

In the Matter of:

KRISTY LAWSON,

ARB CASE NO. 17-073

COMPLAINANT,

ALJ CASE NO. 2015-STA-051

v.

DATE: April 16, 2018

**KWIK KARGO, INC. TRANSPORT;
KWIK KARGO, INC. TRUCKING;
and KENNETH KOTZER;**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, *Truckers Justice Center, Burnsville, Minnesota*

For the Respondent:

Terrance J. Wagener, Esq. and Daniel L. Lowin, Esq; *Messerli & Kramer P.A., Minneapolis, Minnesota*

FINAL DECISION AND ORDER DISMISSING COMPLAINT

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA).¹ On February 7, 2015, Kristy Lawson., filed a complaint with the Secretary of Labor alleging that Respondents Kwik Kargo, Inc. Transport; Kwik Kargo, Inc. Trucking; and Kenneth Kotzer violated the STAA's employee protection provision, which 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.

¹ 49 U.S.C.A. § 31105 (Thomson Reuters 2016), and implementing regulations, 29 C.F.R. Part 1978 (2017).

After investigating Lawson's complaint, the Occupational Safety and Health Administration (OSHA) found that Respondents did not violate the STAA. Lawson objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ). The ALJ issued a Decision and Order Dismissing Complaint on August 22, 2017, and Lawson filed a timely petition for review with the Administrative Review Board.²

On April 3, 2018, Lawson filed a Notice with the Board stating that she had filed an original action pursuant to 49 U.S.C. § 31105(c), with the United States District Court for the District of Minnesota, seeking de novo review. Attached to the notice is a copy of the file-stamped complaint in civil action no. 18-cv-00783, in compliance with 29 C.F.R. § 1978.114(b). The STAA permits a complainant to file an action in the appropriate federal district court if the Secretary of Labor has not issued a final decision within 210 days of the date of the complaint and if there is no showing that the complainant has acted in bad faith to delay the proceedings.³ Lawson filed her action more than 210 days after she filed her complaint with OSHA.

Since Lawson has chosen to proceed in district court, the Department of Labor no longer has jurisdiction over his case. As the statute provides, the "district court of the

² The Secretary of Labor has delegated authority to issue final agency decisions under the STAA to the Administrative Review Board. 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); see 29 C.F.R. § 1978.110(a).

³ The STAA provides for de novo review in an appropriate federal district court under specific circumstances:

With respect to a complaint under [the Act], if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to bad faith of the employee, the employee may bring an original action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

United States . . . shall have jurisdiction over such an action.”⁴ We therefore **DISMISS** this case on the ground that Lawson has removed it to district court.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

LEONARD J. HOWIE III
Administrative Appeals Judge

⁴ *Stone v. Duke Energy Corp.*, 432 F.3d 320, 322 (4th Cir. 2005) (under the Sarbanes-Oxley Act of 2002 (SOX), “when [complainant] filed his first complaint in federal court . . . jurisdiction became lodged in the district court, depriving the ALJ of jurisdiction . . .”); *Kelly v. Sonic Auto.*, ARB No. 08-027, ALJ No. 2008-SOX-003, slip op. at 4 (ARB Dec. 17, 2008) (the filing of Kelly’s SOX complaint in district court deprived the Department of Labor of jurisdiction over his complaint.); *Powers v. Pinnacle Airlines*, ARB No. 05-138, ALJ No. 2005-SOX-065, slip op. at 5 (ARB Oct. 31, 2005) (the district court obtained jurisdiction of the complainant’s SOX complaint once she filed suit in district court and thus the ALJ no longer had jurisdiction to enter any order in the case other than one dismissing it on the ground that the complainant had removed the case to district court).