



In the Matter of:

JOSEPH BELAJONAS,

ARB CASE NO. 09-135

COMPLAINANT,

ALJ CASE NO. 2009-STA-027

v.

DATE: November 18, 2009

**LOAD ONE INC., and
BEACON INDUSTRIAL STAFFING,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER DISMISSING COMPLAINT

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA).¹ On September 19, 2008, Joseph Belajonas filed a complaint with the Secretary of Labor alleging that his employer, Load One and Beacon Industrial Staffing (Beacon), violated STAA, Section 31105, when it terminated him in retaliation for his complaining that he was forced to drive a smelly, unsanitary truck. Section 31105 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 Belajonas's complaint, the Occupational Safety and Health Administration (OSHA) found that Beacon did not violate the STAA. Belajonas objected to

¹ 49 U.S.C.A. § 31105 (West 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.

OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).

The ALJ assigned to the case issued a Notice of Hearing and Pre-hearing Order. On or about April 9, the ALJ was informed that Belajonas had died. His widow, Caroline Belajonas, indicated that she would like to reschedule and prepare to prosecute her husband's claim. The ALJ issued a modified Notice of Hearing and Pre-hearing Order directing parties to complete discovery by July 7, 2009. Ms. Belajonas failed to comply with Beacon's discovery requests, and on June 29, 2009, Beacon filed a request for dismissal. Given the absence of communication, on July 24th, the ALJ issued an order requesting Belajonas to show cause why the case should not be dismissed for failure to prosecute. Ms. Belajonas did not answer the show cause order. Thereafter, on August 28, 2009, the ALJ dismissed the case for failure to prosecute.

The Administrative Review Board "shall issue a final decision and order based on the record and the decision and order of the administrative law judge" in cases arising under Section 31105.² This case is before the Board pursuant to the automatic review provisions found at 29 C.F.R. § 1978.109(a).

The Board issued a Notice of Review and Briefing Schedule permitting the parties to submit briefs in support of or in opposition to the ALJ's order. Beacon filed a letter in response indicating it agreed with the ALJ's opinion.

Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution.³ This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases."⁴ Like the courts, the Department of Labor's Administrative Law Judges and this Board must necessarily manage their dockets in an effort to "achieve the orderly and expeditious disposition of cases." Thus, the Board will affirm an ALJ's recommended decision and order on the grounds of abandonment where the facts dictate that a party has failed to prosecute his or her case.⁵

Ms. Belajonas failed to comply with the ALJ's discovery order and failed to respond to the ALJ's show cause order. Based upon the record before us, we conclude that substantial

² 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001).

³ *Link v. Wabash R R. Co.*, 370 U.S. 626, 629-30 (1962).

⁴ *Id.* at 630-631.

⁵ *Kruml v. Patriot Express*, ARB No. 03-015, ALJ No. 2002-STA-007, slip op. at 4-5 (ARB Feb. 25, 2004); *Assistant Sec'y for OSH & Reichelderfer v. Bridge Transp., Inc.*, ARB No. 02-068, ALJ No. 2001-STA-040, slip op. at 3 (ARB Aug. 29, 2003).

evidence and well-established legal precedent support the ALJ's recommended decision to dismiss.⁶

CONCLUSION

Accordingly, the Board **ACCEPTS** the ALJ's Recommended Order and **DISMISSES** Belajonas's complaint.

SO ORDERED.

WAYNE C. BEYER
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

⁶ *Rose v. ATC Vancom, Inc.*, ARB No. 05-091, ALJ No. 2005-STA-014 (ARB Aug. 31, 2006).