



**In the Matter of:**

**DWIGHT TOLAND,**

**ARB CASE NO. 09-091**

**COMPLAINANT,**

**ALJ CASE NO. 2009-STA-011**

**v.**

**DATE: January 19, 2011**

**FIRSTFLEET, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, Joanne Royce, *Administrative Appeals Judge*, and Luis A. Corchado, *Administrative Appeals Judge***

**FINAL DECISION AND ORDER**

Dwight Toland filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on October 17, 2008. Toland alleged that his employer, Firstfleet, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified, when it terminated his employment. 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp.2010). The STAA protects employees from discrimination when they report violations of commercial motor vehicle safety rules or when they refuse to operate a vehicle when such operation would violate those rules. A Department of Labor (DOL) Administrative Law Judge (ALJ) granted Firstfleet's motion for summary decision and dismissed Toland's complaint because Toland failed to set forth specific facts or present evidence from which some issue of material fact could be discerned and because Firstfleet was entitled to judgment as a matter of law. We agree with the ALJ and summarily affirm the ALJ's order.

In summarily affirming the ALJ's Decision and Order, we limit our comments to the most critical points. First, we review a recommended decision granting summary decision de novo. *Hardy v. Mail Contractors of America*, ARB No. 03-07, 2002-STA-022, slip op. at 2 (ARB Jan. 30, 2004). We view the evidence in the light most favorable to Toland (the non-moving party) to determine whether there are any genuine issues of material fact and whether

Firstfleet was entitled to judgment as a matter of law. *Lee v. Schneider Nat'l, Inc.*, ARB No. 02-102, ALJ No. 2002-STA-025, slip op. at 2 (ARB Aug. 28, 2003).

Toland asserts that Firstfleet fired him because he engaged in protected activity. To prevail on his claim, Toland is required to prove several elements: (1) he engaged in protected activity; (2) Firstfleet knew of his protected activity; and (3) Firstfleet took adverse employment action against him because of the protected activity. *See Peters v. Renner Trucking & Excavating*, ARB No. 08-117, ALJ No. 2008-STA-030, slip op. at 4 (ARB Dec. 18, 2009). The last element listed is the “causation” element and the focus of this decision. Firstfleet provided documentation showing that Toland was fired because he did not provide the Human Resources Department (the “HR Department”) with the appropriate documentation for the extended medical leave he requested beginning on September 7, 2008. *See* Firstfleet’s Exhibits 1 through 6 (particularly the termination letter, Exhibit 6). It is undisputed that Firstfleet initially approved Toland’s extended leave request, but Toland was required to provide a written medical excuse for the medical leave from September 7 through September 26, 2008. *See* Firstfleet’s Exhibits 1 and 2. Toland admitted that Firstfleet “never instructed him to operate a commercial motor vehicle during his illness.” *See* Complainant’s “Opposition [sic] for Summary Decision,” at 1. Toland’s written opposition before the ALJ confirmed that his failure to comply with Firstfleet’s leave procedures and documentary requests led to the termination of his employment. Toland did not present evidence to the ALJ that Firstfleet’s stated reason about the medical documentation was not the true reason. Termination for failing to comply with personnel policies is not termination because of an activity protected under STAA. Given Toland’s admissions and failure to present evidence that could discredit Firstfleet’s stated reason for termination of Toland’s employment, Toland cannot prove an essential element of his claim, the element of causation.

#### CONCLUSION

The ALJ’s decision correctly found that there was no material issue of fact and that Firstfleet is entitled to judgment as a matter of law. Accordingly, we affirm the ALJ’s order dismissing the complaint and **DENY** Toland’s complaint.

**SO ORDERED.**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**