



In the Matter of:

RODERICK A. CARTER,

ARB CASE NO. 15-050

COMPLAINANT,

ALJ CASE NO. 2012-STA-061

v.

DATE: JAN 12 2018

**CPC LOGISTICS, INC.; CPC MEDICAL
PRODUCTS, LLC; and HOSPIRA
FLEET SERVICES, LLC,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Roderick A. Carter, *pro se*, Hopkins, South Carolina

For the Respondent:

**Michael F. Harris, Esq.; *Harris, Dowell, Fisher & Harris, LLC; Chesterfield,
Missouri***

**Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative
Appeals Judge*; and Anuj C. Desai, *Administrative Appeals Judge*¹**

ORDER OF REMAND

Roderick A. Carter filed a complaint under the whistleblower protection provisions of the Surface Transportation Assistance Act² and its implementing regulations³ on December 22,

¹ Judge Desai has since left the Administrative Review Board.

² 49 U.S.C.A. § 311105 (Thomson Reuters 2016) (STAA).

³ 29 C.F.R. Part 1978 (2017).

2011, against his employer, CPC Logistics, Inc., and CPC Medical Properties, LLC (collectively CPC), claiming that the company fired him in violation of the STAA. After a hearing, a Department of Labor Administrative Law Judge (ALJ) dismissed his complaint on the grounds that Carter failed to prove that his protected activity of refusing to drive while fatigued was a contributing factor in CPC's termination. Carter appealed to the Administrative Review Board (ARB) which affirmed the ALJ's dismissal of Carter's complaint. Carter then appealed to the United States Court of Appeals for the Fourth Circuit.

The Fourth Circuit determined that the ALJ overlooked "important evidence" in considering Carter's contention on appeal that he engaged in additional instances of protected activity by refusing to drive when fatigued and that he reported his need to take fatigue breaks to two supervisors. The court held that the ALJ's finding—that Carter never mentioned fatigue breaks when questioned about his route delays—was not supported by substantial evidence. The court concluded that "the ALJ's flawed factual analysis, adopted by the ARB, prejudiced Carter" given CPC's admission that Carter's delays were a factor in his termination. Because the impact of the ALJ's error on Carter's ability to establish contributory causation could not be measured, remand was required.

Accordingly, consistent with the Fourth Circuit's opinion, the ARB vacates its Final Decision and Order of December 22, 2016, and remands this case for further proceedings consistent with the September 5, 2017 opinion of the Fourth Circuit.

SO ORDERED.


PAUL M. IGASAKI
Chief Administrative Appeals Judge


JOANNE ROYCE
Administrative Appeals Judge