

In the Matter of:

ADRIANO BUDRI,

ARB CASE NO. 18-025

COMPLAINANT,

ALJ CASE NO. 2017-STA-086

v.

DATE: June 19, 2018

FIRSTFLEET, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Before: Joanne Royce, *Administrative Appeals Judge*, and Leonard J. Howie III, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

Adriano Budri filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on March 20, 2017. Budri alleged that his employer, Firstfleet, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified, when it terminated his employment in retaliation for raising safety concerns.¹ The STAA prohibits employers from discriminating against employees when they report violations of commercial motor vehicle safety rules or when they refuse to operate a vehicle when such operation would violate those rules. A Department of Labor (DOL) Administrative Law Judge (ALJ) granted Firstfleet's motion for summary decision and dismissed Budri's complaint because Budri failed to present evidence of specific facts that, if true, would allow a reasonable fact-finder to find in his favor on the issue of causation. We agree with the ALJ and summarily affirm the ALJ's order.

In summarily affirming the ALJ's Decision and Order, we limit our comments to the most critical points. First, we review a recommended decision granting summary decision de

¹ 49 U.S.C.A. § 31105 (Thomson Reuters 2016); implementing regulations at 29 C.F.R. Part 1978 (2017); see 49 U.S.C.A. § 42121 (Thomson Reuters 2016).

novo.² We view the evidence in the light most favorable to Budri (the non-moving party) to determine whether there are any genuine issues of material fact and whether Firstfleet was entitled to judgment as a matter of law.³

Budri asserts that Firstfleet fired him because he engaged in protected activity. To prevail on his claim, Budri is required to prove that 1) he engaged in protected activity and 2) that Firstfleet took adverse employment action against him 3) because of the protected activity.⁴

We turn to the “causation” element, the focus of this decision.⁵ Firstfleet provided documentation showing that it fired Budri because he caused several accidents, failed to report accidents, failed to deliver a time-sensitive order, drove on a flat tire to a truck stop when he had been told to wait for a service crew to repair the tire, and had a customer ban him from its facility for refusing to follow instructions.⁶ In his response to the motion for summary decision, Budri did not controvert any of the facts about these instances other than to assert that the declarations of Firstfleet’s witnesses were “submitted in bad faith” and contained “misleading, libel, hearsay and perjury information.” The ALJ also observed that undisputed evidence demonstrated that: (1) Firstfleet immediately remedied the burned out bulb; (2) took no action against Budri following his discussion of logging time, and (3) all Budri’s alleged protected activity happened before the incidents cited by Firstfleet as the basis for Budri’s termination. The ALJ properly

² *Hardy v. Mail Contractors of Am.*, ARB No. 03-07, 2002-STA-022, slip op. at 2 (ARB Jan. 30, 2004).

³ *Lee v. Schneider Nat'l, Inc.*, ARB No. 02-102, ALJ No. 2002-STA-025, slip op. at 2 (ARB Aug. 28, 2003).

⁴ *Leaks v. Arctic Glacier*, ARB No. 15-079, ALJ No. 2014-STA-080, slip op. at 4 (ARB Feb. 7, 2017); 49 U.S.C.A. § 42121(b)(2)(B)(iii).

⁵ The ALJ held that Budri engaged in protected activity on January 30, 2017 when he reported a burned out bulb but that the evidence regarding Budri’s February 8, 2017 discussion about how to log time while waiting for repairs did not constitute protected activity. We disagree with the latter finding. In the course of his discussion with his manager about how to log time, Budri insisted that the direction he was given regarding logging time violated state or federal transportation regulations. Department of Transportation regulations limit the hours of service for drivers and to ensure compliance drivers are required to record their duty status for each 24 hour period. 49 C.F.R. Part 395.8 (2017). Because hours of service are strictly regulated and the regulations distinguish between off-duty and on-duty (not driving), complaints about *how* a driver records driving time, it seems to us, are safety related. Also, STAA provides that a driver is protected when he “accurately reports hours on duty pursuant to chapter 315.” 49 U.S.C.A. § 31105 (a)(1)(C). We find that the evidence regarding Budri’s discussion about logging time presents a genuine issue for trial as to whether it constituted protected activity. That we find an additional instance of protected activity in this case does not change the result however, because we affirm the ALJ’s dismissal based on his causation analysis which applies to both instances of protected activity.

⁶ D. & O. at 3-5.

determined that Budri's evidence was insufficient to create a genuine issue of material fact on the issue of causation. Given Budri's failure to present any evidence that his protected activities contributed to the termination decision, Budri cannot prove an essential element of his claim, the element of causation.

CONCLUSION

The ALJ's decision correctly found that there was no material issue of fact regarding the element of causation and that Firstfleet is entitled to judgment as a matter of law. Accordingly, we affirm the ALJ's order dismissing the complaint and **DENY** Budri's complaint.

SO ORDERED.

JOANNE ROYCE
Administrative Appeals Judge

LEONARD J. HOWIE III
Administrative Appeals Judge