



**In the Matter of:**

**CARL B. BEDWELL, Sr.,**

**ARB CASE NO. 10-024**

**COMPLAINANT,**

**ALJ CASE NO. 2009-STA-060**

**v.**

**DATE: October 27, 2011**

**SPIRIT MILLER NE, L.L.C.,**

**RESPONDENT**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Carl B. Bedwell, Sr., *pro se*, Leeds, Alabama**

*For the Respondent:*

**Carol C. Barnett, Esq., *Polsinelli Shughart, P.C.*, St. Joseph, Missouri**

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Luis A. Corchado, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge***

## **FINAL DECISION AND ORDER**

Carl B. Bedwell, Sr. filed a complaint against Spirit Miller NE, L.L.C. (Spirit), under the whistleblower protection provision of the Surface Transportation Assistance Act of 1982 (STAA), as amended, and its implementing regulations.<sup>1</sup> He alleged that

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<sup>1</sup> 49 U.S.C.A. § 31105 (Thomson/West 2011); 29 C.F.R. Part 1978 (2011).

Spirit disqualified him from driving because he complained about having no insurance. The Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) dismissed Bedwell's complaint as untimely, and he requested a hearing before an Administrative Law Judge (ALJ). After the hearing, the ALJ dismissed Bedwell's complaint as untimely filed. He appealed to the Administrative Review Board (ARB). We affirm.

## BACKGROUND

Bedwell signed a one-year, independent-contractor agreement with Spirit on September 2, 2005.<sup>2</sup> Spirit is in the drive-away trucking industry, transporting trailers from manufacturer to buyer or between lessors and lessees. Spirit assigned Bedwell various deliveries over the next few months. His last assignment ended in Milbury, Massachusetts on December 31, 2005.<sup>3</sup>

In mid-January 2006 Bedwell began calling Spirit's dispatcher, Susan Stanton, for more assignments. She stated in her deposition that she explained to Bedwell that business generally slacked off from the end of December through mid-February and that she had no work for him. Stanton stated that Bedwell began leaving voice mails at night, "very upset that we had not used him" and complaining that he had not worked the whole month of January. Stanton testified that she returned Bedwell's calls and repeatedly explained the lack of business, but Bedwell accused Spirit of not assigning him deliveries because of a complaint he had filed against his previous employer. Stanton added that the last time she talked with Bedwell, he got really irate on the phone so she told him, "Mr. Bedwell, we're done," and hung up.<sup>4</sup> Bedwell received no further assignments.

### *The 2006 complaint*

Bedwell filed his first complaint against Spirit with OSHA on October 31, 2006. He alleged that he stopped working for Spirit on December 31, 2005, because he was disqualified from driving after he complained about not having insurance. OSHA dismissed the complaint as untimely filed.<sup>5</sup>

Prior to the hearing that Bedwell requested, the ALJ ordered Bedwell to show why his complaint should not be dismissed as untimely filed. Subsequently, the ALJ

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<sup>2</sup> Respondent's Exhibit, (RX) 1.

<sup>3</sup> RX 9.

<sup>4</sup> September 30, 2009 Stanton Deposition at 28, 35-37.

<sup>5</sup> RX 4.

dismissed Bedwell's complaint because it was not filed within 180 days of the alleged discharge on December 31, 2005.<sup>6</sup> Bedwell appealed to the ARB, which concluded that Bedwell was not entitled to equitable tolling and dismissed the complaint.<sup>7</sup> Bedwell did not appeal further.

### *The 2008-09 complaints*

Bedwell filed a second complaint with OSHA on September 12, 2008, which OSHA dismissed. Bedwell again requested a hearing, but the ALJ dismissed the complaint as untimely filed.<sup>8</sup> Bedwell appealed, and the ARB again affirmed the ALJ's dismissal.<sup>9</sup>

Bedwell filed a third complaint on March 11, 2009; ALJ No. 2009-STA-060. He asked OSHA to reopen his previous complaint because, he alleged, in early March he discovered that Spirit did not have the legal authority to operate its business in New York, thus violating the STAA and impacting his qualification to drive commercial vehicles in December 2005. OSHA dismissed the complaint as untimely filed and Bedwell requested a third hearing.

Prior to the scheduled September 22, 2009 hearing, Spirit filed a Motion to Dismiss on the grounds that the issue of timeliness had been fully litigated and finally decided. Spirit asked that Bedwell's complaint be dismissed. In his response to the motion, Bedwell did not address the timeliness issue but instead claimed that Spirit had "negated" his employment protection rights under the STAA.

The ALJ reviewed the prior decisions of the ALJ and ARB and concluded that issue preclusion, also known as collateral estoppel, barred Bedwell's complaint.<sup>10</sup> The

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<sup>6</sup> *Bedwell v. Spirit-Miller NE, LLC*, ALJ No. 2007-STA-006 (Dec. 27, 2006). *See* 49 U.S.C.A. § 31105, 29 C.F.R. § 1978.102(d).

<sup>7</sup> *Bedwell v. Spirit-Miller NE, LLC*, ARB No. 07-038, ALJ No. 2007-STA-006 (ARB Oct. 31, 2007).

<sup>8</sup> *Bedwell v. Spirit-Miller NE, LLC*, ALJ No. 2007-STA-029 (May 12, 2009).

<sup>9</sup> *Bedwell v. Spirit-Miller NE, LLC*, ARB No. 09-094, ALJ No. 2009-STA-029 (ARB Aug. 27, 2009).

<sup>10</sup> Collateral estoppel, or "issue preclusion," is a concept included within the doctrine of res judicata, which "refers to the effect of a judgment in foreclosing a relitigation of a matter that has been litigated and decided." Collateral estoppel applies in administrative adjudication. *Hasan v. Sargent & Lundy*, ARB No. 05-099, ALJ No. 2002-ERA-032, slip op. at 6-7 (ARB Aug. 31, 2007).

ALJ noted that Bedwell had not argued or presented any new evidence to show that his complaint was timely filed. Accordingly, the ALJ dismissed Bedwell's complaint.<sup>11</sup>

### JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions under the STAA and its implementing regulations at 29 C.F.R. Part 1978.<sup>12</sup> The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."<sup>13</sup> We are bound by the ALJ's factual findings if those findings are supported by substantial evidence on the record considered as a whole.<sup>14</sup> The ARB reviews the ALJ's conclusions of law de novo.<sup>15</sup>

### DISCUSSION

Collateral estoppel "bars successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim." A prior resolution has preclusive effect when the following four elements are satisfied: (1) the precise issue raised in the present case was raised and actually litigated in the prior proceeding; (2) determination of the issue was necessary to the outcome of the prior proceeding; (3) the prior proceeding resulted in a final judgment on the merits; and (4) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding.<sup>16</sup>

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<sup>11</sup> Recommended Decision and Order at 2-4. The ALJ in an "abundance of caution," adjudicated the merits of Bedwell's complaint and concluded that Spirit had not violated the STAA. Given our disposition of this case, we need not address the ALJ's factual findings or legal conclusions.

<sup>12</sup> Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 1978.109(a).

<sup>13</sup> *Jackson v. Eagle Logistics, Inc.*, ARB No. 07-005, ALJ No. 2006-STA-003, slip op. at 3 (ARB June 30, 2008) (citations omitted).

<sup>14</sup> 29 C.F.R. § 1978.109(c)(3).

<sup>15</sup> *Olson v. Hi-Valley Constr. Co.*, ARB No. 03-049, ALJ No. 2002-STA-012, slip op. at 2 (ARB May 28, 2004).

<sup>16</sup> *Abbs v. Con-Way Freight, Inc.*, ARB No. 08-017, ALJ No. 2007-STA-037, slip op. at 9 (ARB July 27, 2010) (citations omitted).

In this case, the dispositive issue - the timeliness of Bedwell's October 31, 2006 complaint that Spirit disqualified him from driving and thus violated the STAA - is identical to the issue in his 2008 and 2009 complaints. The timeliness issue was thoroughly litigated - OSHA dismissed Bedwell's initial complaint and his two subsequent complaints as untimely, he objected to OSHA's findings and requested a hearing three times, an ALJ dismissed all three complaints on the same basis, and the ARB affirmed two dismissals. The timeliness issue reached a valid and final judgment. Bedwell did not appeal to the U.S. Circuit Courts of Appeal either of the ARB's decisions affirming the dismissal of his complaints due to untimely filing. Finally, Bedwell has had ample opportunity to litigate the issue in pursuing his complaints over the years.<sup>17</sup>

On appeal to the ARB, Bedwell argued that Spirit became an unchartered carrier and had no insurance from April 2002 through August 2008 in violation of New York state and federal laws. Bedwell accused Spirit of abandoning him at Elkton, Maryland on December 31, 2005, when Stanton placed him out of service and expunged his trip logs from December 22-31, 2005, by throwing them in the trash. Bedwell also stated that Stanton committed perjury during her deposition. None of these allegations is germane to the timeliness issue.

In a November 9, 2009 letter to the ARB, Bedwell stated that he could not have appealed the last ARB decision because he had never received a copy. He stated that he now had to file a brief in opposition to the present dismissal based on the 2007 decision that he could not appeal. Bedwell added that at the September 22, 2009 hearing, Spirit "stole his identity to establish entitlement under 49 U.S.C.A. § 31105." Again, Bedwell did not address the timeliness issue.

In a November 29, 2009 letter to the ARB, Bedwell stated that he appeared in federal court in Birmingham, Alabama on September 22, 2009, and confirmed that Spirit operated an illegal business transportation terminal at Deposit, New York from 2005 through 2009 because it had no certificate of authority on the premises issued by the Federal Motor Carrier Safety Administration (FMCSA). He included a June 4, 2009

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<sup>17</sup> We note that Bedwell filed two more complaints against Spirit on June 27 and July 11, 2011. An ALJ consolidated these claims and dismissed both as untimely. *Bedwell v. Spirit-Miller NE, LLC*, ALJ Nos. 2007-STA-046, -049 (ALJ Sept. 13, 2011). The ARB recently declined to address the merits of an appeal because the complainant failed to submit a sworn affirmation explaining how his appeal and underlying complaint were not essentially a relitigation of his previous claims. *Saporito v. FPL Group, Inc.*, ARB No. 10-118, ALJ No. 2010-ERA-018, slip op. at 2-3 (ARB June 29, 2011). In this case, Bedwell continues to relitigate an issue that was first decided in 2006. His repetitious filing of complaints borders on abuse of process and invites legal sanctions. See *Howick v. Campbell-Ewald Co.*, ARB Nos. 03-156, 04-065; ALJ Nos. 2003-STA-006, 2004-STA-007, slip op. at 8 (ARB Nov. 30, 2004) (ARB affirmed the ALJ's dismissal of a complaint as a sanction for wasting adjudicatory resources).

dismissal notice from the Equal Employment Opportunity Commission stating that his discrimination charge dated April 22, 2009, was not timely filed. This complaint alleged that since December 31, 2005, Spirit had subjected Bedwell to harassment and intimidation by filing police reports against him for no apparent reason. On November 30, 2009, Bedwell sent a copy of a letter to Spirit's counsel asking whether Spirit would agree to participate in the settlement judge program. Neither of these letters addressed the timeliness issue.

Finally, on February 16, 2010, Bedwell responded to Spirit's motion to strike his brief as filed out of time. This letter refers to an IRS district court case and Michael and Howard Miller. It reiterates the lack of operating authority issues and alleges that Bedwell's signature on the September 2005 contract was a case of identity theft. Bedwell enclosed other documents from the FMCSA.

None of Bedwell's pleadings addresses the critical issue of timeliness. The facts remain as they were in his first complaint filed in 2006. He did not work for Spirit after December 31, 2005, and he did not file a STAA complaint until October 2006, well beyond the 180-day limitations period. His later filings are equally untimely. Three ALJ recommended decisions and two ARB decisions have addressed the timeliness issue and dismissed Bedwell's claims.<sup>18</sup> Therefore, we dismiss Bedwell's latest complaint.

**SO ORDERED.**

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

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

**LISA WILSON EDWARDS**  
**Administrative Appeals Judge**

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<sup>18</sup> The STAA regulations permit tolling of the 180-day limitations period under certain defined circumstances. 29 C.F.R. § 1978.102(d)(3). In this case, the ALJ did not address the principle of equitable tolling, but the two previous ARB decisions concluded that tolling was not appropriate. *Bedwell*, ARB No. 07-038, slip op. at 4-5; *Bedwell*, ARB No. 09-094, slip op. at 5.