



Issue Date: 27 December 2006

Case No.: 2007-STA-00006

In the Matter of

CARL B. BEDWELL, SR.
Complainant

v.

SPIRIT-MILLER NE, LLC
Respondent

RECOMMENDED DECISION AND ORDER
DISMISSING THE COMPLAINT

This case arises under § 405 of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C. § 31105, which provides for employee protection from discrimination because the employee engaged in protected activity pertaining to commercial motor vehicle safety and health matters. The implementing regulations are contained in 29 C.F.R. Part 1978.

On October 31, 2006, Complainant had a conversation with a staff person at the Atlanta, Georgia office of the Occupational Safety and Health Commission (“OSHA”).¹ The OSHA staff person’s notes of the conversation, signed “Rosa,” state that Complainant alleged that he

stopped working with [Respondent] as of December 31, 2005 [because] he was disqualified from driving at the end of December because he complained about not having insurance.

ALJX 1.² Complainant did not file a written complaint. I find that the conversation Complainant had with the OSHA representative on October 31, 2006, constitutes a complaint under the STAA.

On December 1, 2006, OSHA dismissed the complaint because it was untimely. Complainant requested a formal hearing. On December 14, 2006, the case was assigned to me. On December 14, 2006, I issued an Order to Show Cause requiring Complainant to show cause

¹ It appears that the conversation was by telephone.

² “ALJX” denotes Administrative Law Judge’s Exhibit.

why the complaint should not be dismissed because it was not filed within 180 days of the date of Respondent's alleged action against him that occurred on December 31, 2005. On December 26, 2006, Complainant filed his response to the Order to Show Cause. ALJX 2.

The STAA, § 31105, sets forth the following statute of limitations for filing a complaint:

(b) Filing Complaints and Procedures.--(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred.

The regulations at 29 C.F.R. § 1978.102 provide:

Filing a discrimination complaint.

(d) Time for filing. ...an employee who believes that he has been discriminated against in violation of [the STAA] “ * * * may, within one hundred and eighty days after such alleged violation occurs,” file or have filed by any person on the employee's behalf a complaint with the Secretary.

In his response to the Order to Show Cause, Complainant states, in pertinent part:

[Respondent] replied to E.E.O.C. charge end of June [20]06 [and] evaded addressing what my employment status is from 1-1-06 to 6-31-06. I gave up attempting to get an answer³

Attached to Complainant's response are a “Charge of Discrimination” against Mamo Transportation dated April 7, 2005, and a charge against Respondent dated May 12, 2006, filed with the Equal Employment Opportunity Commission (“EEOC”). The EEOC charge against Mamo Transportation filed on April 7, 2005 was filed before Complainant was discharged by Respondent and is irrelevant to the instant case. Complainant's EEOC charge against Respondent dated May 12, 2006, states:

I began my employment [with Respondent] on September 21, 2005 as a CDL Truck Driver. On January 1, 2006, I was disqualified from my employment with the above referenced employer. I was informed by the dispatcher that there was a lack of work. I believe this is an act of retaliation for me having filed a previous charge against another truck company.

³ The remainder of the response describes acts of Respondent that allegedly violate the STAA.

I believe I have been discriminated against because of my age (69) (09/05/36) in violation of the Age Discrimination in Employment Act and also in retaliation for having filed a charge against another trucking company.

I find that, the STAA complaint that Complainant filed with OSHA on October 31, 2006, is barred by the 180-day statute of limitations (unless the running of the statute of limitations was tolled). The STAA and its regulations require the filing of a complaint within 180 days after the alleged violation occurred. It is clear that the alleged violation or discrimination occurred on December 31, 2005, or January 1, 2006, when Respondent informed Complainant that he was disqualified for driving for the company and he ceased performing that work.

On the other hand, the EEOC charge filed by Complainant on May 12, 2006, alleges the same act of discrimination (although the violation of a different statute) and was filed within 180 days of the termination of his job with Respondent. Consequently, the question is whether this EEOC charge can toll the STAA's statute of limitations. The answer is no. The Administrative Review Board has clearly held that making a complaint in the wrong forum does not toll the STAA's statute of limitations. *Hillis v. Knochel Brothers, Inc.*, ARB Case Nos. 03-136, 04-081, 04-148 (ARB Oct. 19, 2004) (citing 29 C.F.R. § 1978.102(d)(3): "filing with another agency . . . do[es] not justify a tolling of the 180-day period.")

Based on the foregoing, the complaint herein is untimely and must be dismissed.

ORDER

The complaint of Carl B. Bedwell, Sr. is dismissed.

A

Robert D. Kaplan
Administrative Law Judge

Cherry Hill, New Jersey

NOTICE OF REVIEW: The administrative law judge's Recommended Decision and Order, Dismissing the Complaint along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Decision and Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.