



In the Matter of:

TERRENCE WHEAT,

ARB CASE NO. 10-062

COMPLAINANT,

ALJ CASE NO. 2009-STA-020

v.

DATE: September 14, 2011

**GAINNEY TRANSPORTATION
SERVICES, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

FINAL DECISION AND ORDER

Terrence Wheat filed a whistleblower complaint with the United States Department of Labor alleging that his employer, Gainey Transportation Services, Inc., violated the employee protection provisions of the Surface Transportation Act, 49 U.S.C. § 31105, (as amended by the 9/11 Commission Act of 2007, Pub. L. No. 110-53). The STAA prohibits certain employers from retaliating against employees who complain about or report violations of commercial motor vehicle safety requirements.¹

After investigating Wheat's complaint, the Occupational Safety and Health Administration determined that Wheat's protected activity was not a contributing factor in his discharge. The case was referred to the Office of Administrative Law Judges for a formal hearing. An Administrative Law Judge (ALJ) stayed the administrative proceeding on March 24, 2009, when counsel for Gainey notified the ALJ that the company had commenced voluntary proceedings under Chapter 11 of the U.S.

¹ See 49 U.S.C.A. § 31105 (a)(1) (Thomson/West Supp. 2011).

Bankruptcy Code. The ALJ's order staying proceedings stated that there was "no indication that the Complainant had filed a proof of claim, relating to alleged liability arising out of the termination of employment, with the U.S. Bankruptcy Court."² On February 12, 2010, Gainey's counsel notified the ALJ that the bankruptcy court in Gainey's case had issued a reorganization order.³ The bankruptcy court's order became final on January 31, 2010.

On February 19, 2010, the ALJ, citing the bankruptcy court's order, dismissed the complaint and closed the case. The ALJ observed that the bankruptcy court's order established that the Respondent had "passed through bankruptcy" and that under STAA the company "is considered to be discharged and dismissed from the STAA cause of action."⁴

The Secretary of Labor has delegated to the Administrative Review Board (ARB) the authority to issue final agency decisions under the STAA and the implementing regulations at 29 C.F.R. Part 1978.⁵ The ARB automatically reviews STAA decisions issued on or before August 31, 2010.⁶ When reviewing STAA cases, the ARB reviews the ALJ's factual findings for substantial evidence, and legal conclusions de novo.⁷

The ARB issued a Notice of Review and Briefing Schedule, informing the parties of their right to file briefs in support of, or in opposition to, the ALJ's Order within 30 days of the issuance of the ALJ's decision, or March 19, 2010.⁸ Neither Wheat nor

² See *Wheat v. Gainey Transp. Servs., Inc.*, ALJ No. 2009-STA-020, slip op. at 2 (ALJ Mar. 24, 2009).

³ See Counsel Letter to ALJ (dated Feb. 12, 2010), attaching Findings Of Fact, Conclusions of Law, and Order Confirming Debtor's First Amended Joint Plan Of Reorganization Under Chapter 11 of the Bankruptcy Code With Modifications, *In Re Gainey*, Case No. 08-09092 (dated Dec. 31, 2009).

⁴ ALJ Decision at 2, citing *Powers v. Paper, Allied-Industrial Chemical and Energy Works Int'l Union*, ARB No. 04-111, ALJ No. 2004-AIR-019, slip op. at 8 (ARB Aug. 31, 2007),.

⁵ See Secretary's Order 1-2010, (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010).

⁶ 29 C.F.R. § 1978.109(c)(1).

⁷ *Husen v. LLK Transp., Inc.*, ARB No. 06-094, ALJ No. 2005-STA-001, slip op. at 2 (ARB Feb. 28, 2007).

⁸ See 29 C.F.R. § 1978(c)(2).

Gainey responded to the ARB's notice. Finding substantial evidence in the record to support the ALJ's order, we affirm.⁹

Upon consideration of the ALJ's Decision and the administrative record, we accept the order of dismissal and **DISMISS** Wheat's complaint.

SO ORDERED.

LISA WILSON EDWARDS
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

⁹ See, e.g., *Davis v. United Airlines, Inc.*, ARB No. 02-105, ALJ No. 2001-AIR-005, slip op. at 3 (ARB Apr. 26, 2006) (“confirmation of a Chapter 11 reorganization plan . . . discharges the debtor from any debt [including liability on any claim] that arose before the date of such confirmation.”).