



In the Matter of:

LINDELL BEATTY,

**ARB CASE NOS. 15-064
15-067**

and

**ALJ CASE NOS. 2008-STA-020
2008-STA-021**

APRIL BEATTY,

COMPLAINANTS,

DATE: JUN 27 2016

v.

INMAN TRUCKING MANAGEMENT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainants:

E. Holt Moore, III, Esq.; *The Law Office of E. Holt Moore, III*; Wilmington, North Carolina

For the Respondent:

Andrew J. Hanley, Esq.; *Crossley, McIntosh, Collier, Hanley & Edes, PLLC*; Wilmington, North Carolina

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

FINAL DECISION AND ORDER

This case arises under the whistleblower protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. § 31105 (Thomson Reuters 2007 & Supp. 2015), and its implementing regulations, 29 C.F.R. Part 1978 (2015). It is before the Administrative Review Board (ARB or the Board), on

appeal, for the fourth time.¹ The issues for decision are whether the ALJ properly determined that Inman Trucking failed to prove by clear and convincing evidence that it would have submitted adverse DAC reports about the Beattys absent their protected activity and whether the ALJ appropriately awarded damages.

Following the Board's third remand of this case,² the case was assigned to a different ALJ, Paul C. Johnson, Jr., because the formerly presiding ALJ had retired. ALJ Johnson issued a Decision and Order on Remand, dated May 26, 2015, in which he determined that Inman Trucking failed to prove by clear and convincing evidence that it would have submitted adverse DAC reports about the Beattys absent their protected activity.³ For the following reasons, the ARB affirms the ALJ's May 26, 2015 Decision and Order (D. & O.), with limited discussion.

FACTUAL BACKGROUND⁴

Complainants Lindell and April Beatty (the Beattys) worked as truck drivers for Inman Trucking, a commercial motor carrier within the meaning of 49 U.S.C.A. § 31101, from August 2004 to December 2005, when Inman Trucking terminated their employment.⁵ Throughout their employment, the Beattys complained to Inman Trucking about, and on occasion refused to drive, trucks to which they were assigned because of the trucks' conditions.⁶

¹ This case was previously before the ARB in *Beatty v. Inman Trucking Mgmt.*, ARB No. 09-032, ALJ Nos. 2008-STA-020, -021 (ARB June 30, 2010); *Beatty v. Inman Trucking Mgmt.*, ARB No. 11-021, ALJ Nos. 2008-STA-020, -021 (ARB June 28, 2012); and again in *Beatty v. Inman Trucking Mgmt.*, ARB No. 13-039, ALJ Nos. 2008-STA-020, -021 (ARB May 13, 2014).

² On May 13, 2014, the ARB applied the "contributing factor" burden of proof standard to conclude, based on the uncontested evidence, that the Beattys met their burden of proving contributing factor causation by a preponderance of the evidence. *Beatty*, ARB No. 13-039, slip op. at 12. The ARB remanded for the ALJ to consider whether Inman Trucking established by clear and convincing evidence that it would have issued the negative DAC report even if the Beattys had not engaged in protected activity, and if not, for an award of damages.

³ *Beatty v. Inman Trucking Mgmt.*, ALJ Nos. 2008-STA-020, -021 (May 26, 2015) (D. & O. of May 26, 2015, on Rem.).

⁴ The background statement is based on facts taken from the D. & O. of May 26, 2015, on Rem., unless otherwise indicated.

⁵ D. & O. of May 26, 2015, on Rem. at 15.

⁶ *Id.*

On October 29, 2005, the Beattys complained to Inman Trucking about an exhaust leak in the truck they were driving.⁷ No repairs were made at that time, and the Beattys continued with their assignment.⁸

On December 4, 2005, the Beattys complained to Inman Trucking about an exhaust leak and faulty muffler on a different truck that they were driving.⁹ The exhaust leak repair was completed on December 6, 2005, before the Beattys continued their route.¹⁰

On or about December 12, 2005, Lindell Beatty met with Alan Gover,¹¹ a safety director for Inman Trucking, at Inman Trucking's offices to turn in his post-trip paperwork.¹² Because of the Beattys' previous exchanges at Inman Trucking, Lindell Beatty took a tape recorder with him to the office.¹³ Following a heated exchange between the two men, Beatty told Gover that he was going to record their conversation, and Gover informed Beatty that Inman Trucking was terminating his and Mrs. Beatty's employment.¹⁴ On December 14, 2005, Gover submitted a DAC report on the Beattys that indicated that the Beattys had been discharged from employment.¹⁵ The report stated with regard to their work record: "Excessive Complaints, Company Policy Violation, Personal Contact Requested, Other."¹⁶

After their employment termination, the Beattys received unemployment benefits for 26 weeks, whereupon they secured employment as drivers for FedEx for three months during 2006. After their employment with FedEx ended, they did not seek further employment until August of 2007.

⁷ *Id.* at 16.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Although many of the documents in the record including the transcript and decisions refer to Alan Grover, it appears that his name is Alan Gover. D. & O. May 26, 2015, on Rem. at 9, n.3.

¹² D. & O. at 16.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* A DAC report is a report that sets forth a truck driver's employment history, which is maintained by HireRight Solutions, Inc. (formerly known as USIS Commercial Services), a consumer reporting agency. *Canter v. Maverick Transp., LLC*, ARB No. 11-012, ALJ No. 2009-STA-054, slip op. at 2 n.2 (ARB June 27, 2012).

¹⁶ *Id.*

In early August of 2007, the Beattys applied to work for US Express. They were not hired and, after several attempts to learn the reason, they were informed that there was adverse information on their DAC reports. They were not able, however, to learn what that information was or by whom it was provided.¹⁷

Also in early August, the Beattys sought employment with Cargill Meats, but were informed that they would not be hired because of adverse information in their DAC reports.¹⁸ The Beattys were also informed that the adverse information on their DAC reports was information Gover provided in December of 2005.¹⁹ Cargill would have hired the Beattys if they had not had negative DAC reports.²⁰ The Beattys filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging retaliation under the STAA on August 9, 2007.²¹

In an effort to settle the Beattys' complaints, Gover changed the DAC reports on August 24, 2007, to remove "personal contact requested," and on August 27, 2007, to remove "excessive complaints."²² On September 13, 2007, Gover submitted the necessary codes to make the final changes, and on September 17, 2007, the DAC reports no longer included negative information.²³ Before the ALJ, Gover testified that he apologized and changed the DAC report to remove the negative information upon discovering, as a result of his further investigation during the course of the OSHA proceedings, that in fact the Beattys' complaints about the faulty muffler and exhaust leaks were valid.²⁴ When he had originally entered the negative DAC information, he stated that he had thought that the Beattys had fabricated their December safety complaint.²⁵

¹⁷ *Id.* at 17.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 17-18.

²³ *Id.* at 18.

²⁴ *Id.*; Hearing Transcript (Tr.) at 159-61; CX F. Gover also apologized in an e-mail to OSHA (at CX F) that stated: "First let me offer both you and the Beattys a sincere apology for my obstinacy and stubbornness. I am sitting here in abject and red-faced shame. . . . While I was investigating the Beattys^[1] records here, I came across some information of which I was not originally informed. Only on the basis of the new information, and in the interest of fairness, I am reversing my decision to stand and fight, and am changing the DAC reports for both of the Beattys"

²⁵ *Id.*

PRIOR PROCEEDINGS

OSHA dismissed the Beattys' complaint because it concluded that Respondent did not issue the DAC reports in retaliation because the Beattys engaged in STAA-protected activity. The Beattys filed objections to OSHA's determination and timely requested a hearing before the Office of Administrative Law Judges. The presiding ALJ subsequently issued a decision dismissing the Beattys' complaints as untimely.²⁶ Upon review of the ALJ's initial decision, the ARB affirmed the ALJ's ruling with respect to the timeliness of the Beattys' claim concerning the termination of their employment, but reversed the ALJ's timeliness ruling with respect to their claim of blacklisting, and remanded for further consideration by the ALJ of the blacklisting claim.²⁷

On remand, the ALJ again dismissed the complaints because he found that the Beattys failed to prove that Inman Trucking blacklisted them.²⁸ The Beattys again appealed to the ARB. The ARB concluded, upon review, that the uncontroverted evidence of record established that the negative information contained in the Beattys' DAC report constituted blacklisting. Accordingly, the ARB reversed the ALJ's second decision and remanded the case to the ALJ for a determination of whether the Beattys engaged in STAA-protected activity and, if so, whether the protected activity was a contributing factor in the DAC blacklisting.²⁹

On remand, the ALJ again dismissed the Beattys' complaint, having concluded that they failed to meet their burden of proving causation.³⁰ The Beattys again appealed, and the ARB reversed the ALJ's determination with regard to proof of causation upon applying the proper "contributing factor" burden of proof standard to the uncontroverted evidence of record. The ARB held that the Beattys met their burden of proving contributing factor causation by a preponderance of the evidence and remanded the case to the ALJ for consideration of whether Inman Trucking could establish by clear and convincing evidence that it would have issued the negative DAC report even if the Beattys had not engaged in protected activity, and thus avoid liability, or if not, for an award of damages.³¹

On remand, the ALJ determined that Inman Trucking failed to prove by clear and convincing evidence that it would have submitted adverse DAC reports about the Beattys

²⁶ *Beatty v. Inman Trucking Mgmt.*, ALJ Nos. 2008-STA-020, -021 (Dec. 9, 2008).

²⁷ *Beatty*, ARB No. 09-032.

²⁸ *Beatty v. Inman Trucking Mgmt.*, ALJ Nos. 2008-STA-020, -021 (Dec. 2, 2010).

²⁹ *Beatty*, ARB No. 11-021.

³⁰ *Beatty v. Inman Trucking Mgmt.*, ALJ Nos. 2008-STA-020, -021 (Feb. 7, 2013).

³¹ *Beatty*, ARB No. 13-039, slip op. at 12.

absent their protected activity and awarded them \$14,256.00 in back pay plus interest, but decided that an award of punitive damages was not warranted.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions under the STAA and its implementing regulations.³² In reviewing STAA cases, the ARB is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole.³³ The ARB reviews the ALJ's conclusions of law de novo.³⁴

DISCUSSION

The STAA provides that an employer may not discharge, discipline, or discriminate against an employee-operator of a commercial motor vehicle "regarding pay, terms, or privileges of employment" because the employee has engaged in certain protected activity.³⁵ The STAA protects an employee who "refuses to operate a vehicle because the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security."³⁶ To prevail in his claim, a complainant must show by a preponderance of evidence that his action was protected activity, that the company took an adverse employment action against him, and that his protected activity was a contributing factor in the adverse action.³⁷ If the complainant proves by a preponderance of evidence that

³² Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a).

³³ 29 C.F.R. § 1978.109(c)(3); *Jackson v. Eagle Logistics, Inc.*, ARB No. 07-005, ALJ No. 2006-STA-003, slip op. at 3 (ARB June 30, 2008) (citations omitted). In conducting our review, we will uphold an ALJ's findings of fact to the extent they are supported by substantial evidence even if there is also substantial evidence for the other party, and even if the Board "would justifiably have made a different choice" had the matter been before us de novo." *Hirst v. Southeast Airlines, Inc.*, ARB Nos. 04-116, 04-160; ALJ No. 2003-AIR-047, slip op. at 6 (ARB Jan. 31, 2007) (quoting *Rooks v. Planet Airways, Inc.*, ARB No. 04-092, ALJ No. 2003-AIR-035, slip op. at 4 (ARB June 29, 2006)).

³⁴ *Olson v. Hi-Valley Constr. Co.*, ARB No. 03-049, ALJ No. 2002-STA-012, slip op. at 2 (ARB May 28, 2004) (citations omitted).

³⁵ 49 U.S.C.A. § 31105(a)(1); see also 29 C.F.R. § 1978.102(c).

³⁶ *Id.*

³⁷ 49 U.S.C.A. § 42121(b)(2)(B)(iii). The STAA provides, at 49 U.S.C.A. § 31105(b), that all complaints initiated under STAA's whistleblower protection provision are governed by the legal burdens of proof set forth under 49 U.S.C.A. § 42121(b); see also 29 C.F.R. § 1978.109(a).

his protected activity was a contributing factor in the adverse personnel action, the employer will avoid liability if it demonstrates by clear and convincing evidence that it would have taken the same adverse action absent any protected activity.³⁸

This proceeding before the ARB involves cross-appeals by the parties challenging different aspects of the ALJ's decision of May 26, 2015.

In their petition for review (15-064), the Beattys object that the ALJ denied their request for punitive damages and argue that this decision was arbitrary, capricious, and an abuse of discretion. The Beattys also request on appeal that they be afforded the opportunity to address issues regarding proper identification of Respondent.

Respondent's petition for review (15-067) raises a number of objections, not all of which are properly before the ARB at this time. Respondent's objections that are properly before the Board include: (1) that ALJ Johnson (the presiding ALJ in the decision appealed) made fact findings in contravention to ALJ Sarno's previous findings of fact that Respondent contends are binding; (2) that ALJ Johnson erred when he found that Respondent did not prove by clear and convincing evidence that it would have made the adverse DAC reports absent the Beattys' protected activity; (3) that the Beattys are not entitled to damages because they did not establish the amount; (4) that the ALJ awarded damages in excess of the amount the Beattys requested; (5) that the ALJ failed to consider whether the Beattys failed to mitigate damages; (6) that the ALJ erred in admitting Complainant witness testimony about the employer's motivations as the testimony was pure speculation; and (7) that the ALJ erred in admitting testimony regarding the reason a subsequent potential employer (Cargill) did not hire the Beattys because it was hearsay.

Respondent raised three objections in its petition for review concerning matters that the ARB has previously addressed and ruled upon and are therefore final as a matter of law—the law of the case has thus been established. Consequently, they are not properly the subject of this appeal. These include Respondent's argument that the Beattys did not engage in STAA-protected activity,³⁹ that the DAC report was not blacklisting, and that the blacklisting

³⁸ 49 U.S.C.A. § 42121(b)(2)(B)(iv); 29 C.F.R. § 1978.109(b)).

³⁹ In the ALJ Decision and Order of February 7, 2013, the ALJ found that the Beattys engaged in STAA-protected activity when they complained to Respondent in October 2005 about an exhaust leak in the cab of the truck they were driving, and when they subsequently reported, in early December of 2005, that the truck they were driving had a damaged muffler in need of repair. Respondent did not challenge this determination in its appeal of the February 7, 2013 ALJ decision, thus rendering the prior ALJ's ruling final. *See Beatty*, ARB No. 13-039, slip op. at 12. Additionally it is noted, although not addressed by the parties, that a tape recording, under certain circumstances, may be considered protected activity. *See Benjamin v. Citationshares Mgmt., LLC*, ARB No. 12-029, ALJ No. 2010-AIR-001, slip op. at 8 (ARB Nov. 5, 2013) (if a complainant holds a reasonable belief that he will experience retaliation, attempting to record such retaliation may be protected activity).

claim was not timely filed. As the Board has previously decided these matters, we will not further address them.

The Board also will not address several arguments that Respondent has made for the first time on appeal, including: (1) that the DAC report was protected speech under the First Amendment and therefore cannot form the basis of a blacklisting claim; (2) that the ALJ erred in admitting into evidence Gover's changes to the Beattys' DAC reports because the changes were made in an effort to settle the Beattys' claims,⁴⁰ and (3) that the STAA amendments of August 3, 2007, do not apply because they were promulgated after Gover submitted the DAC reports.

1. The ALJ's determination that Inman Trucking failed to prove by clear and convincing evidence that it would have submitted the negative DAC reports in the absence of the Beattys' protected activity is supported by substantial evidence in the record and is in accordance with the law

Turning to the question of whether Respondent proved by clear and convincing evidence that it would have issued the negative DAC reports absent the Beattys' STAA-protected activity, i.e., absent their reports about exhaust leaks and other truck defects, the ALJ noted that Respondent failed to offer any evidence supporting a finding that it would have terminated the Beattys' employment and then issued the adverse DAC reports in any event.⁴¹ The ALJ determined that Respondent had not offered any evidence that it would have submitted the adverse DAC reports based on the Beattys' excessive complaints of uncleanness or of the size of the cab.⁴² The ALJ noted that the only direct evidence of Respondent's intent was Gover's testimony that he intended to fire the Beattys and presumably file the DAC reports if they refused a trip—but that they did not refuse a trip, and Gover fired them and submitted the adverse DAC reports anyway.⁴³ Moreover, the ALJ found that Respondent did not show that it had taken adverse action against other drivers in the past for complaining about truck cleanliness or size, or that it had a company policy of doing so.⁴⁴ Accordingly, the ALJ determined that Respondent failed to prove by clear and convincing evidence that it would have issued the adverse DAC report absent the Beattys' protected activity. The ALJ's findings on this issue are supported by substantial evidence of record.

⁴⁰ Further, Gover himself testified at the hearing, under questioning by Respondent's counsel, about his several changes to the DAC submissions.

⁴¹ D. & O. at 18-19.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

2. Respondent's challenge to ALJ Johnson's findings of fact

As previously noted, Respondent also challenges certain findings of fact ALJ Johnson made that Respondent argues contravene the previous ALJ's findings that Respondent contends are binding. Respondent contends, in particular, that the prior ALJ's finding of no causation between the Beattys' protected activity and the adverse action Respondent took against them is binding. What Respondent fails to appreciate, however, is that the Board reversed ALJ Sarno's findings on the issue of contributing factor causation based on the uncontroverted evidence of record; that the uncontroverted evidence established that there was contributing factor causation as a matter of law.⁴⁵ Furthermore, because ALJ Sarno did not make extensive findings of fact, but instead chose to merely summarize testimony for almost the entirety of his decisions, ALJ Johnson necessarily had to make findings of fact to fill in the holes in the narrative to provide the factual basis necessary for the ultimate conclusion of law he was required to make, i.e., as to whether or not Respondent could avoid liability upon proof by clear and convincing evidence that it would nevertheless have issued the adverse DAC reports.⁴⁶

3. The ALJ's decision regarding back pay

An ALJ is required to order, where appropriate, payment of compensatory damages (back pay with interest, and compensation for any special damages sustained as a result of the retaliation, including any litigation costs, expert witness fees, and reasonable attorney's fees that the complaint may have incurred), if the ALJ concludes that the respondent has violated

⁴⁵ See *Beatty*, ARB No. 13-039, slip op. at 11 and n.72 (citing the Board's authority under the "rare circumstances" exception to the requirement of remand to address and resolve an issue on appeal where the lower tribunal has failed to properly address the issue in the first instance, but where remand would constitute a mere formality because it is clear from the record that the lower tribunal would reach the same conclusion as the reviewing authority).

⁴⁶ Respondent has argued that ALJ Sarno found that Inman Trucking did not have animus or improper motive in submitting the DAC reports and that the Beattys have never proven a discriminatory motive. Resp. Brief in Support of its Pet. For Rev. at 1, 3. This argument misses the mark, as animus is not required for a finding of causation: "Animus can be evidence of retaliation, but it is not required to prove retaliation. Causation is established, with or without evidence of retaliatory animus, if the protected activity contributed to the adverse action." *Beatty*, ARB No. 11-021, slip op. at 7-8. Likewise, Respondent's argument that ALJ Sarno found that Respondent established legitimate, non-discriminatory reasons for submitting the DAC reports is inapposite because that is not what is required. Resp. Brief in Support of its Pet. For Rev. at 2. "[U]nder the 2007 amendments to STAA the complainant is merely required to prove by a preponderance of the evidence that his protected activity was a contributing factor in the adverse employment taken against him. Where the complainant meets this burden of proof, the respondent may nevertheless avoid liability if the respondent is able, in turn, to prove by clear and convincing evidence, that it would have taken the same adverse action in the absence of any protected activity." *White v. Action Expediting Inc.*, ARB No. 13-015, ALJ No. 2011-STA-011, slip op. at 9 (ARB June 6, 2014).

the law.⁴⁷ Back pay awards to successful whistleblower complainants are intended to make the complainant whole.⁴⁸ Although “there is no fixed method for computing a back pay award, calculations of the amount due must be reasonable and supported by evidence; they need not be rendered with ‘unrealistic exactitude.’”⁴⁹ In this case, the ALJ thoroughly analyzed the amount of pay the Beattys likely would have received, if Respondent had not issued the negative DAC reports. He made extensive findings of fact and credibility determinations⁵⁰ in his analysis that are supported by substantial evidence in the record.⁵¹ Accordingly, the Board affirms the ALJ’s order requiring Respondent to pay the Beattys \$14,256.00 in back pay, plus interest. With regard to Inman Trucking’s argument that the ALJ failed to consider whether the Beattys failed to mitigate damages, the burden would have been on Inman Trucking, in the first instance, to argue and prove that there were jobs available, which it did not do.⁵² Thus, this argument fails.

⁴⁷ 29 C.F.R. § 1978.109(d)(1).

⁴⁸ *Ass’t Sec. of Labor for Occupational Safety & Health and Bryant v. Mendenhall Acquisition Corp.*, ARB No. 04-014, ALJ No. 2003-STA-036, slip op. at 5 (ARB June 30, 2005).

⁴⁹ *Id.* at 6 (quoting *Cook v. Guardian Lubricants, Inc.*, ARB No. 97-005, ALJ No. 1995-STA-043, slip op. at 14 n.12 (ARB May 30, 1997) (citation omitted)).

⁵⁰ The ALJ had discretion to credit Hall’s testimony that the Beattys would have been hired if not for the adverse DAC reports; although Hall testified that his safety director told him that the Beattys could not be hired because of their DAC reports, he also testified that he knew that their reports were accessed several times and that the Beattys’ applications would not go through after the DAC reports were run, and that to his own knowledge, the Beattys would have been hired if they had clean DAC reports. Tr. at 128-29.

⁵¹ D. & O. of May 26, 2015, on Rem. at 19-20.

⁵² See *Anderson v. Timex Logistics*, ARB No. 13-016, ALJ No. 2012-STA-011, slip op. at 7 (ARB Apr. 30, 2014) (“While STAA imposes a duty on a wrongfully discharged complainant to mitigate damages, the burden of proving a failure to mitigate lies with Respondent. The respondent must establish that substantially equivalent positions were available to complainant and that complainant failed to use reasonable diligence in attempting to secure such position(s).” (citing *Dale v. Step 1 Stairworks, Inc.*, ARB No. 04-003, ALJ No. 2002-STA-030, slip op. at 6-7 (ARB Mar. 31, 2005))).

4. The ALJ's decision that punitive damages were not warranted⁵³

The question of whether punitive damages are warranted focuses on the employer's state of mind and does not necessarily require that the misconduct be egregious.⁵⁴ The factual question an ALJ must answer is whether the respondent acted with "reckless or callous disregard for the plaintiff's rights" or intentionally violated federal law.⁵⁵ Like any other fact finding under STAA, the Board reviews an ALJ's factual determination of whether the employer acted with reckless or callous disregard or intentionally violated federal law for support by substantial evidence in the record.⁵⁶

The ALJ found that Inman Trucking's actions did not show reckless or callous disregard for the Beattys' rights under the STAA.⁵⁷ As the ALJ explained, while Inman Trucking did not prove by clear and convincing evidence that it would have submitted the adverse DAC reports absent the Beattys' protected activity, Respondent nevertheless had ample reason, as the ALJ found, to submit the reports because of the Beattys' complaints about dirty trucks, for refusing to drive because a truck was too dirty, and for not completing three cross-country round trips per month as required by company policy.⁵⁸ The ALJ's finding that Respondent did not act with reckless or callous disregard for the Beattys' rights under the STAA is thus supported by substantial evidence in the record and accordingly is affirmed.

⁵³ We note that this is not the only question with regard to punitive damages, it is simply the only one at issue in this case. If an ALJ determines that punitive damages *are* warranted, the question of whether to award punitive damages is in the ALJ's discretion. *Smith v. Wade*, 461 U.S. 30, 52, 54 (1983) (quoting Restatement (Second) of Torts § 908(1) (1977) (Punitive damages "are never awarded as of right, no matter how egregious the defendant's conduct," but "are awarded in the jury's discretion 'to punish [the defendant] for his outrageous conduct and to deter him and others like him from similar conduct in the future.'")). See also *Carter v. BNSF Ry. Co.*, ARB Nos. 14-089, 15-016, -022; ALJ No. 2013-FRS-082, slip op. at 9 (ARB June 21, 2016).

⁵⁴ *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 546 (1999) ("[A]n employer's conduct need not be independently 'egregious' to satisfy 42 U.S.C.A. § 1981a's requirements for a punitive damages award, although evidence of egregious misconduct may be used to meet the plaintiff's burden of proof.").

⁵⁵ *Youngermann v. United Parcel Serv. Inc.*, ARB No. 11-056, ALJ No. 2010-STA-047, slip op. at 5-6 (ARB Feb. 27, 2013).

⁵⁶ *Id.* at 7; 29 C.F.R. § 1978.110(b) ("The ARB will review the factual determinations of the ALJ under the substantial evidence standard.").

⁵⁷ D. & O. of May 26, 2015, on Rem. at 21.

⁵⁸ *Id.* at 15.

5. Proper identification of Respondent

The Beattys requested on appeal that they be permitted to address the issue of Respondent's proper corporate designation. Respondent has been listed as Inman Trucking Management, Inc., on all ALJ and ARB orders in this matter. Further, Respondent has submitted numerous briefs, using the case heading *Lindell Beatty and April Beatty v. Inman Trucking Management, Inc.*, and has never objected to use of this name for itself. Inman Trucking Management, Inc. has apparently called itself many things throughout the record including Inman Trucking Management, Inc., Inman Trucking Inc., Inman Trucking/Inman Man., Inman Trucking/Inman/Leland, Inman Trucking/Inman, and simply Inman, regardless of whether its corporate name is Inman Trucking Management, Inc., or some other name.⁵⁹ The Board treats all versions of the names by which Respondent identifies itself as one and the same for purposes of liability under STAA as found by this Board and responsibility for the payment of the Beattys' back pay and interest as ordered by the ALJ, and as affirmed by the Board in this decision.

CONCLUSION

Accordingly, the ALJ's Decision and Order is **AFFIRMED**.

To recover reasonable attorney's fees and litigation costs incurred in responding to this appeal before the Board, the Beattys must file a sufficiently supported petition for such costs and fees within 30 days after receiving this Final Decision and Order, with simultaneous

⁵⁹ The Board takes administrative notice of the fact that Inman Trucking, Inc., Inman Transportation, LLC, and Inman Management, Inc., are all registered with the North Carolina Secretary of State's Office, all with similar, if not identical, underlying information as to registered agent, address, and corporate officers.

service on opposing counsel.⁶⁰ Thereafter, Respondent shall have 30 days from its receipt of the fee petition to file a response.

SO ORDERED.

[REDACTED]

E. COOPER BROWN
Administrative Appeals Judge

[REDACTED]

PAUL M. IGASAKI
Chief Administrative Appeals Judge

[REDACTED]

JOANNE ROYCE
Administrative Appeals Judge

⁶⁰ 49 U.S.C.A. § 31105(b)(3)(A)(iii); 29 C.F.R. § 1978.110(d).

