



In the Matter of:

GERALD FISH,

ARB CASE NO. 03-047

COMPLAINANT,

ALJ CASE NO. 1997-STA-32

v.

DATE: March 24, 2004

RAYMOND COSSETTE TRUCKING,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Gerald Fish, pro se, Audubon, Minnesota

For the Respondent:

David L. Johnson, Esq., McNair, Larson & Carlson, Ltd., Fargo, North Dakota

FINAL DECISION AND ORDER

Gerald Fish filed a complaint alleging that Raymond Cossette Trucking, Inc. (Cossette) retaliated against him for engaging in activities protected by Section 405, the employee protection provision of the Surface Transportation Assistance Act of 1982, 49 U.S.C.A. § 31105 (West 1997). After investigating the complaint the Secretary determined that it was without merit. Fish objected to the Secretary's determination and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).

On January 23, 1998, the ALJ stayed proceedings pending the outcome of Cossette's bankruptcy hearing. The final report from that hearing stated that Cossette had no remaining assets. On December 9, 2002, the ALJ ordered both parties to show cause why the case should not be dismissed. Neither party responded to the Show Cause Order. On January 22, 2003, the ALJ issued an order recommending that Fish's complaint be dismissed (R. O.).

Pursuant to 29 C.F.R. § 1978.109(a), (b) (2002), the ALJ forwarded the case to the Board to issue a final decision and order based on the record and the ALJ's R. O. We issued a Notice of Review and Briefing Schedule, informing the parties that they were permitted to file briefs with the Board in support of or in opposition to the ALJ's R. O. Neither party filed a brief.

DISCUSSION

Courts possess the "inherent power" to dismiss a case on their own initiative for lack of prosecution. *Link v. Wabash R. R. Co.*, 370 U.S. 626, 630 (1962). This power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* at 630-631. Like the courts, the Department of Labor's Administrative Law Judges and this Board must necessarily manage their dockets in an effort to "achieve the orderly and expeditious disposition of cases." Thus, the Board will affirm an ALJ's recommended decision and order to dismiss on the grounds of abandonment where the facts dictate that a party has failed to prosecute his or her case. *Tucker v. Connecticut Winpump Co.*, ARB No. 02-005, ALJ No. 2001-STA-53, slip op. at 4 (ARB Mar. 15, 2002); *Curley v. Grand Rapids Iron & Metal Co.*, ARB No. 00-013, ALJ No. 99-STA-39, slip op. at 2 (ARB Feb. 9, 1999).

As previously noted, Fish did not respond to the ALJ's Show Cause Order. On review, the Board issued a briefing order giving Fish an additional opportunity to explain why the ALJ's finding should be reversed. Fish did not respond to our briefing order. Accordingly, the Board **AFFIRMS** the ALJ's Order and **DISMISSES** the complaint.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge