



In the Matter of:

WILLIAM L. PECK,

ARB CASE NO. 10-047

COMPLAINANT,

ALJ CASE NO. 2009-STA-032

v.

DATE: February 26, 2013

HAPPY TRAILS, LLC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

William L. Peck, *pro se*, Live Oak, Texas

For the Respondent:

Robert J. Inger, Esq., Bellaire, Texas

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

FINAL DECISION AND ORDER DISMISSING CASE

William L. Peck filed a complaint with the United States Department of Labor alleging that his employer, Happy Trails, LLC., violated Section 405, the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA)¹ when Happy Trails initially suspended him and subsequently terminated his employment. A Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision

¹ 49 U.S.C.A. § 31105 (Thomson/West Supp. 2012). The STAA's implementing regulations are found at 29 C.F.R. Part 1978 (2012).

and Order (R. D. & O.) finding that Happy Trails violated the STAA when it suspended Peck and then terminated his employment. The ALJ did not award damages to Peck and instead recommended “that the [Administrative Review] Board review and affirm the foregoing findings and then reopen and . . . remand the record to properly address the back pay, interest, and compensatory issues.”² The case is now before the Administrative Review Board pursuant to the STAA’s automatic review provisions.³

On November 15, 2010, Happy Trails filed a Suggestion of Bankruptcy with the Board. Happy Trails stated that it had filed a petition for relief pursuant to Chapter 11 of the Bankruptcy Code in the Southern District of Texas-Houston Division (Case No. 10-39248). Happy Trails requested that administrative proceedings be stayed pursuant to 11 U.S.C.A. § 362 (West 2006)(the automatic stay provision).

The Board has held that the Bankruptcy Code’s automatic stay provision applies to cases litigated by private parties under the STAA’s whistleblower protection provision.⁴ Because it was undisputed that Peck filed his whistleblower complaint before Happy Trails filed for bankruptcy, the Board stayed further proceedings in this case.

Peck filed the most recent status report on bankruptcy proceedings with the Board on April 17, 2012. He notified the Board that bankruptcy proceedings were ongoing. On December 17, 2012, we requested the parties to provide, no later than January 14, 2013, a status report on the bankruptcy proceedings. We cautioned that failure to timely respond could result in an order to show cause why the case should not be dismissed.

Neither party responded to the Board’s December 17, 2012 Order. On February 4, 2013, we ordered the parties to show cause, no later than February 17, 2013, why the case should not be dismissed. Neither party responded. A review of the court docket for

² R. D. & O. at 14.

³ See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1). The Secretary of Labor has delegated to the Administrative Review Board her authority to issue final agency decisions under STAA. Secretary’s Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1978.109(a)(2011). The ALJ’s bifurcation of the merits and damages proceedings and the consequent automatic appeal of the merits decision only, contravened the Board’s longstanding policy against deciding piecemeal appeals. See *United States Dep’t of Labor v. Bank of America*, ARB No. 10-048, ALJ No. 1997-OFC-016 (ARB Apr. 29, 2010)(and cases cited therein). The Department of Labor has since amended the STAA regulations and has replaced the automatic review provision with a regulation requiring that parties must file a petition for review to obtain review of an ALJ’s decision. See 29 C.F.R. § 1978.110(a)(2012).

⁴ *Smith v. Lake City Enters*, ARB Nos. 08-091, 09-033; ALJ No. 2006-STA-032 (ARB Sept. 24, 2010); *Haubold v. KTL Trucking Co.*, ARB No. 00-065, ALJ No. 2000-STA-035 (Aug. 10, 2000).

the Happy Trails bankruptcy proceeding in the Public Access to Court Electronic Records (PACER) shows that the bankruptcy case for Happy Trails was closed on September 28, 2012.⁵ In light of the termination of the bankruptcy proceedings and the failure of either party to respond to the show cause order, the case is **DISMISSED**.

SO ORDERED.

LISA WILSON EDWARDS
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

⁵ *In re Happy Trails, LLC*, No. 10-39248 (Bankr. S.D. Tex., Sept. 28, 2012).