

**U.S. Department of Labor**

Office of Administrative Law Judges  
11870 Merchants Walk - Suite 204  
Newport News, VA 23606

(757) 591-5140  
(757) 591-5150 (FAX)



**Issue Date: 10 February 2005**

Case No. 2004-STA-0060

In the Matter of:

GEOFFERY COATES,  
Complainant,

v.

SOUTHEAST MILK INSTITUTE, INC.,  
Respondent.

Before: DANIEL A. SARNO, JR.  
Administrative Law Judge

**ORDER CERTIFYING FACTS TO THE  
UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

In Re: Mr. Geoffrey Coates  
2040 West Howard Place  
Citrus Hills, Florida 34434

Pursuant to 29 C.F.R. § 18.29(b) the following facts are hereby certified to the United States District Court for the Middle District of Florida, with a request for appropriate remedies:

1. A complaint was filed on December 13, 2003, under § 31105 of the Surface Transportation Assistance Act of 1982, (hereinafter, "STAA" or the "Act") 49 U.S.C. 31101, *et seq.*, and the regulations promulgated thereunder at 29 C.F.R. 1978, by Mr. Geoffrey Coates, the *pro se* Complainant, versus Southeast Milk, Inc., Respondent.
2. This whistleblower complaint was investigated by the U.S. Department of Labor, Occupational Safety and Health Administration and was forwarded to the Department of Labor, Office of Administrative Law Judges for formal hearing on the merits of the complaint.
3. The case was assigned to the undersigned Administrative Law Judge, and a Notice of Assignment and Pre-Hearing Order was issued on September 28, 2004.

4. On January 4, 2005, Respondent submitted a Second Emergency Motion for a Protective Order to the court. In this Motion, Respondent stated that it had inadvertently produced a privileged document, which Complainant then disseminated to Respondent's clients and customers. Respondent requested that the document be returned and that Complainant be restricted from relying on or using the document in any way during the course of the proceedings.
5. On January 6, 2005, in Pre-Hearing Order # 11 (Exhibit 1)<sup>1</sup>, the Court granted Respondent's Motion. The Order, *inter alia*, instructed Complainant to return the privileged document and refrain from relying on or using the document during the proceedings.
6. Upon motion by Complainant, the court reconsidered its ruling in Pre-Hearing Order # 11. In Pre-Hearing Order # 12 (Exhibit 2), the Court reaffirmed its previous order, and again ordered Complainant to return the privileged document and refrain from relying on or using the document during the proceedings.
7. On January 12, 2005, the court, in a Recommended Decision and Order in this matter (Exhibit 3), granted Respondent's Motion for Summary Decision and dismissed the complaint. On January 13, 2005, Complainant filed a Petition for Review (Exhibit 4) with the U.S. Department of Labor Administrative Review Board, which considers, *inter alia*, appeals from whistleblower decisions by Administrative Law Judges.
8. On January 24, 2005, Respondent submitted to this court a Motion for Sanctions to Enforce Pre-Hearing Order # 11 (Exhibit 5). In this Motion, Respondent stated that Complainant has failed to return any copy of the privileged document and has continued to defy the court's Order by including the document with subsequent submissions to the court and to other entities. Respondent requested the court to issue an order for sanctions against Complainant and to certify the facts surrounding Complainant's defiance of the Court's Pre-Hearing Order #11 to the United States District Court having proper jurisdiction. Respondent asserts that the court is permitted by 29 C.F.R. § 18.29(b) to certify the facts surrounding Complainant's actions.
9. On February 2, 2005, Respondent submitted a Supplement to its Motion for Sanctions and a Request for Expedited Ruling (Exhibit 6). In its supplemental motion, Respondent alleged that Complainant and/or his agent, Edward A. Slavin Jr., continue to forward discovery materials obtained in this case to at least one of Respondent's customers. Respondent requests that the court issue a protective order forbidding Complainant and his agents from contacting any of Respondent's customers for the purpose of disclosing or discussing information in documents obtained in this case; and ordering Complainant and his agents to return all copies of the privileged document. Respondent also renews its request for this court to certify the facts of the violation of Pre-Hearing Order # 11 to the U.S. District Court.

---

<sup>1</sup> The enclosures in this Order will be sent to the U.S. District Court for the Middle District of Florida and the Administrative Review Board only, as the parties already have copies of the documents relevant to this Order.

10. On February 7, 2005, Complainant filed an Opposition to Respondent's Motion for Sanctions (Exhibit 7). Complainant alleged that pursuant to Pre-Hearing Order # 12, he has an absolute right to complain to state and federal agencies regarding Respondent's alleged wrongful practices. Complainant also stated that no deadline was given by this court for turning over the privileged document, which Complainant asserts is the basis for its Appeal for Review before the Administrative Law Board.<sup>2</sup>

11. Section 18.29(b), Title 29 C.F.R., Authority of the Administrative Law Judge, provides:

(b) Enforcement. If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the administrative law judge responsible for the adjudication, where authorized by statute or law, may certify the facts to the Federal District Court having jurisdiction in the place in which he or she is sitting to request appropriate remedies.

12. The court is aware that Complainant continues to violate the court's order and continues to disseminate the privileged document.<sup>3</sup> Furthermore, Complainant's actions thus far and his response to Respondent's Motion to Certify have convinced this court that Complainant has no intention to comply with Pre-Hearing Order # 11.

13. Pre-Hearing Order # 11 remains a valid protective order of this court, and Complainant's flagrant disregard for the court's order is cause for concern.<sup>4</sup> The court hereby reiterates

---

<sup>2</sup> Although no explicit deadline was given for Complainant to return the privileged document, it was implicit in the gravity of Complainant's actions and the nature of the document that Complainant return the document immediately to Respondent. The court finds this particular excuse from Complainant to be wholly inadequate to justify Complainant's continued defiance of Pre-Hearing Order # 11.

<sup>3</sup> For example, the court received a copy of Complainant's Petition for Suspension and Debarment of SMI (Exhibit 8), which Complainant filed with the Environmental Protection Agency. This petition is signed by Edward A. Slavin, Jr., as Complainant's agent, and contains the privileged document as an attachment. The court finds it curious that Mr. Slavin is acting as a representative of Complainant, and, as Complainant's agent, is cavalierly submitting to other agencies a document deemed privileged by the Judge in this case. Mr. Slavin is not only currently suspended from the practice of law in Tennessee, but is also suspended from practicing before the U.S. Department of Labor. See *Board of Prof. Responsibility of the Supreme Court of Tennessee v. Slavin*, No. M2003- 00845-SC-R3-BP (Aug. 27, 2004) (2004 WL 1907797); *In the Matter of Qualifications of Edward A. Slavin, Jr.*, ALJ No. 2004-MIS-5 (September 28, 2004); *In the Matter of Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-172 (ARB October 20, 2004).

<sup>4</sup> The court is aware that Complainant has appealed the court's Recommended Decision and Order and several of the Pre-Hearing Orders in this case. However, despite Complainant's assertion that this court no longer has jurisdiction over this particular matter, the Pre-Hearing Orders of this court remain valid and shall be obeyed by the parties in this case until the Administrative Review Board issues its decisions on Complainant's appeals.

that Complainant and/or his agents must *immediately* return the privileged document, and *immediately* cease from disseminating the privileged document, or any other document obtained through the discovery process in this case, to persons or entities not parties to this case.<sup>5</sup>

14. Pursuant to 29 C.F.R. 18.29(b), Respondent's Motion to Certify the Facts to the U.S. District Court is granted. Respondent may request the District Court to enforce the order of this court, and Respondent may request the District Court to issue remedies as deemed appropriate by the Court.
15. It is believed that the U.S. District Court for the Middle District of Florida has jurisdiction of this matter, as Complainant resides at 2040 West Howard Place, Citrus Hills, FL 34434; this Administrative Law Judge had jurisdiction of this case when Pre-Hearing Order # 11 was issued and which Complainant continues to violate.
16. It is therefore Ordered that these facts are hereby certified to the United States District Court for the Middle District of Florida pursuant to 29 C.F.R. § 18.29(b). It is respectfully requested that appropriate action be taken as if the violations referred to above had occurred before the United States District Court.

**A**  
Daniel A. Sarno, Jr.  
Administrative Law Judge

---

<sup>5</sup> Complainant also asserted that the court "essentially vacated its Pre-Hearing Order # 11 . . . in its subsequent Pre-Hearing Order # 12." Complainant's understanding of Pre-Hearing Order # 12 is in error. The court merely clarified that Complainant has a right to use documents *properly* obtained through the discovery process as a basis for filing claims with other federal and state agencies. However, Complainant has no right to use a document which is privileged and which the court found was inadvertently produced.