



**In the Matter of:**

**WILLIAM OPHARDT, JR.,**

**ARB CASE NO. 10-099**

**COMPLAINANT,**

**ALJ CASE NO. 2010-STA-010**

**v.**

**DATE: February 24, 2012**

**ISON INTERNATIONAL, LLC,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**ORDER DISMISSING COMPLAINT**

On October 6, 2009, the Complainant, William Ophardt, Jr., filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that Ison International, LLC, violated the employee protection provisions of section 405 of the Surface Transportation Assistance Act (STAA) and its implementing regulations.<sup>1</sup> Following an investigation, OSHA dismissed the complaint because it found that Ophardt did not engage in any protected activity. Secretary's Findings at 3 (Dec. 17, 2009). Ophardt appealed the matter and it was assigned to an Administrative Law Judge (ALJ) who scheduled a hearing. The hearing took place on January 26, 2010.

Following the hearing, the ALJ issued a Recommended Decision and Order (R. D. & O.) denying the Complainant's complaint on April 23, 2010. Pursuant to 29 C.F.R. § 1978.109(a) (2010), this decision and the record were forwarded immediately to the Administrative Review Board (the Board) for review and to issue a final decision. However, the regulations were subsequently amended and appeals to the Board are no longer automatic. Under the new regulation at 29 C.F.R. § 1978.110 (2011), any party seeking review of an ALJ decision must file a written petition for review with the Board.

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<sup>1</sup> 49 U.S.C.A. § 31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007); 29 C.F.R. Part 1978 (2011).

The Board received the ALJ's R. D. & O. and the record as provided in 29 C.F.R. § 1978.109(a), and on May 13, 2010, issued a Notice of Review and Briefing Schedule giving the parties until May 24, 2010, to file briefs. Neither of the parties filed a brief in this matter. Thus, the Board issued an Order to Show Cause requesting any party seeking review to file, no later than January 17, 2012, a statement requesting that such review continue. Neither party responded to the Order.

Courts possess the inherent power to dismiss a case for lack of prosecution. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962); *Mastrianna v. Northeast Utils. Corp.*, ARB No. 99-012, ALJ No. 1998-ERA-033, slip op. at 2 (ARB Sept. 13, 2000). See *Saporito v. Florida Power & Light Co.*, ARB Nos. 09-009, 09-010; ALJ No. 2008-ERA-014, slip op. at 2 (ARB Feb. 28, 2011); *Blodgett v. Tennessee Dep't of Env't & Conservation*, ARB No. 03-138, ALJ No. 2003-CAA-015, slip op. at 2 (ARB Mar. 22, 2004)(each recognizing inherent authority in administrative adjudications). 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." *Rose v. ATC Vancom, Inc.*, ARB No. 05-091, ALJ No. 2005-STA-014, slip op. at 3 (ARB Aug. 31, 2006) (citing *Link*, 370 U.S. 630-31).

The Board has given the parties ample opportunity to request review of this matter and they have not done so. Therefore, the Board considers this matter abandoned and denies review based upon failure to prosecute. 29 C.F.R. § 24.110(b).

#### CONCLUSION

Accordingly, the Board **DISMISSES** Ophardt's complaint.

**SO ORDERED.**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

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

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