



In the Matter of:

STEVEN BURROWS,

ARB CASE NO. 09-134

COMPLAINANT,

ALJ CASE NO. 2006-STA-029

v.

DATE: June 30, 2010

J. B. HUNT TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Wayne C. Beyer, *Administrative Appeals Judge*

**FINAL DECISION AND ORDER
DISMISSING COMPLAINT WITH PREJUDICE**

The Complainant, Steven Burrows, alleged that J. B. Hunt Transport, Inc. violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and re-codified,¹ and its implementing regulations,² when J. B. Hunt harassed him and ultimately terminated his employment because he refused to drive a truck with a missing

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2009), 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. The amended provisions are not at issue in this case and thus do not affect our decision.

² 29 C.F.R. Part 1978 (2009).

mud-flap. A Department of Labor Administrative Law Judge (ALJ) dismissed Burrows's complaint after Burrows requested that the case be dismissed. We affirm.

BACKGROUND

Burrows alleged that J. B. Hunt harassed him and then terminated his employment because he refused to drive a truck with a missing mud-flap.³ Following an investigation, the Secretary found that there was no causal connection between Burrows's protected activities and the termination of his employment. Thus, the Secretary found that Burrows's complaint had no merit.⁴

Burrows filed an objection to the Secretary's findings and requested a hearing before an ALJ. On August 11, 2009, however, Burrows, through counsel, filed a Motion to Dismiss with Prejudice. On August 25, 2009, the ALJ issued a Recommended Order Dismissing Complaint noting that pursuant to 29 C.F.R. § 1978.111(c), a complainant may withdraw his objections to the Secretary's findings with an ALJ at any time before the findings or order becomes final. Thus, the ALJ construed Burrows's request for dismissal as a withdrawal of objections to the Secretary's preliminary findings.⁵

The case is now before the ARB pursuant to the STAA's automatic review provisions.⁶ The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."⁷ Although the ARB issued a Notice of Review and Briefing Schedule permitting each party to submit a brief in support of or in opposition to the ALJ's order, neither party submitted a brief.

The ALJ's recommended order complies with applicable STAA statutory and regulatory provisions. The STAA's implementing regulation at 29 C.F.R. § 1978.111(c) provides:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written

³ Secretary's Findings at 1 (Apr. 20, 2006).

⁴ *Id.* at 2.

⁵ ALJ's Recommended Order at 2 (May 11, 2010); *see Mysinger v. Rent-A-Driver*, 1990-STA-023 (Sec'y Sept. 21, 1990).

⁶ 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

⁷ 29 C.F.R. § 1978.109(c).

withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

Consistent with 29 C.F.R. § 1978.111(c), the ALJ recommended that Burrows's claim be dismissed based on his request for a dismissal, which the ALJ treated as a withdrawal of his objections to the findings of the Secretary.

CONCLUSION

Neither party has objected to the ALJ's decision to recommend dismissal of this claim, and we know of no reason to reject the ALJ's recommended decision. Accordingly, Burrows's claim is hereby **DISMISSED** with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge