



In the Matter of:

JIMMY C. HOLLAND,

ARB CASE NO. 02-103

COMPLAINANT,

ALJ CASE NO. 2002-STA-14

v.

DATE: August 25, 2003

STAGE CALL CORPORATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul Taylor, Esq., Truckers Justice Center, Eagan, Minnesota

For the Respondent:

Ryan E. Kelly, Esq., Baumann, Kelly, Paytas & Bernstein, P.A., Phoenix, Arizona

FINAL DECISION AND ORDER

A Department of Labor Administrative Law Judge (ALJ) determined that although Jimmy C. Holland, an employee driver of Stage Call Corp., engaged in protected activity as specified in the Surface Transportation Assistance Act (STAA)¹ and was terminated shortly thereafter, Stage Call managers were unaware of Holland's protected activities when they terminated him. Therefore, the ALJ concluded that Stage Call did not discriminate in violation of the STAA. His Recommended Decision and Order of July 26, 2002 (R. D. & O.) denying Holland's complaint automatically comes to us for review.² We are bound by the ALJ's factual

¹ 49 U.S.C.A. § 31105 (West 1997) is the employee protection section of the STAA.

² See 29 C.F.R. § 1978.109(a) (2002). The Secretary of Labor's authority to decide this case has been delegated to the Administrative Review Board. See 49 U.S.C.A. § 31105(b)(2)(C) and Secretary's Order 1-2002, 67 Fed Reg. 64272 (Oct. 17, 2002).

findings if those findings are supported by substantial evidence on the record considered as a whole.³ We review the ALJ's conclusions of law de novo.⁴

The R. D. & O. thoroughly and fairly recites the relevant facts underlying this dispute. Furthermore, having reviewed the entire record, we find substantial evidence supports the ALJ's findings of fact. And although the ALJ unnecessarily delved into and discussed whether Holland established a prima facie case,⁵ we affirm the recommended decision because the record clearly demonstrates that on January 10, 2001, Stage Call managers Conner and Maples (with Peterson and Ramero present) made the decision to terminate Holland before they were aware of his protected activity. Transcript at 176-177, 180. Thus, the ALJ correctly concluded that Holland did not prove by a preponderance of evidence the causality element of a traditional STAA whistleblower claim.⁶ Therefore, we attach and incorporate the R. D. & O.

Accordingly, we **ADOPT** the ALJ's Recommended Decision and Order and **DENY** Holland's complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

³ 29 C.F.R. § 1978.109(c)(3); *BSP Transp., Inc. v. United States Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995). Substantial evidence is that which is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Clean Harbors Env'tl. Servs., Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998) (quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971)).

⁴ *See Roadway Express v. Dole*, 929 F. 2d 1060, 1066 (5th Cir. 1991).

⁵ *See Williams v. Baltimore City Public Schools System*, ARB No. 01-021, ALJ No. 00-CAA-15, n.7 (ARB May 30, 2003). *See also Costa v. Desert Palace, Inc.*, 299 F.3d 838, 855-856 (9th Cir. 2002).

⁶ This decision is, however, strictly limited to the facts of the case. We do not hold that a complainant must invariably prove that the employer had certain knowledge of the complainant's protected activity. *See Michaud v. BSP Transp., Inc.*, ARB No. 96-198, ALJ No. 95-STA-29, slip op. at 6-7 (ARB Jan. 6, 1997) (knowledge established by proof that employer suspected complainant was about to file a complaint).