



**In the Matter of:**

**ANTHONY D. REAVES,**

**ARB CASE NO. 09-079**

**COMPLAINANT,**

**ALJ CASE NO. 2009-STA-019**

**v.**

**DATE: May 29, 2009**

**MARTEM TRANSPORT, LTD.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND DISMISSAL ORDER**

Anthony D. Reaves complained that Marten Transport, Ltd., violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA),<sup>1</sup> and its implementing regulations,<sup>2</sup> when it discharged him on November 4, 2008 for using his vehicle in an unauthorized manner.

After an investigation, the Department of Labor's Occupational Safety and Health Administration (OSHA) found that Reaves's actions in providing two passengers a ride to Detroit, Michigan, without Marten's authorization were not protected under the STAA.

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<sup>1</sup> 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.

<sup>2</sup> 29 C.F.R. Part 1978 (2008).

Accordingly, OSHA dismissed the complaint.<sup>3</sup> Reaves timely requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup>

The ALJ scheduled the case for hearing, but on February 11, 2009, conducted a telephone conference with Reaves and an attorney representing Marten.<sup>5</sup> The ALJ granted Reaves 30 days to seek the services of an attorney.<sup>6</sup> By letter dated March 11, 2009, Reaves informed the ALJ that he had consulted an attorney and wished to withdraw his case.<sup>7</sup> By Recommended Order dated April 8, 2009, the ALJ construed Reaves's letter as a request to withdraw any objection to OSHA's findings, dismissed his complaint, and cancelled the hearing.

The ALJ forwarded his Recommended Order and the administrative record to the Administrative Review Board (ARB) pursuant to the STAA's automatic review provision.<sup>8</sup> The Secretary of Labor has delegated to the ARB her authority to issue final agency decisions under the STAA.<sup>9</sup> When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.<sup>10</sup> In reviewing the ALJ's legal conclusions, the ARB, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ."<sup>11</sup> Therefore, the ARB reviews the ALJ's legal conclusions de novo.<sup>12</sup>

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<sup>3</sup> OSHA's Findings and Order dated Jan. 13, 2009 (unpaginated).

<sup>4</sup> Undated letter from Reaves received on Feb. 9, 2009. *See* 29 C.F.R. § 1978.105.

<sup>5</sup> Transcript of telephone conference on Feb. 11, 2009.

<sup>6</sup> Transcript at 10.

<sup>7</sup> Reaves letter dated March 11, 2009. *See* 29 C.F.R. § 1978.111(c) (at any time before the OSHA findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge).

<sup>8</sup> *See* 29 C.F.R. § 1978.109(c)(1).

<sup>9</sup> 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. § 1978.109(a).

<sup>10</sup> 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); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

<sup>11</sup> 5 U.S.C.A. § 557(b) (West 1996).

<sup>12</sup> *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

On April 23, 2009, the ARB issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs in support of or in opposition to the ALJ's Recommended Order within thirty days of the ALJ's decision, or by May 9, 2009.<sup>13</sup> Marten responded that it would not file a brief, and Reaves did not respond to the ARB's order.

Reaves 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, we **DISMISS** Reaves's case.

**SO ORDERED.**

**WAYNE C. BEYER**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

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<sup>13</sup> See 29 C.F.R. § 1978.109(c)(2).