



In the Matter of:

DONNY G. KIRK,

ARB CASE NO. 14-035

COMPLAINANT,

ALJ CASE NO. 2013-STA-042

v.

DATE: March 24, 2016

ROONEY TRUCKING INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Donny Kirk, *pro se*, Odessa, Missouri

Formerly for the Respondent:

Stuart D. Wieland, Esq., *Norton & Norton, P.C.*, Kansas City, Missouri

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*

DECISION AND ORDER DENYING RECONSIDERATION

This case arises under the Surface Transportation Assistance Act of 1982 (STAA or the Act), as amended, 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2015), and its implementing regulations, 29 C.F.R. Part 1978 (2015). Donny Kirk filed a complaint alleging that Rooney Trucking Inc. retaliated against him in violation of the STAA's whistleblower protection provisions. A Department of Labor Administrative Law Judge (ALJ), found in Kirk's favor after a hearing on the merits, and we affirmed on November 18, 2015. Subsequently, Donny Kirk and Rooney Trucking signed a settlement agreement on January 16, 2016, and

January 31, 2016, respectively. On February 17, 2016, Rooney Trucking moved to reconsider the Board's decision, recognize the parties' settlement agreement, and "set aside and hold for naught [the Board's] Decision and Order upon approval of the parties' settlement of this action."¹

We have previously identified four non-exclusive grounds for reconsidering a final decision and order. The grounds for reconsideration include, but are not limited to, whether the movant has demonstrated:

- (i) material differences in fact or law from that presented to [the Board] of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the [Board's] decision, (iii) a change in the law after the [Board's] decision, and (iv) failure to consider material facts presented to the [Board] before its decision.^[2]

Rooney Trucking's motion for reconsideration contains no argument as to any grounds supporting its motion to reconsider and its request that we vacate our Final Decision and Order.³ We will not reconsider and vacate our final order finding that Rooney Trucking violated the STAA simply because the parties settled and Rooney Trucking requested it.⁴ We find insufficient basis for further briefing and hereby deny such motion. We make no determination regarding the validity or any other aspect of the parties' settlement agreement.

¹ Respondent's Motion for Reconsideration of Decision and Order Granting Claim at 1.

² *OFCCP v. Fla. Hosp. of Orlando*, ARB No.11-011, ALJ No. 2009-OFC-002, slip op. at 4, n.4 (ARB July 22, 2013) (Order Granting Motion for Reconsideration and Vacating Final Decision and Order Issued Oct. 19, 2012) (citation omitted).

³ See 49 U.S.C.A. § 31105(b)(2)(C) ("Not later than 120 days after the end of the hearing, the Secretary of Labor shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.").

⁴ See *In re Dubrowsky*, 268 B.R. 6, 8 (E.D.N.Y. 2001) (discussing *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994), and other cases relying on *Bancorp*, for the proposition that vacatur is an exceptional measure that is not warranted merely upon a showing that the parties have settled or that a settlement agreement provides for vacatur).

Accordingly, Rooney Trucking's motion for reconsideration is **DENIED**.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge