

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 29 March 2004**

CASE NO.: 2004-STA-7

In the Matter of:

MARK E. HOWICK,  
Complainant

v.

CAMPBELL-EWALD COMPANY,  
FRED BATTEN, ESQ. AND CLARK  
HILL, LLC.  
Respondent

Edward A. Slavin, Jr., Esquire  
For Complainant

Fred W. Batten, Esquire  
For Respondent

Before: RICHARD A. MORGAN  
Administrative Law Judge

**ORDER DENYING RECONSIDERATION  
AND RELIEF REQUESTED**

This proceeding arises from a claim filed under the employee protection provisions of Section 31105 of the Surface Transportation & Assistance Act of 1982 (STAA). Complainant alleged that the motion requesting a “gag order” filed by Campbell Ewald’s legal counsel in a previous administrative proceeding<sup>1</sup> constitutes a violation of whistleblower laws.

The Notice of Hearing for the above-captioned matter stated:

All motions must specifically reflect the party’s efforts to resolve the matter with the opposing party. It will be insufficient grounds to state that the opposing party/counsel could not be reached or was unavailable. Motions with such inappropriate justification will not be acted upon.

(Notice of Hearing issued December 10, 2003).

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<sup>1</sup> *Mark E. Howick v. Campbell-Ewald Company*, 2003-STA-6 (ALJ, Sept. 18, 2003).

On February 5, 2004, I issued an Order to Show Cause why the above-captioned matter should or should not be immediately dismissed with prejudice for failure to state a claim upon which relief can be granted or why a summary decision denying the complaint should not be issued. Both Complainant and Respondent submitted a response to the Order to Show Cause. Thereafter, on February 27, 2004, I issued a Recommended Order Granting Respondents' Request for Summary Dismissal.

On March 9, 2004, Complainant submitted a Motion for Reconsideration, Request for Oral Argument and Renewed Motion for Remand to OSHA. Complainant argues that Respondent did not comply with the Notice of Hearing. He states "Respondent's Motion to Dismiss was never subject of any effort by Respondent to comply with the Court's order to request Complainant's concurrence." Thus, Complainant states "the motion should never have been considered."

On March 12, 2004, Respondents submitted objections to Complainant's Motion for Reconsideration, Request for Oral Argument and Renewed Motion to Remand to OSHA. Respondent assert that Complainant misstated the facts. Respondent argues that the requirement in the Notice of Hearing to seek Complainant's concurrence did not apply, because they were complying with this Court's show cause order.

Complainant is correct in stating that Respondent is required by the Notice of Hearing to request Complainant's concurrence prior to submitting a motion. However, Respondent did not submit an unexpected motion. Respondent submitted an answer to the Court's order to show cause why the above-captioned matter should not be dismissed or summary decision granted. It was unnecessary for the Respondent to seek Complainant's concurrence prior to responding to the court's order. Respondent did not seek or request anything in addition to answering the question presented by the court.

### **ORDER**

Accordingly, IT IS HEREBY ORDERED that the Request for Reconsideration submitted on the Complainant's behalf is DENIED. IT IS FURTHER ORDERED that the relief requested by Complainant is DENIED.

**A**

RICHARD A. MORGAN  
Administrative Law Judge