



Issue Date: 08 April 2009

Case No. 2009-STA-19

In the Matter of

ANTHONY D. REAVES,

Complainant,

v.

MARTEN TRANSPORT, Ltd.,

Respondent.

RECOMMENDED ORDER APPROVING WITHDRAWAL OF OBJECTIONS
TO OSHA'S FINDINGS AND APPROVING OSHA'S FINDINGS
AND DISMISSING THE COMPLAINT
AND
ORDER CANCELLING THE HEARING

This proceeding arises under the employee protection provisions of 49 U.S.C. Section 31105 of the Surface Transportation Assistance Act (STAA), and the applicable regulations issued thereunder at 29 C.F.R. Part 1978. On January 13, 2009, the United States Department of Labor's Occupational Safety and Health Administration ("OSHA") Area Director, issued his findings on a complaint filed by Anthony D. Reaves against Marten Transport, Ltd., in which he concluded that there was no reasonable cause to believe that Respondent violated 49 U.S.C. § 31105.

In response to OSHA's Area Director's determination, the Complainant appealed the findings, by letter, dated January 26, 2009, and requested a hearing before an administrative law judge. The above-captioned matter is currently set for hearing on August 5, 2009, in Paducah, Kentucky. By letter, filed March 16, 2009, Complainant states in pertinent part: "I Anthony D. Reaves have consulted coun[s]el on case # 2009-STA-19 and have no case in which to win under that law and do wish to withdraw my case." By letter, filed on April 3, 2009, Respondent's

counsel stated: "This is to advise the Court that Marten Transport, Ltd.[,] has no objection to the withdrawal of the Complaint and the dismissal of the case on that basis."

Twenty-nine C.F.R. § 1978.111(c) (2008) governs withdrawals of STAA complaints. The regulation specifically states:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

29 C.F.R. § 1978.111(c) (2008).

Complainant's request to withdraw his case is tantamount to a request to withdraw any objection to OSHA's findings. *Thompson v. Inland Northwest Dairies, LLC*, ARB No. 07-085, ALJ No. 2007-STA-31 (ARB July 31, 2007).

RECOMMENDED ORDER

Accordingly, **IT IS HEREBY RECOMMENDED** that Complainant's request to withdraw his objections to OSHA's findings be granted and OSHA's findings be affirmed and the complaint be dismissed. **IT IS FURTHER ORDERED** that the hearing scheduled for August 5, 2009, in Paducah, Kentucky is **CANCELLED**.

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LARRY S. MERCK
Administrative Law Judge

Notice of Review: The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W.,

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 Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order 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.