



**In the Matter of:**

**ALPHONSE MADDIN,**  
  
**COMPLAINANT,**  
  
v.

**ARB CASE NO. 13-031**  
  
**ALJ CASE NO. 2010-STA-020**  
  
**DATE: July 24, 2015**

**TRANSAM TRUCKING, INC.,**  
  
**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant, Alphonse Maddin:*

**Robert D. Fetter, Esq.; Miller Cohen, P.L.C.; Detroit, Michigan**

*For the Respondent, TransAm Trucking, Inc.:*

**Brad K. Thoenen, Esq.; Seigfreid Bingham, P.C.; Kansas City, Missouri**

**BEFORE: Paul M. Igasaki, Chief Administrative Appeals Judge; Joanne Royce, Administrative Appeals Judge; and E. Cooper Brown, Deputy Chief Administrative Appeals Judge**

**ORDER AWARDING ATTORNEY'S FEES**

This case arises under the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended,<sup>1</sup> and its implementing regulations.<sup>2</sup> On November 24, 2014, the Administrative Review Board (ARB or Board) issued a decision affirming an Administrative Law Judge (ALJ) decision that TransAm Trucking violated the STAA when it terminated Maddin's employment because protected activity contributed to TransAm's decision to terminate. The STAA states that if the Board decides that an employer has violated the statute, we shall order the employer "to pay compensatory damages, including . . . compensation for any special damages sustained as a

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<sup>1</sup> 42 U.S.C.A. § 31105 (Thomson/West Supp. 2014).

<sup>2</sup> 29 C.F.R. Part 1978 (2013).

result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.”<sup>3</sup>

The Board’s Final Decision and Order stated that “[a]ny petition for costs (including attorney’s fees) reasonably incurred by Complainant in bringing this appeal must be filed with the Board within 30 days from the date of this Final Decision and Order.” However, on December 17, 2014, along with a fee petition for fees and costs incurred before the ALJ, Maddin filed his petition for fees and costs incurred for work before the Board with the ALJ. On March 12, 2015, the ALJ issued his Second Supplemental Order Confirming Award of Attorney’s Fees and Costs, and ordered Maddin to submit the petition for fees and costs incurred before the Board, to the Board. On April 6, 2015, Maddin submitted his Supplemental Petition for Attorney Fees to the Board, for fees incurred before the Board.

Under Board practice, a prevailing complainant is directed to file a fee petition for costs (incurred on appeal before the Board) with the Board within 30 days of its final decision. This mandate is neither statutory nor regulatory, is not jurisdictional, and is therefore subject to equitable modification.<sup>4</sup> It is within our discretion to consider an untimely filed petition for litigation costs, expert witness fees, and reasonable attorney’s fees.<sup>5</sup> The Board has recognized four situations in which equitable tolling of a nonjurisdictional deadline is appropriate: (1) when the respondent has actively misled the complainant with respect to the cause of action; (2) when the complainant has in some extraordinary way been prevented from asserting his rights; (3) when the complainant has raised the precise statutory claim in issue but has mistakenly done so in the wrong forum; and (4) when the employer’s own acts or omissions have lulled the complainant into foregoing timely attempts to assert his rights.<sup>6</sup>

We find that Maddin satisfied the third situation by timely filing his fee petition, but mistakenly doing so in the wrong forum. Further, Respondent does not allege that it was prejudiced by Maddin’s failure to file in the correct forum. Accordingly, we exercise our discretion to accept Maddin’s petition for attorney’s fees because Maddin filed his petition for fees in a timely manner with the ALJ, and when the ALJ notified him that he needed to file his petition for fees before the Board with the Board, he filed his petition with the Board in a timely manner.

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<sup>3</sup> 49 U.S.C.A. § 31105(b)(3)(A); *see also* 29 C.F.R. § 1978.110(d).

<sup>4</sup> *See Prince v. Westinghouse Savannah River Co.*, ARB No. 10-079, ALJ No. 2006-ERA-001, slip op. at 4 (ARB Nov. 17, 2010) (in which the Board explained that the limitations period for filing a petition for review with the Board is not jurisdictional, is subject to equitable modification, and within our discretion to consider its acceptance if untimely filed).

<sup>5</sup> *Id.*

<sup>6</sup> *Hyman v KD Res.*, ARB No. 09-076, ALJ No. 2009-SOX-020, slip op. at 6-7 (ARB Mar. 31, 2010).

Maddin requests \$7,081.25 in fees for work performed before the Board. Other than to object to their untimeliness, TransAm has not objected to the amount of this request. Accordingly, we **GRANT** Maddin's request and order TransAm to pay attorney's fees in the amount of \$7,081.25 for services provided by Maddin's legal representatives before the Board.

**SO ORDERED.**

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

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

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