



In the Matter of:

**JAMES M. MINNE and,
ROBERT W. PRIVOTT,**

COMPLAINANT

v.

STAR AIR, INC.,

RESPONDENTS.

ARB CASE NO. 08-131

ALJ CASE NO. 2004-STA-026

DATE: December 31, 2008

BEFORE: THE ADMINISTRATIVE REVIEW BOARD:

ORDER DISMISSING APPEAL

This case arose under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA)¹ and its implementing regulations² when James M. Minne and Robert W. Privott filed complaints alleging that Star Air retaliated against them in violation of the STAA's whistleblower protection provisions. On August 27, 2008, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order on Remand (R. D. & O.) finding that Star Air violated the STAA, but reserving the issue of the amount of damages for which Star Air was liable for further adjudication. Nevertheless, the R. D. & O. included the following "**NOTICE OF REVIEW:**" "The administrative law judge's Recommended

¹ 49 U.S.C.A. § 31105 (West 2008). The STAA has been amended since Minne and Privott filed their complaints. *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 are applicable to these complaints because even if the amendments applied to the complaints, they are not implicated by the interlocutory review issue presented here and thus, the amendments would not affect our decision.

² 29 C.F.R. Part 1978 (2007).

Decision and Order, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor”³

In response to the R. D. & O., the Board issued a Notice of Review and Briefing Schedule permitting either party to submit briefs in support of or in opposition to the ALJ’s order. Neither party submitted a brief pursuant to the Board’s notice.

On December 5, 2008, the ALJ issued an Erratum. He explained:

On August 27, 2008, I issued a Recommended Decision and Order on Remand in the above captioned case. While finding a violation of the [STAA], the damages portion of the claim was reserved for further adjudication. The Decision was issued, however, with a Notice of Review. The addition of the Notice of Review was in error. The Decision was not intended to be an appealable order as it did not dispose of the entire complaint. Accordingly, the paragraph captioned “Notice of Review” is stricken from the Decision.⁴

We agree that a recommended decision that does not dispose of the entire complaint generally is not ripe for review.⁵ Accordingly in response to the ALJ’s Erratum, we **DISMISS** this appeal. We will review the case in its entirety when and if the ALJ issues his recommended decision disposing of the merits of this case.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

³ R. D. & O. at 9. See 29 C.F.R. 1978.109 (a) (“The decision shall be forwarded immediately, together with the record, to the Secretary for review by the Secretary or his or her designee.”) The Secretary of Labor has delegated to the Administrative Review Board her authority to issue final agency decisions under STAA. Secretary’s Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002); 29 C.F.R. § 1978.109(c)(1).

⁴ Erratum at 1.

⁵ Cf. *Walsh v. Resource Consultants, Inc.*, ARB No. 05-123, ALJ No. 2004-TSC-001 (ARB Aug. 10, 2005) (the Secretary and the Board have held many times that interlocutory appeals are generally disfavored, and that there is a strong policy against piecemeal appeals).