

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 August 2004

Case No. 2004-AIR-21

In the Matter of

STEVAN E. JOHNSON

Complainant

v.

FACILITIES SERVICES & SYSTEMS

Respondent

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

DECISION AND ORDER APPROVING WITHDRAWAL REQUEST

This proceeding arises under the employee protection provisions of 49 U.S.C. § 42121 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, and the applicable regulations issued thereunder at 29 C.F.R. Part 1979 published at 67 Fed. Reg. 15453 (Apr. 1, 2002) (hereinafter AIR). On February 18, 2004, the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, issued his findings on a complaint filed by Stevan E. Johnson against Facilities Services and Systems in which he concluded that because of the Complainant's lack of cooperation and because the complaint was without substantive merit that it should be dismissed. Thus, the Regional Administrator found that it was reasonable to believe that the Respondent had not violated 49 U.S.C. § 42121.

In response to the Regional Administrator's findings, the Complainant timely perfected an appeal in a written statement dated March 15, 2004. The case was subsequently scheduled for hearing in Boston, Massachusetts.

On July 19, 2004, I received a Notice of Withdrawal from Stevan Johnson in which his appeal request is withdrawn "due to unforeseen circumstances that will bear considerably on his ability to proceed with this matter." The Respondent has filed a statement indicating that it concurs with the Complainant's withdrawal request.

The AIR regulations closely parallel those found in the Surface Transportation Assistance Act, 49 U.S.C. § 31105 and the applicable regulations codified at 29 C.F.R. Part 1978 (hereinafter STAA). Twenty-nine C.F.R. § 1979.111(c) permits a party to withdraw his objections to the Findings or Order of the Regional Administrator at any time before the Findings or Order become final by filing a written withdrawal with the Administrative Law Judge. Fed. R. Civ. P. 41(a)(1) is not applicable since it permits a dismissal without prejudice only at a time before an Answer to the Complaint has been filed. In this case, the Secretary's Findings were issued and the Complainant timely filed objections coupled with a request for hearing. The Complainant's response constitutes an Answer, and therefore, renders Rule 41 inapplicable.

In view of the above, IT IS ORDERED that the Complainant's request to withdraw his objections to the Secretary's Findings is hereby GRANTED pursuant to authority conferred by 29 C.F.R. § 1979.111(c). The Findings of the Regional Administrator, Occupational Safety and Health Administration concluding that the Respondent had not violated 49 U.S.C. § 42121 of the Act are hereby affirmed and reinstated. This Order is the final administrative action and no Secretarial review is required. *Underwood v. Blue Springs Hatchery*, 87-STA-21 (Dep. Sec'y Nov. 2, 1987) (Order to Show Cause).

In view of the above, IT IS ORDERED that the hearing scheduled for September 21, 2004 in Boston, Massachusetts is hereby cancelled.

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RUDOLF L. JANSEN
Administrative Law Judge