



Issue Date: 26 January 2016

Case No.: 2015-NTS-00004

In the Matter of

TOYA PEREZ

Complainant

v.

MTA BUS 126 DEPOT

Respondents

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

This matter arises under the National Transit Systems Security Act (NTSSA), 6 U.S.C. § 1142. Applicable regulations are set forth at 29 C.F.R. Part 1982. The Complainant is not represented by counsel.

Procedural History

The Complainant was formerly employed as a probationary bus operator with the New York City Transit Authority. On October 3, 2014, the Complainant filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) against the Respondent, her former employer.¹ In her complaint, the Complainant alleged that she had reported to the Respondent that she had been harassed on multiple occasions on duty ("on the bus"), but the Respondent had not taken any corrective action ("never check[ed] it out"). The complaint asserted that the Respondent had taken various adverse actions against her, including discipline, threats, and harassment.² OSHA acknowledged the receipt of the Complainant's complaint on April 9, 2015, and informed the Respondent of the Complainant's complaint by letter dated May 4, 2015.³

By letter dated June 15, 2015, OSHA informed the Complainant that the investigation into her complaint had been completed. OSHA Determination Letter at 1. OSHA acknowledged

¹ The record indicates the Complainant filed this complaint (Complaint Number ECN5426) online.

² Complainant's complaint states, among other things, that the Respondent took her out of service without pay, had coworkers try to intimidate her, and follow her off duty. OSHA Complaint at 2.

³ There is no explanation in the record for the delay between the date the Complainant filed the Complaint and the date OSHA acknowledged receipt.

that the Complainant's complaint was timely filed.⁴ Id. OSHA noted that the Complainant also alleged that the Respondent had terminated her employment in retaliation for filing a sexual harassment complaint and for reporting safety concerns to the New York State Division of Human Rights (NYSDHR). Id. However, OSHA also determined that the Respondent terminated the Complainant's employment based on unsatisfactory job performance, including incidents OSHA characterized as follows: "[Complainant] pulled off the road while on-duty and discharged her passengers." Id. OSHA concluded that neither the Complainant's reporting of safety concerns nor her filing of a complaint with OSHA contributed either to her change of duties or termination from employment. Id. Accordingly, OSHA dismissed the Complainant's complaint. Id.

By letter dated June 24, 2015 to the Chief Administrative Law Judge, the Complainant filed objections to OSHA's Determination and requested that the Chief Administrative Law Judge help her "re-open" her claim. Letter of June 24, 2015, at 2. The Chief Administrative Law Judge deemed the Claimant's letter of June 24, 2015 to be a request for a hearing, and assigned this matter to me for adjudication. On July 14, 2015, I issued an Order informing the parties that this matter had been assigned to me. I also directed the parties to file "initial submissions," and ordered the Complainant to provide me a complete copy of her OSHA Complaint. Order of July 14, 2015, at 2-3.

On July 28, 2015, received in my office on July 29, 2015, counsel for the Respondent entered an appearance and submitted a Motion to Dismiss.⁵ By Order dated August 6, 2015, having not yet received any submissions from the Complainant, I directed the Complainant to file her "Initial Submissions," or an explanation as to why she was unable to do so, within seven days. Order of Aug. 6, 2015, at 1. I also denied portions of the Respondent's Motion to Dismiss, and informed the Complainant of her right to respond to the Respondent's Motion to Dismiss.⁶ Id., at 3.

On August 28, 2015, I issued another Order, in which I again directed the Complainant to comply with my Order directing her to file "Initial Submissions" or explain why she was unable to do so.⁷ Order of Aug. 28, 2015 at 2. I also discussed the Respondent's pending Motion to Dismiss in more detail: I informed the Complainant that she was entitled to submit a response in opposition to the Motion, advised her of the regulatory provision relating to opposing motions; and related the elements of proof she must establish in order to prevail in her complaint. Id., at 2-3. Further, I told the Complainant that if she did not file a response to the Motion to Dismiss, I would consider the Motion to Dismiss to be unopposed and that, if I granted the Respondent's Motion to Dismiss, I may dismiss the matter in its entirety. Id., at 3. I also attached copies of relevant provisions of the procedural regulation. Id., at 3-4.

⁴ The Determination Letter reflects that the Respondent moved the Complainant from her position as a bus operator to a caretaker position on September 8, 2014 and terminated the Complainant's employment on February 12, 2015. I presume these are the adverse actions at issue in this matter.

⁵ Respondent's counsel also conditionally submitted the Respondent's "Initial Submissions."

⁶ I denied that portion of the Respondent's Motion to Dismiss that sought dismissal based on the Complainant's failure to provide Respondent with a copy of her objection and request for hearing. Order of Aug. 6, 2015, at 3.

⁷ The order was prompted by the Complainant's failure to appear at a telephonic conference that had been scheduled at her request. See Order of Aug. 28, 2015, at 1.

Subsequently, on September 21, 2015, a telephonic conference was held. At this conference, the Complainant agreed to provide her “Initial Submissions” and indicated she would respond to the Respondent’s Motion to Dismiss. Complainant also stated that she was attempting to retain counsel. By Order dated September 22, 2015, I directed the Complainant to file her “Initial Submissions” and any response to the Respondent’s Motion to Dismiss within 30 days, whether or not she had retained counsel.⁸ Order of Sept. 22, 2015 at 1-2. In addition, I cancelled the hearing, which had been scheduled for October 15, 2015, and removed this matter from the hearing calendar, pending resolution of various issues, including the Respondent’s Motion to Dismiss. Id.

Since my Order of September 22, 2015, the Complainant submitted various items to me, on multiple occasions, by fax. These will be discussed in more detail below.

By letter dated December 21, 2015, through counsel, the Respondent reported that it had identified video surveillance footage that the Complainant had requested, and, on November 4, 2015, had provided the Complainant with these items. Respondent stated that the Complainant’s submissions to me did not “reveal any protected activity or adverse action as defined under the National Transit Systems Security Act.” Accordingly, the Respondent requested that I grant its previously filed Motion to Dismiss.

Respondent’s Motion to Dismiss

In its Motion to Dismiss, the Respondent asserted that the Complainant’s complaint fails to state a claim, because the Complainant did not allege a protected activity as defined under the Act. Motion to Dismiss at 1. Accordingly, the Respondent requested that this matter be dismissed pursuant to 29 C.F.R. § 18.70(c).

As the Respondent put it, the Complainant’s “allegations of being harassed while operating a bus, being intimidated by co-workers and being followed off-duty do not constitute protected activity related to public transportation safety or security, fraud, waste or abuse of Federal grants or public funds intended to be used for public transportation safety or security within the NTSSA.” Motion to Dismiss at 5. And, the Respondent also stated, to the extent that the Complainant alleged harassment, such complaints do not constitute protected activity, because the Complainant “failed to establish that this activity was related in any way to public transportation safety or security within the meaning of the NTSSA.” Id.

The Complainant’s Submissions

Since my Order of August 28, 2015, the Complainant has submitted items to me on multiple occasions. Below is a listing of the Complainant’s submissions, based on the date received, as well as a summary of the submissions.⁹

⁸ I also I directed the Respondents to try to locate video footage from the Complainant’s bus routes, that the Complainant had requested be provided to her. See Order of Sept. 22, 2015, at 2.

⁹ Some of the Complainant’s submissions contain personal medical and financial information, and information regarding litigation not related to this matter. I have reviewed these submissions carefully, but my summaries contain only information necessary to my adjudication of the issues before me.

September 4, 2015: These documents indicate that in August and September 2014 the Complainant complained to management officials that she was being harassed by supervisors and management “on a daily basis,” on and off duty. According to the Complainant, such harassment included incidents in which persons connected to the Respondent were following her. The documents do not indicate what the Complainant believed regarding what, if anything, precipitated the alleged harassment. The Complainant was evaluated by a physician and was cleared to return to work by October 30, 2014.¹⁰ An additional evaluation dated December 13, 2014 confirmed that the Complainant was medically cleared to return to work.

October 13, 2015: In this submission the Complainant stated that she complained about being harassed and assaulted, and was then terminated from employment. She also stated: “The ADA Compliant Company who received federal grants is doing fraud.”¹¹ Various materials relating to the Complainant’s employment are also included; these items indicate the Complainant lodged complaints about various events (such as interactions with customers), and complained about being harassed and followed by Respondent’s personnel. There is also a document indicating that the Complainant’s status as a probationary employee was extended to April 26, 2015.

October 20, 2015: Complainant submitted various documents indicating she filed a civil action in state court (Supreme Court, Kings County, New York) alleging discrimination, harassment, and retaliation by the Respondent. She also submitted a handwritten document, titled “Initial Submission.”¹² In this document, the Complainant stated that she had been assaulted by a passenger who then filed an “EEO Complaint” against her, and she was called in and questioned about this incident. Complainant stated that passengers assaulted her and sexually harassed her when she was driving the bus. Complainant stated that she complained about this because she was afraid for her life. She also stated: “I then found out the [ADA] “Complaint [Compliant?] Company was doing fraud – using ... fake passengers ... to watch the bus operators.” Complainant also alleged that the Respondent was using ADA grants “which was supposed to be for ADA ride checks to make sure the bus operator was compliant to ADA Federal guidelines, which is fraud.”

October 26, 2015: The Complainant submitted documents indicating that the Respondent provided her with copies of video surveillance footage of the buses she operated on September 1 and 2, 2014. According to the Respondent’s communication with the Complainant, the only surveillance video available was for extremely limited time periods (less than an hour on September 1, and less than two hours on September 2). The Complainant asserted that the Respondent “deleted evidence.” Complainant also submitted documents relating to an incident in April 2014 (4/14/2014) in which she called for assistance after a female customer grabbed her in the shoulder.

¹⁰ A medical evaluation dated September 13, 2014, shortly after the Claimant was suspended from her job, is incomplete (only the first page was submitted). The rest of the evaluation is included in the items the Complainant submitted on October 13, 2015. In the September 13, 2014 evaluation, the Complainant was determined to be ineligible for work.

¹¹ The Complainant also submitted materials relating to her complaint of discrimination filed with the New York State Division of Human Rights (NYSDHR), including an incomplete copy (page 1 is missing) of a submission from Employer’s counsel in which the Employer sought to have the Complainant’s complaint for discrimination dismissed.

¹² Complainant submitted several copies of this document, some of which were incomplete.

December 9, 2015: The Complainant submitted a two-page typed document dated October 19, 2015 (10/19/2015).¹³ The first paragraph of the document stated: “Initial Submission.” In the document she stated that she was assaulted by a passenger on April 13, 2014, and the passenger filed an EEO complaint against her. She stated that there is video footage of her being harassed while driving on September 1 and 2, 2015, and she again stated that the Respondent’s videos are incomplete. She said she was “scared for my life” while driving. Complainant also stated: “I’ve then found out the ADA compliant company was doing Fraud using ... fake [passengers] ... to watch the bus operators, while using federal grants which is supposed to be for ADA ride checks. The bus operators are supposed to be ADA compliant. [T]hey are using federal grants to have passengers ride the bus and watch the bus operators which is fraud” Complainant also stated that she had made complaints about other issues and no investigations were ever done, and said that her union did not assist her in her complaints.

December 31, 2015: The Complainant submitted copies of the Respondent’s response to OSHA relating to the Complainant’s OSHA Complaint, dated May 12, 2015, and the Respondent’s response to NYSDHR, relating to the complaint the Complainant had filed in that forum, dated December 26, 2014; these documents provide the Respondent’s position relating to the Complainant’s complaints.¹⁴ Additionally, the Complainant submitted various documents from supervisors dated August 11, 2014, and September 4, 8, and 16, 2014, relating to the Complainant’s job performance. The Complainant also submitted a “Final Evaluation of Separating Employee” Form, indicating her employment was terminated on February 12, 2015, for “unsatisfactory operating and time and attendance record.”

January 4, 2016: Complainant submitted documents pertaining to a legal matter not related to her employment, and also submitted documents relating to her complaint to NYSDHR.¹⁵

Whistleblower Protection under the Act

In pertinent part, the National Transit Systems Security Act prohibits a public transportation agency from taking adverse actions (including discharge and discrimination) against an employee if such action is due, in whole or in part, to the employee’s protected activity. 6 U.S.C. § 1142(a). Protected activity is defined in the statute as including the following:

(1) to provide information ... regarding any conduct which the employee reasonably believes constitutes a violation of any Federal law, rule, or regulation relating to public transportation safety or security, or fraud, waste or abuse of Federal grants or other public funds intended to be used for public transportation safety or security, if the information or assistance is provided to or an investigation stemming from the provided information is conducted by —

(A) a Federal, State, or local regulatory or law enforcement agency (including an office of the Inspector General under the Inspector General Act of 1978 (5 U.S.C. App.; Public Law 95-452) ;

¹³ Complainant submitted two copies of this document.

¹⁴ Portions of several pages of the latter document are not legible (too dark). The Complainant also submitted several other documents relating to complaints she made with state authorities.

¹⁵ These documents are not signed but indicate that the Complainant’s NYSDHR complaint was dismissed. The documents suggest that the Complainant’s NYSDHR complaint centered on allegations that the Respondent discriminated against her, but not on any safety-related issues.

- (B) any Member of Congress, any Committee of Congress, or the Government Accountability Office; or
- (C) a person with supervisory authority over the employee or such other person who has the authority to investigate, discover, or terminate the misconduct;

6 U.S.C. § 1142(a)(1).

Additionally, reporting a “hazardous safety or security condition” is also defined as protected activity under the Act. 6 U.S.C. § 1142(b)(1)(A).¹⁶

According to the Joint Explanatory Statement of the Congressional Conference Committee, this statute is “modeled on” the employee protection provisions of the Federal Rail Safety Act, 49 U.S.C. § 20109, and the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), 49 U.S.C. § 42121. H.R. CONF. REP. NO. 110-259, at 340 (2007). Accordingly, the Act has similar standards for establishing what constitutes protected activity, and for what constitutes a defense to a claim. For example, a complainant must establish that the protected activity was a “contributing factor” in the adverse action alleged in the complaint. 6 U.S.C. § 1142(c)(2)(B)(i). In addition, notwithstanding a determination that a complainant has established a prima facie case by making such a showing, the employer prevails if it demonstrates, by “clear and convincing evidence” that it would have taken the same unfavorable personnel action in the absence of the protected activity. 6 U.S.C. § 1413(c)(2)(B)(ii).

Standard of Review

Under the governing procedural regulation, any party may move to dismiss all or part of a matter for reasons recognized under controlling law, such as failure to state a claim upon which relief can be granted. 29 C.F.R. § 18.70(c). If the opposing party fails to respond, then the administrative law judge may consider the motion to be unopposed. Id.

The Administrative Review Board has held that strict pleading requirements are not applicable to whistleblower complaints, and has indicated that liberal amendment of complaints should be permitted. Sylvester v. Parexel Int’l LLC, ARB No. 07-0123, ALJ Nos. 2007-SOX-00039 & -00042, slip op. at 12-13 (ARB May 25, 2011) (Sarbanes-Oxley case). The Board also has commented that it may not be appropriate for an administrative law judge to grant a motion to dismiss based on failure to state a claim upon which relief can be granted because proceedings before the Office of Administrative Law Judges are informal, and do not have strict pleading requirements. Id.

The governing regulation indicates that an administrative law judge may allow parties to amend and supplement their filings. 29 C.F.R. § 18.36. As discussed above, the Complainant has availed herself of multiple opportunities to respond to the Respondent’s Motion to Dismiss. She also has, on multiple occasions, submitted “initial submissions.” I will consider all of the Complainant’s submissions on the issue of whether the Complainant has engaged in protected

¹⁶ I find that the provisions of 6 U.S.C. § 1142(a)(2) through (5), as well as the remaining provisions of 6 U.S.C. § 1142(b), which describe other types of protected activity (such as cooperating with an investigation of the National Transportation Safety Board), or refusing to work because of a hazardous safety or security condition, are not implicated under the facts in this matter, based on the record before me, and so I do not discuss them.

activity, a necessary element of her prima facie case. Specifically, I will construe the items that the Complainant submitted, from September 4, 2015 to January 4, 2016, to be amendments and/or supplements to her initial OSHA Complaint.

Though not styled as a motion for summary decision, the Respondent's Motion to Dismiss is similar to a motion for summary decision, in which the moving party bears the initial burden of demonstrating there is no disputed issue of material fact, which may be demonstrated by "an absence of evidence to support the nonmoving party's case."

In Reddy v. Medquist, Inc., the Administrative Review Board ("Board") offered specific guidance on the issue of summary decision:

Once the moving party has demonstrated an absence of evidence supporting the non-moving party's position, the burden shifts to the non-moving party to establish the existence of an issue of fact that could affect the outcome of the litigation. The non-moving party may not rest upon mere allegations, speculations, or denials in his pleadings, but must set forth specific facts in each issue upon which he would bear the ultimate burden of proof. If the non-moving party fails to sufficiently show an essential element of his case, there can be "no genuine issue as to any material fact [because] a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial."

Reddy v. Medquist, Inc., ARB No. 04-123 (ARB Sept. 30, 2005), slip op. at 4-5 (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)).

Complainant's Status as a Pro Se Litigant

The Complainant is appearing without counsel (pro se) in these proceedings. I note, though, that the Complainant has been responsive to my Orders and has filed matters that comply with my instructions. Accordingly, I find that the Complainant has full capacity to articulate her position, as necessary to establish that she can meet the elements of a prima facie case.¹⁷ I am mindful, though, that the Complainant is not educated in the niceties of legal practice.

In Peck v. Safe Air Int'l, Inc., ARB No. 02-028, (ARB Jan. 30, 2004), the Board described its obligations toward a pro se litigant in whistleblower cases, and noted that this standard also applies to administrative law judges:

We construe complaints and papers filed by pro se complainants "liberally in deference to their lack of training in the law" and with a degree of adjudicative latitude. Young v. Schlumberger Oil Field Serv., ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 8-10 (ARB Feb. 28, 2003), citing Hughes v. Rowe, 449 U.S. 5 (1980). At the same time we are charged with a duty to remain impartial; we must "refrain from becoming an advocate for the pro se litigant." Id. We recognize that while adjudicators must accord a pro se complainant "fair and equal treatment, [such a complainant] cannot generally be permitted to shift the burden of litigating his case to the [adjudicator], nor to avoid the risks of failure that attend his decision to forgo expert assistance." Griffith v. Wackenhut Corp., ARB No. 98-067, ALJ No. 97-ERA-52, slip op. at 10 n.7 (ARB Feb. 29, 2000), quoting Dozier v. Ford Motor Co., 702 F.2d 1189, 1194 (D.C. Cir. 1983). Affording a pro se complainant undue assistance in developing a record would

¹⁷ I note that I informed the Complainant, on at least one occasion, of her requirement to establish that she engaged in protected activity as defined in the NTSSA and its regulations. Order of Aug. 28, 2015, at 3.

compromise the role of the adjudicator in the adversary system. Young, slip op. at 9, citing Jessica Case, Note: Pro Se Litigants at the Summary Judgment Stage: Is Ignorance of the Law and Excuse?, 90 Ky. L.J. 701 (2002).

Accordingly, I have construed all of the Complainant's submissions as liberally as possible, and have drawn every reasonable inference in the Complainant's favor. I also have taken into consideration that this matter is at a preliminary stage, and the Complainant has requested a hearing.

Discussion

In an action under the NTSSA, a complainant is required initially to establish a prima facie case, which consists of the following elements:

- The employee engaged in protected activity, as defined in the applicable statute;
- The employer knew or suspected that the employee engaged in protected activity;
- The complainant suffered an adverse action; and
- Circumstances are sufficient to raise the inference that protected activity was a contributing factor to the adverse action.

29 C.F.R. § 1982.104(e)(2).¹⁸

If a complainant cannot establish a prima facie case, the complainant cannot prevail. Accordingly, dismissal is appropriate. See Motarjemi v. Metropolitan Counsel Metro Transit Div., ARB No. 08-135 (ARB Sept. 17, 2010), slip op at 3 (summary decision issue). See also 29 C.F.R. § 1982.104(d). The Board also requires that an administrative law judge notify an unrepresented complainant of an opponent's dispositive motion, inform the complainant of the right to submit a response, and caution the complainant that failure to respond may result in dismissal. Motarjemi, slip op. at 4. My Order of August 28, 2015 was intended to fulfill this requirement. This Order specifically advised that the Complainant provide "some facts about the protected activity, showing some 'relatedness' to the laws and regulations," and listed the types of actions that are covered in 6 U.S.C. § 1142. Order of Aug. 28, 2015, at 3.

In this matter, the Complainant has submitted various items to me, on multiple occasions. Though the Complainant did not specifically state that these items were intended in opposition to the Respondent's Motion, I will consider them to be such.¹⁹ Accordingly, I find that the Complainant has submitted items in opposition to the Respondent's Motion.

The Respondent's position is that the Complainant's complaints do not constitute protected activity, because they are not the kinds of actions that are defined in the Act as constituting protected activity. Motion to Dismiss at 3-5; see also 6 U.S.C. § 1142(a),(b). Notably, not all complaints that an employee of a public transit system brings against an employer, but only those types of complaints listed in the statute, constitute protected activity.

¹⁸ On November 9, 2015, the Department of Labor issued its Final Rule governing employee protection provisions of the NTSSA and the Federal Railroad Safety Act. 80 FED. REG. 69,115 (Nov. 9, 2015). The Final Rule superseded the Interim Rule, published on August 31, 2010 (see 75 Fed. Reg. 53,322).

¹⁹ And I also note that my Orders of August 28, 2015 and September 22, 2015 specifically addressed the Complainant's right to submit items in opposition to the Respondent's Motion to Dismiss.

As a hypothetical example, an allegation that the employer committed an adverse action (such as termination of employment) against an employee because of her religion does not constitute an allegation covered by the NTSSA; such allegations would instead be covered under Title VII of the Civil Rights Act of 1964, or possibly under state law. See 42 U.S.C. § 2000e.

The Complainant's initial complaints, as expressed in her OSHA Complaint, are quite vague ("harassment on the bus"). I find that, of themselves, these complaints do not implicate safety or security. I further find that they are so nonspecific that I cannot presume that they relate to either safety or security. Therefore, I find that the Complainant's OSHA Complaint does not assert that she engaged in protected activity, as defined in the NTSSA and its regulations. However, and subsequent to my Order of August 28, 2015, the Complainant supplemented her initial OSHA Complaint in her submissions dated September 4, 2015; October 13, 2015; October 20, 2015; October 26, 2015; December 9, 2015; December 31, 2015; and January 4, 2016.

I find that the Complainant's amendments/supplements to her OSHA Complaint contained specific allegations against the Respondent. In her submissions, dated October 13, October 20, and December 9, 2015, the Complainant asserted that the Respondent used "ADA Compliant" funds for an improper purpose – specifically, to have personnel follow bus operators. There is no evidence of record regarding whether the Respondent receives funding to assure compliance with the Americans with Disabilities Act (ADA). See 42 U.S.C. § 12101 et seq. (Americans with Disabilities Act), particularly Title II (42 U.S.C. §§ 12141-12150 (public transit)). I will presume, for the purposes of this Motion, that the Respondent actually receives funding for ADA compliance. I will also presume that the Respondent's personnel, on least some occasions, followed bus operators such as the Complainant.²⁰

The federal regulation implementing the ADA for public transportation entities is at Title 49, Code of Federal Regulations, Part 37. See 49 C.F.R. § 37.31. The purpose of these regulations is to enforce the ADA's mandate of nondiscrimination. See 49 C.F.R. §§ 37.1, 37.5. The terms "safety" and "security" do not appear in these regulations. Accordingly, I find that the purpose of any ADA funding that the Respondent may have received to facilitate its compliance with that law was not for "safety" or "security" but was to ensure compliance with the ADA's goal of eliminating discrimination against persons with disabilities. See 42 U.S.C. § 12101(b).

Based on the foregoing, I find that any funds that the Respondent may have received relating to ADA compliance were intended to advance the ADA's nondiscrimination goals, and were not intended to pertain to either "safety" or "security." Under the NTSSA, only complaints relating to fraud, waste, or abuse of Federal grants or other public funds "intended to be used for public transportation safety or security" fall within the definition of protected activity. 6 U.S.C. § 1142(a)(1). Accordingly, I find that, even if the Respondent improperly used such funds to

²⁰ It appears, from the record, that the Respondent monitors probationary employees such as the Complainant by having personnel accompany them from time to time, as they perform their duties. See, e.g., Complainant's submission of Dec. 31, 2015 (Respondent's letter of Dec. 26, 2015 to NYDHR at 2-3).

monitor the Complainant's actions, her complaint does not fall within NTSSA because it does not relate to the misuse of federal funds for transportation safety or security.²¹

Moreover, if I construe the Complainant's complaints more broadly, as allegations that the Respondent did not comply with federal ADA regulations in general, I conclude that any such complaints do not relate to any federal rule or regulation involving transportation safety or security. Consequently, I must conclude that they do not constitute protected activity under the Act, which strictly limits the definition of protected activity to complaints about those subjects.²²

Accordingly, I must conclude that the Complainant's complaint does not allege any protected activity. Because the Complainant's actions do not constitute protected activity, as defined in the NTSSA and its associated regulations, I must conclude that the Complainant is unable to establish a prima facie case. And therefore, I must dismiss the Complainant's complaint.

Conclusion

As discussed above, I find that the Complainant's assertions about her actions do not constitute protected activity, a necessary element of a complaint under the NTSSA. Accordingly, I GRANT the Respondent's Motion. I DISMISS the Complaint.

SO ORDERED.

ADELE H. ODEGARD
Administrative Law Judge

Cherry Hill, New Jersey

²¹ I must note there is no evidence of record to indicate that the Respondent's personnel followed the Complainant for any improper or retaliatory purpose.

²² 6 U.S.C. § 1142(a)(1) requires that a complainant's complaints evidence a "reasonable" belief of a violation of federal standards (law, rule or regulation) involving public transportation safety or security, or of fraud involving public funds relating to transportation safety or security. Because I find that the Complainant's complaints did not relate to public transportation safety or security, I find it is not necessary to address whether the Complainant's belief was reasonable.