



In the Matter of:

TYSON HARPER,

ARB CASE NO. 10-069

COMPLAINANT,

ALJ CASE NO. 2010-STA-002

v.

DATE: May 27, 2010

J.B. HUNT TRANSPORTATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*

FINAL DECISION AND ORDER

Tyson Harper filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on October 16, 2009. Harper alleged that his employer, J.B. Hunt Transportation (J.B. Hunt), violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified,¹ when it terminated his employment and blacklisted him. The STAA protects from discrimination 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 investigated the complaint. OSHA found, on behalf of the Secretary of Labor, that Harper's alleged protected activity was not in fact protected activity. Based on the Secretary's Findings, OSHA dismissed the complaint. Harper objected to the Secretary's Findings, but later moved to withdraw his

¹ 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp.2009).

objections. A Department of Labor (DOL) Administrative Law Judge (ALJ) granted Harper's motion and recommended dismissal of Harper's complaint. We affirm the Secretary's Findings and dismiss Harper's complaint.

J.B. Hunt employed Harper as a driver.² Harper alleged that J.B. Hunt terminated his employment May 26, 2009, because two days earlier he had pulled his truck-tractor and trailer off the road due to a blown tire, striking a boulder and damaging the step of the truck-tractor he was driving.³ Harper claimed that if he would have continued driving, actual violations of safety regulations would have occurred. Therefore, Harper claimed that his action of pulling off the road was protected under 49 U.S.C.A. § 31105(a)(1)(A).⁴ Harper also alleged that following his discharge, J.B. Hunt blacklisted him "by causing to be placed on his HireRight Report derogatory information."⁵

Following an investigation, OSHA found, on behalf of the Secretary of Labor, "Simply maneuvering a vehicle to the side of the road due to a blown tire is not protected activity under the STAA, as Complainant alleged in the complaint. Complainant failed to allege that he engaged in any whistleblowing activity."⁶ Accordingly, OSHA dismissed Harper's complaint.

On November 5, 2009, Harper filed an objection to the Secretary's preliminary findings and requested a hearing before a United States Department of Labor Administrative Law Judge. The ALJ set the hearing for February 26, 2010. On February 19, 2010, Harper withdrew his objection to the Secretary's Findings and requested that the proceeding be dismissed.

On February 22, 2010, the ALJ issued a Recommended Decision and Order Approving Complainant's Withdrawal of Objections to Secretary's Findings, Dismissing His STAA Complaint, and Order Cancelling Hearing. The ALJ noted that pursuant to 29 C.F.R. § 1978.111(c) (2009),⁷ a complainant may file a written withdrawal of objections to the Secretary's preliminary findings at any time before those findings become final.⁸

² Secretary's Findings at 1 (October 30, 2009).

³ Complaint at 2.

⁴ *Id.*

⁵ *Id.* at 3.

⁶ Secretary's Findings at 2 (October 30, 2009).

⁷ The 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 withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States

The case is now before the Administrative Review Board (ARB) pursuant to the STAA's automatic review provisions.⁹ The ARB "shall issue a final decision and order based on the record and the decision and order of the administrative law judge."¹⁰

The STAA's implementing regulations permit each party to submit a brief in support of or in opposition to the ALJ's order;¹¹ however, neither party submitted a brief.

The ALJ's recommended decision and order complies with applicable STAA statutory and regulatory provisions. Consistent with 29 C.F.R. § 1978.111(c), the ALJ recommended that Harper's complaint be dismissed based on his written request to withdraw his objections to the Secretary's Findings and to dismiss the proceeding.

CONCLUSION

Neither party objected to the ALJ's decision and order recommending dismissal of Harper's complaint, and we know of no reason to reject the ALJ's recommended decision and order. Accordingly, we **AFFIRM** the Secretary's Findings and **DISMISS** Harper's complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

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.

⁸ ALJ's recommended decision and order at 1.

⁹ 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1) (2009).

¹⁰ 29 C.F.R. § 1978.109(c)(1); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

¹¹ 29 C.F.R. § 1978.109(c)(2).