

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 12 December 2008**

**CASE NO: 2009-STA-00003**

**IN THE MATTER OF**

**ROMEO EDMUND,  
Complainant**

**v.**

**METROPOLITAN TRANSIT AUTHORITY,  
Respondent**

**RECOMMENDED DECISION AND ORDER**  
**DISMISSING COMPLAINT AS UNTIMELY**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act (the STAA), 49 U.S.C. § 31105, and its implementing regulations, 29 C.F.R. Part 1978, brought by Romeo R. Edmund (Complainant) against Metropolitan Transit Authority (Respondent). Complainant alleges Respondent terminated him in violation of the STAA.

**FINDINGS OF FACT**

Complainant was fired from his employment on April 16, 2007. He filed an STAA complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) on September 8, 2008. After an investigation, OSHA notified Complainant by letter dated September 15, 2008 that his complaint was being dismissed because it was not timely filed. Thereafter, Complainant filed a timely appeal with the Office of Administrative Law Judges. The Court issued an Order to Show Cause as to why the complaint should not be dismissed as not having been timely filed pursuant to the STAA. Complainant filed a response on November 20, 2008. In his response, Complainant noted a charge of employment discrimination filed with the Equal Employment Opportunity Commission (the EEOC).

There is nothing in the record providing a date on which Complainant filed his charge with the EEOC. There is a "Dismissal and Notice of Rights" form sent by the EEOC on August 24, 2007, notifying Complainant that it was unable to conclude that there had been a violation of the statutes regarding his complaint filed in its office. From these facts, it is apparent that the charge filed with the EEOC was filed within 180-days of Complainant's termination. However, as discussed below, this EEOC charge cannot toll the STAA's statute of limitations.

## DISCUSSION

The STAA protects employees from employer retaliation when they complain about violations of commercial or motor vehicle safety requirements. 49 U.S.C. § 31105(a)(1)(A). Employees alleging employer retaliation in violation of the STAA must file their complaints with OSHA within 180 days after the alleged violation occurs. 20 C.F.R. § 1978.102(c). The STAA limitations period is not jurisdictional and therefore is subject to waiver, estoppel, and equitable tolling. *Hoff v. Mid-States Express, Inc.*, ARB No. 03-051, 2002-STA-6 (ARB May 27, 2004) (citing *Hicks v. Colonial Motor Freight Lines*, No. 84-STA-20 (Sec’y Dec. 10, 1985)). The regulations implementing the STAA discuss equitable tolling. Specifically, they provide in pertinent part:

[T]here are circumstances which will justify tolling of the 180-day period on the basis of recognized equitable principles or because of extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or *filing with another agency are examples of circumstances which do not justify a tolling of the 180-day period.* 29 C.F.R. § 1978.102(d)(3) (emphasis added).

I find that the STAA complaint that Complainant filed with OSHA on September 8, 2008 is barred by the 180-day statute of limitations. In his Response, Complainant does not cite any circumstances which would justify a tolling of the 180-day period. Complainant only notes that he filed an EEOC charge but there is nothing to indicate that the EEOC charge had anything to do with violations of the STAA. In addition, the Administrative Review Board has held that making a complaint in the wrong forum does not toll the STAA’s statute of limitations. *Hillis v. Knochel Brothers, Inc.*, ARB Nos. 03-136, 04-081, 04-148 (ARB Oct. 19, 2004) (citing 29 C.F.R. § 1978.102(d)(3)).

The Court notes that in his cover letter Complainant alleges a continuing violation. But Complainant was fired from his employment and nothing in the Response would support a continuing violation theory.

Based on the foregoing, the Court finds the complaint herein was not timely filed and must be dismissed.

**RECOMMENDED ORDER**

The complaint of Romeo Edmund is hereby **DISMISSED**.

**A**

**LARRY W. PRICE**  
**Administrative Law Judge**

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**NOTICE OF REVIEW:** The administrative law judge's Recommended Decision and Order, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 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.