



In the Matter of:

ADRIANO BUDRI,

ARB CASE NO. 2020-0021

COMPLAINANT,

ALJ CASE NO. 2019-STA-00071

v.

DATE: JAN - 7 2020

FIRSTFLEET, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Adriano Budri; *pro se*; Burleson, Texas

Before: William T. Barto, *Chief Administrative Appeals Judge* and Heather C. Leslie, *Administrative Appeals Judge*

FINAL DECISION AND ORDER

PER CURIAM. Adriano Budri filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration on August 30, 2019. 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 provided information about him to Tenstreet (a consumer reporting agency specialized in trucking employment references) that continued to be maintained by Tenstreet. 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. 49 U.S.C. § 31105 (2007); 29 C.F.R. Part 1978 (2019); *see* 49 U.S.C. § 42121 (2000).

This is the third complaint Budri has filed against Firstfleet, based on the same underlying facts. In his first complaint, filed on March 20, 2017, Budri alleged that Firstfleet fired him in retaliation for STAA-protected activities. The ALJ issued a decision and order granting Respondent's motion for summary decision because he

concluded that there was no genuine issue of material fact which would allow for the conclusion that any protected activity contributed to Complainant's termination. *Budri v. Firstfleet, Inc.*, ALJ No. 2017-STA-0086 (ALJ Feb. 2, 2018). Complainant appealed the decision, which the Administrative Review Board (ARB or the Board) summarily affirmed. *Budri v. Firstfleet, Inc.*, ARB No. 2018-0025, ALJ No. 2017-STA-0086 (ARB Jun. 19, 2018). Complainant appealed the Board's decision to the Fifth Circuit, which issued a per curiam affirmance. Complainant petitioned for writ of certiorari to the United States Supreme Court, which was denied.

In his second complaint, Budri alleged that Respondent had taken additional adverse action against him in retaliation for protected activities when it reported negative information about him to Tenstreet. The ALJ issued a decision granting Respondent's motion to dismiss having concluded the Budri's complaint was untimely because he had learned about Firstfleet's report to Tenstreet more than 180 days before filing of the complaint. *Budri v. Firstfleet, Inc.*, ALJ No. 2018-STA-00033 (ALJ Jun. 26, 2018). The ALJ concluded that the reporting agency's retention of the information did not create a continuous violation so the complaint was untimely. Complainant appealed the decision to the Board, which summarily affirmed the ALJ decision. However, the Board vacated that decision because Complainant informed the Board that he had filed a District Court complaint without notifying the Board, removing the Board's jurisdiction. *Budri v. Firstfleet, Inc.*, ARB No. 2018-0055, ALJ No. 2018-STA-00033 (ARB Jul. 30, 2019).

The District Court also concluded that it had no jurisdiction and dismissed the complaint, and upon Respondent's motion for Rule 11 sanctions, reprimanded and warned Complainant that sanctions would result if he filed any future litigation against Respondents arising out of the same facts in any federal court without prior judicial authorization. *Budri v. Firstfleet, Inc.*, 2019 WL 5587181 (N.D. Tex. Sept. 20, 2019); 2019 WL 5578975 (N.D. Tex. Oct. 29, 2019). Complainant appealed to the Fifth Circuit on November 4, 2019. *Budri v. Firstfleet, Inc.*, ALJ No. 2019-STA-00071, slip op. at 4, n.13 (ALJ Dec. 16, 2019) (citing Case No. 19-11203).

A STAA complaint must be filed within 180 days after an alleged violation of the STAA. 29 C.F.R. § 1978.102(d). The ALJ in the instant complaint, in granting Respondent's motion to dismiss, explained that Budri had failed to timely file his complaint based on Tenstreet's retention of information Respondent provided to it beyond the statutory filing deadline. The Board has discretion to deny petitions for review under the STAA. 29 C.F.R. 1978.110(b) ("If . . . the ARB denies review, the decision of the ALJ will become the final order of the Secretary."). In this circumstance, we will exercise that discretion.

CONCLUSION

Accordingly, we **DENY** Budri's petition for review. The decision of the ALJ is the final order of the Secretary.

SO ORDERED.