



In the Matter of:

SCOTT WHEELER

ARB CASE NO. 10-129

COMPLAINANT,

ALJ CASE NO. 2010-STA-052

v.

DATE: November 19, 2010

NFI INTERACTIVE LOGISTICS,

RESPONDENTS.

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 DISMISSAL ORDER

Scott Wheeler complained that NFI Interactive Logistics violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA)¹ and its implementing regulations² when it fired him on March 27, 2010, after he refused a dispatch assignment because of potential fatigue.

¹ 49 U.S.C.A. § 31105 (West 2010), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Section 405 of the STAA provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would violate those rules. The amended provisions are not at issue in this case and thus do not affect our decision.

² 29 C.F.R. Part 1978 (2010).

After an investigation, the Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) found that Wheeler's allegation of a violation of Department of Transportation (DOT) regulations regarding driver fatigue did not contribute to his discharge. Accordingly, OSHA dismissed the complaint.³ Wheeler objected to OSHA's findings and requested a hearing before an Administrative Law Judge (ALJ).⁴

The ALJ scheduled the case for hearing, but on July 17, 2010, Wheeler wrote to the ALJ that he wished to withdraw his request for a hearing and dismiss his claim against NFI.⁵ By Recommended Order (R. O.) dated July 23, 2010, the ALJ cancelled the hearing, granted Wheeler's request to withdraw his objections, and dismissed his complaint against NFI.

The case is now before the Administrative Review Board (ARB or Board) pursuant to the STAA's automatic review provisions.⁶ The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.⁷ When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if those findings are supported by substantial evidence in the record considered as a whole.⁸ In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision" ⁹ Therefore, the Board reviews the ALJ's legal conclusions de novo.¹⁰

The ARB issued a Notice of Review and Briefing Schedule reminding the parties of their right to file briefs with the Board in support of or in opposition to the ALJ's recommended order within thirty (30) days of the ALJ's decision, or by August 23,

³ Secretary's Findings, May 13, 2010.

⁴ See 29 C.F.R. § 1978.105.

⁵ See 29 C.F.R. § 1978.111(c).

⁶ See 29 C.F.R. § 1978.109(c)(1).

⁷ 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).

⁸ 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. U.S. Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

⁹ 5 U.S.C.A. § 557(b) (West 1996).

¹⁰ See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

2010.¹¹ NFI responded that it would not file a brief, and Wheeler did not respond to the Board's notice.

The STAA and its regulations do not specifically provide for withdrawal of a complaint once the case has been referred to an administrative law judge for hearing, but the STAA's implementing regulations do provide:

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 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.^{12]}

Accordingly, we construe Wheeler's request to withdraw his request for an ALJ hearing as a withdrawal of his objections to OSHA's findings, and **GRANT** Wheeler's unopposed request to withdraw his objections.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Administrative Appeals Judge

¹¹ See 29 C.F.R. § 1978.109(c)(2).

¹² 29 C.F.R. § 1978.111(c).