



In the Matter of:

ROBERT MICHAUD,

ARB CASE NO. 96-198

COMPLAINANT,

ALJ CASE NO. 95-STA-29

and

DATE: December 21, 1998

**ASSISTANT SECRETARY OF LABOR FOR
OCCUPATIONAL SAFETY AND HEALTH,**

INTERVENOR,

v.

BSP TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**ORDER VACATING PRIOR BOARD DECISIONS
AND DISMISSING COMPLAINT**

This case arises under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. §31105 (1994). We issue this Order pursuant to the decision of the United States Court of Appeals for the First Circuit in *BSP Trans, Inc. v. United States Department of Labor*, 160 F.3d 38 (1st Cir. Nov. 3, 1998).

In a 1996 Recommended Decision and Order, the Administrative Law Judge (ALJ) recommended dismissal of the complaint. The ALJ found that Complainant did not engage in any activities protected under the STAA and therefore did not establish that Respondent violated the employee protection provision. *Michaud v. BSP Transport, Inc.*, ALJ Case No. 95-STA-29, Rec. Dec. and Ord., Sept. 6, 1996. A regulation implementing the employee protection provision provides that an ALJ's factual findings are conclusive if they are supported by substantial evidence in the record. 29 C.F.R. §1978.109(c)(3).

On review of the Recommended Decision, this Board found that some of the ALJ's factual findings were not supported by the record evidence. Contrary to the ALJ, we found that Michaud

established a STAA violation. *Michaud v. BSP Transport, Inc.*, ARB Case No. 96-198, Dec. and Rem. Ord., Jan. 6, 1997. We remanded the case to the ALJ for a supplemental recommended decision on the remedies for the violation.

The ALJ duly issued a Recommended Decision and Order on Remand, which we accepted in large part. *Michaud v. BSP Transport, Inc.*, ARB Case No. 97-113, Final Dec. and Ord., Oct. 9, 1997. In the Final Order we required Respondent to pay back pay, front pay, compensatory damages, and attorney fees and costs.

On judicial review, the Court of Appeals found that there was substantial evidence to support the ALJ's factual findings, particularly the finding that Complainant did not make any complaints to his employer that were protected under the STAA. Accordingly, the Court reversed the Board's decision and remanded with instructions to enter judgment on behalf of the Respondent.

Pursuant to the Court's order, we **VACATE** our decisions issued on January 6 and October 7, 1997 and **DISMISS** the complaint.

SO ORDERED.

PAUL GREENBERG
Chair

CYNTHIA L. ATTWOOD
Acting Member