



In the Matter of:

RONALD OLIVERI, JR.,

ARB CASE NO. 09-097

COMPLAINANT,

ALJ CASE NO. 2009-STA-026

v.

DATE: August 14, 2009

NORTH STAR FOOD SERVICE, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Julie A. Uebler, Esq., *Rubin, Fortunato & Harbison, P.C.*, Paoli, Pennsylvania

For the Respondent:

**A. Jack Finklea, Esq., *Scopelitis, Garvin, Lighth, Hanson & Feary*,
Indianapolis, Indiana**

FINAL DECISION AND ORDER DISMISSING COMPLAINT

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA).¹ On October 17, 2008, Ronald Oliveri, Jr., filed a complaint with the Secretary of Labor alleging that his employer, North Star Food Service, Inc., (North Star), violated the employee protection provision of the STAA,

¹ 49 U.S.C.A. § 31105 (West 2008), and implementing regulations, 29 C.F.R. Part 1978 (2007).

which 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.

After investigating Oliveri's complaint, the Occupational Safety and Health Administration (OSHA) found that North Star did not violate the STAA. Oliveri objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). The ALJ scheduled a hearing on June 9, 2009. Prior to the hearing date, Oliveri's counsel informed the ALJ that on May 15, 2009, Oliveri had filed an action in the United States District Court for the Middle District of Pennsylvania. The STAA permits a complainant to file an action in the appropriate federal district court if the Secretary of Labor has not issued a final decision within 210 days of the date of the complaint and if there is no showing that the complainant has acted in bad faith to delay the proceedings.² Oliveri filed his action exactly 210 days after he filed his complaint with OSHA. Therefore, on May 26, 2009, the ALJ dismissed Oliveri's case.

The Secretary of Labor has delegated her authority to issue final agency decisions under the STAA to the Administrative Review Board.³ This case comes before the Board under the STAA's automatic review provisions.⁴

Since Oliveri has chosen to proceed in district court, the Department of Labor no longer has jurisdiction over his case. As the statute provides, the "district court of the

² The STAA provides for de novo review in an appropriate federal district court under specific circumstances:

With respect to a complaint under [the Act], if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

49 U.S.C.A. § 31105(c).

³ 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. Part 1978.

⁴ 29 C.F.R § 1978.109(a).

United States . . . shall have jurisdiction over such an action.”⁵ We therefore **DISMISS** this case on the ground that the Complainant has removed it to district court.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁵ *Stone v. Duke Energy Corp.*, 432 F.3d 320, 322 (4th Cir. 2005) (under the Sarbanes-Oxley Act of 2002 (SOX), “when [complainant] filed his first complaint in federal court . . . jurisdiction became lodged in the district court, depriving the ALJ of jurisdiction”); *Kelly v. Sonic Auto.*, ARB No. 08-027, ALJ No. 2008-SOX-003, slip op. at 4 (ARB Dec. 17, 2008) (the filing of Kelly’s SOX complaint in district court deprived the Department of Labor of jurisdiction over his complaint.); *Powers v. Pinnacle Airlines*, ARB No. 05-138, ALJ No. 2005-SOX-065, slip op. at 5 (ARB Oct. 31, 2005) (the district court obtained jurisdiction of the complainant’s SOX complaint once she filed suit in district court and thus the ALJ no longer had jurisdiction to enter any order in the case other than one dismissing it on the ground that the complainant had removed the case to district court).