 2008 decision, the ALJ dismissed the attorney's fee petition with prejudice and forwarded the March 14, 2008 letter to the ARB as he "no longer had jurisdiction over the disposition of the complaint." Dismissal of Attorney Fee Petition at 1.

On automatic appeal of the ALJ's March 19, 2008 decision, the ARB issued a Notice of Review and Briefing Schedule in the attorney's fee dismissal, ARB No. 08-069, on April 3, 2008, advising the parties of their right to file a brief in support of or in opposition to the ALJ's decision. Neither party responded.

On July 23, 2009, the ARB issued an order requiring the parties to show cause within ten days of receipt why the ARB should not consider that Hunt has withdrawn its objections to the ALJ's R. D. & O. and dismissal of the attorney fee petition. The ARB

has received no response from either party. Accordingly, the ARB concludes that Hunt has withdrawn its objections to both decisions pursuant to 29 C.F.R. § 1978.111(c) and **AFFIRMS** the ALJ's recommended decision and dismissal.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge