In the Matter of:

CHARLES A. WILLIAMS JR.,

COMPLAINANT,

v.

CAPITOL ENTERTAINMENT SERVICES, INC.,

RESPONDENT.

ARB CASE NO. 08-102

ALJ CASE NO. 2005-STA-027

DATE: April 7, 2010

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Charles A. Williams Jr., *pro se*, New York, New York

FINAL DECISION AND ORDER

Charles A. Williams Jr., filed a complaint under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and recodified, 49 U.S.C.A. § 31105 (Thomson/West 2007) and its implementing regulations, 29 C.F.R. Part 1978 (2009).[1] He alleged that his employer, Capitol

[1] The STAA has been amended since Williams filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007); 49 U.S.C.A. § 31105(b)(1)(Thomson/West 2007 & Supp. 2009). We need not decide whether the amendments incorporating the legal burdens of proof set forth in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C.A. §

Entertainment Services, Inc. (Capitol), violated the STAA by firing him after he complained about violations of commercial motor vehicle safety rules.

After a hearing, a Department of Labor Administrative Law Judge (ALJ) dismissed Williams's complaint. He appealed to the Administrative Review Board (ARB), which remanded the case to the ALJ for further consideration.[2] On remand, the ALJ again dismissed the complaint. The case is now before the ARB for review pursuant to 29 C.F.R. § 1978.109(c)(1).

BACKGROUND

We summarize the facts as presented in the ALJ's Recommended Decision and Order on Remand (R. D. & O. on R.) dated June 23, 2008. John Best, president of Capitol, hired Williams, an experienced bus mechanic, on September 1, 2004, to develop a preventive maintenance program and service his vehicles. Best had just obtained a contract to provide school bus service in the District of Columbia.

Initially, Williams complained to Best that Capitol's bus drivers were not using the vehicle inspection reports that the Federal Motor Carrier Safety Administration (FMCSA) requires. Hearing Transcript (TR) at 61. With Best's consent, Williams bought a set of these reports for the drivers and they started using them, but Williams complained to Best that the drivers were not correctly recording all defects. TR at 65-66. Williams testified that Best told him that he "was coming on too strong" and should "back off" since the school bus operation was still new. TR at 61.

Williams also complained about safety defects such as a faulty windshield wiper; low tread on tires; oil and antifreeze leaks; and an exhaust system, the emissions from which leaked into the passenger compartment. TR at 67-70. To implement his maintenance program, Williams wanted Best to purchase a computer with a software program, more equipment such as a forklift, and an inventory of tires. Best bought the computer items but testified that other servicing equipment was available for Williams to use. TR at 251.

On September 17, 2005, Best met with Williams to discuss his performance. Best told Williams that he was too often absent from the bus premises during work hours and was not keeping up with maintenance of the buses, as shown by the fact that a bus with a faulty muffler had languished at the facility for several days. TR at 261. The next day Best gave Williams a memorandum listing his concerns with his work habits, including a

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42121(b) (Thomson/West 2007), are applicable to this case, because even if they were, they would not affect our decision.

[2] *Williams v. Capitol Entm't Serv., Inc.*, ARB No. 05-137, ALJ No. 2005-STA-027 (ARB Dec. 31, 2007).

prohibition against working on other vehicles while on CES time. Employer's Exhibit (EX) 12.

On September 24, 2005, Williams told Best that a bus with bald tires must be grounded. TR at 82. Best asked Williams to measure the tread, which he did. Best then arranged for his contract tire supplier to change the tires so that the bus could be used. TR at 292-93.

On September 27, 2005, Best fired Williams. At the time of the discharge, Best did not explain his reason to Williams but he testified at the hearing that he felt that Williams "didn't want to produce . . . he wanted to be a big supervisor." TR at 300.

Subsequently, Williams filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that Capitol had discriminated against him because he engaged in whistleblowing activities under the STAA. On March 9, 2005, OSHA dismissed Williams's claim. Complainant's Exhibit (CX) 10. Williams requested a hearing, which was held on April 28, 2005. The ALJ recommended dismissal of Williams's claim on August 4, 2005, and he appealed to the ARB.

The ARB affirmed the ALJ's conclusion that Williams had engaged in STAA-protected activity when he refused to clear vehicles for service because of his concerns about the safety of the tires and an exhaust system. See 49 U.S.C.A. § 31105(a)(1)(A). The ARB found, however, that the ALJ had failed to consider whether Williams's complaints about the "defect" reports constituted protected activity.[3] The ARB remanded the case for the ALJ to evaluate the effect of this potential protected activity on Williams's discharge. *Williams v. Capitol Entm't. Servs., Inc.*, ARB No. 05-137, ALJ No. 2005-STA-027 (ARB Dec. 31, 2007).

On remand, the ALJ found that Williams engaged in protected activity when he advised Best about maintaining and completing the defect reports properly. R. D. & O. on R. at 5-6. However, the ALJ then concluded that because Williams failed to establish that his discharge was caused by any of the protected activities in which he engaged, his complaint should be dismissed. R. D. & O. on R. at 8.

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 at 29 C.F.R. Part 1978. Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of

[3] The FMCSA regulations provide an exception for school bus operations, 49 C.F.R. § 390.3(f)(1), but motor carriers such as Capitol must adhere to the regulations covering all drivers. Drivers must prepare a written report identifying defects or deficiencies in their vehicles at the end of the work day. 49 C.F.R. § 396.11. Also, drivers must inspect a vehicle before driving it and review the previous driver's report. 49 C.F.R. § 396.13.

Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1978.109(a). In reviewing STAA cases, the ARB is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole. 29 C.F.R. § 1978.109(c)(3); *Lyninger v. Casazza Trucking Co.*, ARB No. 02-113, ALJ No. 2001-STA-038, slip op. at 2 (ARB Feb. 19, 2004). The ARB reviews the ALJ's conclusions of law de novo. *Olson v. Hi-Valley Constr. Co.*, ARB No. 03-049, ALJ No. 2002-STA-012, slip op. at 2 (ARB May 28, 2004).

DISCUSSION

The STAA protects employees who engage in protected activity from discharge, discipline, and discrimination. STAA-protected activity occurs when the employee files a complaint or begins a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or when an employee testifies or will testify in such a proceeding. *See* 49 U.S.C.A. § 31105 (a).

To prevail on a STAA complaint, the complainant must prove by a preponderance of the evidence that he engaged in protected activity; that his employer was aware of the protected activity; that the employer discharged, disciplined, or discriminated against him regarding his pay, or terms or privileges of employment; and that the protected activity was the reason for the adverse action. *Bryant v. Mendenhall Acquisition Corp.,* ARB No. 04-014, ALJ No. 2003-STA-036, slip op. at 4 (ARB June 30, 2005). Failure to establish any one of these elements requires dismissal of the complaint.[4]

In STAA cases, the ARB has adopted the *McDonnell-Douglas*, burden-shifting framework developed under Title VII of the Civil Rights Act of 1964. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). Thus, the complainant must first adduce evidence that he engaged in STAA-protected activity, that the employer was aware of this activity, and that the employer took adverse action against the complainant because of the protected activity. *Bethea v. Wallace Trucking Co.*, ARB No. 07-057, ALJ No. 2006-STA-023, slip op. at 7 (ARB Dec. 31, 2007). Only if the complainant makes this prima facie showing does the burden shift to the employer to produce a legitimate, non-discriminatory reason for the adverse action. If the employer meets this burden, the prima facie inference "drops from the case," and the complainant must then prove intentional discrimination by a preponderance of the evidence. *Israel v. Schneider*

[4] In its remand decision, the ARB accepted the ALJ's findings that the parties were covered under the STAA and that Williams was subject to the adverse action of discharge. *Williams*, slip op. at 4. Additionally, the ARB affirmed the ALJ's findings that Williams's internal complaints to Best about the safety of tires and an exhaust system constituted protected activity, that his requests to Best about inventory and equipment were not protected activity, and that his complaint about tire tread on September 24 "did not contribute" to Best's decision to fire him. *Id*. at 5-7.

Nat'l Carriers, Inc., ARB No. 06-040, ALJ No. 2005-STA-051, slip op. at 7 (ARB July 31, 2008).

On remand, the ALJ applied this burden-shifting framework, which she had outlined in her initial decision, to determine whether Williams established that his protected activity of internal complaints about the drivers' defect reports was causally related to his firing. The ALJ accorded "full credence" to Best's explanations for firing Williams. She found that Williams offered no evidence that Best's reasons for firing him were pretext. The ALJ concluded that despite the temporal relationship between Williams's protected activity and his discharge, his complaints about the need for defect reports and the drivers' failure to fill them out correctly did not factor into Best's decision to fire him.

Substantial evidence supports the ALJ's findings. Best testified that when Williams told him that the drivers needed proper inspection reports, Best obtained the forms for the drivers. TR at 269; *see* 29 C.F.R. § 396.11. Best agreed that the drivers did not always complete the reports properly, but as time went on, the problems were corrected. TR at 275-277, 296. The record contains copies of the completed reports for September 2005 showing that the drivers noted defects in the buses they operated. EX 14. Further, two employees testified that they completed pre-trip inspections and documented maintenance and repair items in the inspection reports. TR at 216-19 (Josh Best); TR at 32-34, 42-43 (Lowell Bolden). Based on this evidence, we affirm the ALJ's conclusion that Williams did not prove that Best fired him because of this protected activity.

In our initial decision, we affirmed the ALJ's findings that Williams engaged in unacceptable conduct in the workplace, that he was frequently absent from the bus facility, and that his relationship with Best had soured. *Williams*, slip op. at 7. Inasmuch as the record contains substantial evidence to support the ALJ's finding that Best fired Williams because of poor performance and not for his protected activities, we accept the ALJ's recommended decision on remand and dismiss Williams's complaint. *See Noeth v. Indiana Western Express, Inc.*, ARB No. 07-042, ALJ No. 2006-STA-034 (ARB Mar. 19, 2009).

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge