



**In the Matter of:**

**JOHN BEHRMANN,**

**ARB CASE NO. 09-116**

**COMPLAINANT,**

**ALJ CASE NO. 2008-STA-062**

**v.**

**DATE: August 14, 2009**

**DEPENDABLE CARRIERS and  
ALEKSANDAR TODOSIJEVIC,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND DISMISSAL ORDER**

John Behrmann complained that the Respondents, Dependable Carriers and Aleksandar Todosijeovic, 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 they terminated his employment because he refused to drive and then complained about a truck that he believed was unsafe to drive.

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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).

After an investigation, the Department of Labor's Occupational Safety and Health Administration (OSHA) found that Behrmann did not engage in protected activity until after the Respondents terminated his employment.<sup>3</sup> Behrmann requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup>

The ALJ scheduled the case for hearing, but on July 8, 2009, Behrmann filed a Motion for Dismissal Without Prejudice in which he "moved [the ALJ] 'to dismiss his complaint and this proceeding without prejudice.'" As grounds for this dismissal, Behrmann averred that he had learned that the Federal Motor Carrier Safety Administration had revoked the Respondent, Dependable Carriers, Inc.'s, authority to operate as a motor carrier effective May 19, 2009; and that the Respondent, Todosijevic, stated that Dependable Carriers, Inc. had ceased operation in May 2009 and that there were no funds available to pay Behrmann. Accordingly, Behrmann concluded that it would be a waste both of his time and resources and those of the Department of Labor to further pursue the Respondents.<sup>5</sup> By Recommended Order of Dismissal dated July 10, 2009, the ALJ construed Behrmann's letter as a request to withdraw any objection to OSHA's findings, dismissed his complaint without prejudice, and cancelled the hearing.

The ALJ forwarded her Recommended Order and the administrative record to the Administrative Review Board (ARB) pursuant to the STAA's automatic review provision.<sup>6</sup> The Secretary of Labor has delegated to the ARB her authority to issue final agency decisions under the STAA.<sup>7</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>8</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

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<sup>3</sup> OSHA's Findings and Order dated Aug. 21, 2008 (unpaginated).

<sup>4</sup> Complainant's Objection to Secretary's Findings and Order (Sept. 5, 2008). *See* 29 C.F.R. § 1978.105.

<sup>5</sup> Complainant's Motion for Dismissal Without Prejudice at 1 (July 8, 2009).

<sup>6</sup> *See* 29 C.F.R. § 1978.109(c)(1).

<sup>7</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>8</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).

initial decision . . . .”<sup>9</sup> Therefore, the ARB reviews the ALJ’s legal conclusions de novo.<sup>10</sup>

On July 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 August 9, 2009.<sup>11</sup> Neither party filed a response.

Behrmann 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** Behrmann’s case, without prejudice.

**SO ORDERED.**

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

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

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<sup>9</sup> 5 U.S.C.A. § 557(b) (West 1996).

<sup>10</sup> *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

<sup>11</sup> *See* 29 C.F.R. § 1978.109(c)(2).