



In the Matter of:

DANIEL S. SOMERSON,

ARB CASE NO. 02-118

COMPLAINANT,

ALJ CASE NO. 02-STA-44

v.

DATE: February 13, 2003

MAIL CONTRACTORS OF AMERICA,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearance:

For the Complainant:

Edward A. Slavin, Jr., Esq., *St. Augustine, Florida*

ORDER DISMISSING INTERLOCUTORY APPEAL

This case arose when the complainant, Daniel Somerson, filed a complaint alleging that Mail Contractors of America (Mail Contractors), the respondent, had retaliated against him in violation of the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C.A § 31105 (West 1997). Pursuant to 29 C.F.R. §§ 1978.105(a); 1978.106(a), (b), a Department of Labor Administrative Law Judge (ALJ) scheduled a hearing in this case for September 10, 2002.

On September 9, 2002, Somerson filed a Petition for Interlocutory Appeal with the Administrative Review Board (Board). Somerson requested review of “the ALJ’s pretrial orders *instanter*.” The Secretary and the Board have held many times that interlocutory appeals are generally disfavored, and that there is a strong policy against piecemeal appeals. *See e.g., Amato v. Assured Transportation and Delivery, Inc.*, ARB No. 98-167, ALJ No. 98-TSC-6 (ARB Jan. 31, 2000); *Hasan v. Commonwealth Edison Co.*, ARB No. 99-097; ALJ No. 99-ERA-17 (ARB Sept. 16, 1999); *Carter v. B & W Nuclear Technologies, Inc.*, ALJ No. 94-ERA-13 (Sec’y Sept. 28, 1994). Furthermore, in *Plumley v. Federal Bureau of Prisons*, 86-CAA-6 (Sec’y April 29, 1987), the Secretary of Labor described the procedure for obtaining review of an Administrative Law Judge’s interlocutory order. In accordance with this procedure, a party seeking interlocutory review is required to obtain certification of the interlocutory questions for review from the ALJ. Somerson’s Petition for Interlocutory Review contained no such certification.

Therefore, on September 18, 2002, the Board issued an Order to Show Cause directing Somerson to show cause no later than October 2, 2002, why the Board should not dismiss his interlocutory appeal. Somerson filed no response to the order.

We find that Somerson has failed to comply with the procedure established in *Plumley* for obtaining interlocutory review. We further find that Somerson has failed to suggest any reason that we should depart from our well-established general rule against consideration of interlocutory appeals. Accordingly, we **DISMISS** this appeal.¹

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹ We note that on December 16, 2002, the ALJ issued in this case a Recommended Decision and Order Dismissing Complaint and Certifying Facts Relating to Intimidation and Harassment of Witnesses and Counsel to Federal District Court. This Recommended Decision is currently before the Board for review pursuant to 29 C.F.R. § 1978.109(a), the STAA's "automatic review" provision.