



In the Matter of:

ROBERT LUVARA,

ARB CASE NO. 08-040

COMPLAINANT,

ALJ CASE NO. 2008-STA-013

v.

DATE: February 27, 2009

UNITED PARCEL SERVICE,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND DISMISSAL ORDER

The Complainant, Robert Luvara, filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that the Respondent, United Parcel Service (UPS), violated the employee protection provisions of the Surface Transportation Assistance Act (STAA)¹ and its implementing regulations² when it discharged him from employment.

¹ 49 U.S.C.A. § 31105 (West 2008), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Section 405 of the STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. The amended provisions are not at issue in this case and thus do not affect our decision.

² 29 C.F.R. Part 1978 (2007).

OSHA investigated the complaint and found that UPS had not discharged Luvara in reprisal for engaging in activity protected by the STAA. Luvara objected and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).³

On January 15, 2008, Luvara filed with the ALJ a “Request to Withdraw Complaint,” informing the ALJ that “Robert Luvara withdraws his complaint against United Parcel Service that was previously filed pursuant to the employee protection provision of the [STAA].” That same day, the ALJ issued a Recommended Order Dismissing Complaint (R. O.), dismissing Luvara’s STAA claim.⁴ The ALJ forwarded his R. O. and the administrative record to the Administrative Review Board (ARB or Board). The case is before us pursuant to the STAA’s automatic review provisions.⁵

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁶ When reviewing STAA cases, the Board is bound by the ALJ’s factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁷ In reviewing the ALJ’s legal conclusions, the Board, as the Secretary’s designee, acts with “all the powers [the Secretary] would have in making the initial decision”⁸ Therefore, the Board reviews the ALJ’s legal conclusions de novo.⁹

On January 29, 2008, the Board issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs with the Board in support of or in opposition to the ALJ’s recommended order within thirty days of the date on which the ALJ issued it.¹⁰ Neither party filed a brief.

³ See 29 C.F.R. § 1978.105(a).

⁴ R. O. at 1.

⁵ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1).

⁶ Secretary’s Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(a).

⁷ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, 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).

⁸ 5 U.S.C.A. § 557(b) (West 1996).

⁹ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

¹⁰ See 29 C.F.R. § 1978.109(a).

Luvara has not objected to the ALJ's decision to recommend dismissal of his STAA case, and we know of no reason to reject the ALJ's recommended decision. Accordingly, Luvara's case is hereby **DISMISSED** with prejudice.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge