



Issue Date: 06 November 2020

Case Nos.: **2020-SOX-00036**
2020-STA-00089

In the Matter of:

JASON STOLARIK,
Complainant,

v.

NATIONAL EXPRESS, LLC,
DBA DURHAM SCHOOL SERVICE LLC,
Respondent.

ORDER DISMISSING CASES WITH PREJUDICE

These cases arise under the employee protection provisions of the Sarbanes Oxley Act and the Surface Transportation Assistance Act. There also appear to be allegations which arise under the Occupational Safety and Health Act, and under the whistleblower protection provisions of the Clean Air Act and the Toxic Substances Control Act.

It does not appear to me that Respondent(s), National Express, LLC d/b/a Durham School Service LLC were ever notified of Complainant's complaint filed with the Occupational Safety and Health Administration ("OSHA"). No person representing the interests of Respondent(s) has ever entered an appearance while the case was pending before OSHA or before the Office of Administrative Law Judges.

On September 1, 2020, I issued an Order requiring Complainant to provide me with the name and telephone number of the person who would be representing the interests of Respondent(s). I gave Complainant one full month to produce this information to me.

Complainant submitted a document to me on October 1, 2020. This document did not provide me with the name and telephone number of the person representing the interests of Respondent(s).

On October 1, 2020, I issued an Order to Show Cause. In this Order, I required Complainant to serve Respondent(s) with notice that a complaint had been filed against Respondent(s), and providing instructions how the Respondent(s) could contest the allegations made in Complainant's complaint. I required Complainant to certify that he had taken these actions. I gave Complainant until November 1, 2020 to take the actions required in the Order to Show Cause. I advised Complainant in prominent language that I would dismiss his action before me if he failed to take the actions required in the Order to Show Cause.

As of November 6, 2020, Complainant has failed to certify that he has taken the actions required by my Order to Show Cause.

I cannot proceed with Complainant's cases unless and until Respondent(s) receive notice that an action has been commenced against them, and until Respondents are advised that they have a right to assert a defense to those actions. Complainant bears the responsibility to inform Respondent(s) of the pending actions, and to inform Respondent(s) of their right to answer the allegations being made. The rights of notice and an opportunity to be heard in defense form the bedrock of the due process to which Respondent(s) are entitled.

I have given Complainant more than 2 months to notify Respondent(s) that these cases have been filed and that they may contest the allegations. Complainant has apparently made no effort to comply with my prior Orders. Complainant has failed to show cause why I should not dismiss these actions.

Cases 2020-SOX-36 and 2020-STA-89 are hereby **DISMISSED WITH PREJUDICE**.

Steven D. Bell
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of the administrative law judge's decision.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1980.110(a). Your Petition should identify the legal conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1980.110(a).

When you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. *See* 29 C.F.R. § 1980.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1980.109(e) and 1980.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary

of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1980.110(b).

IMPORTANT NOTICE ABOUT FILING APPEALS:

The Notice of Appeal Rights has changed because the system for electronic filing is changing beginning on Monday, December 7, 2020, at 8:30 a.m.

Thus, if you intend to e-file your appeal online on or after December 7, 2020, at 8:30 a.m., be sure to allow sufficient time to register under the new system and to learn how to file an appeal.

You may pre-register to use the new system from November 9, 2020, until 5:00 pm EST on December 3, 2020. As part of the migration to EFS, the Board's current EFSR system will go offline permanently at 5:00 pm Eastern Standard Time (EST) on December 3, 2020. This means that you will not be able to e-file any appeals or other documents with the ARB after 5:00 pm EST on December 3rd through December 7th, at 8:30 a.m. If you intend to file on these dates, please plan to file by other means (conventional mail, hand delivery, etc.).

Although you may pre-register earlier, you will not be able to file using the new system until December 7, 2020, at 8:30 a.m.

In addition, the Office of the Chief Information Officer (“OCIO”) will conduct an informational webinar on how to register and how to conduct basic filing operations:

Tuesday, November 17, 1:00 to 2:00 p.m. EST.

Webinar link:

<https://usdoevents.webex.com/usdoevents/onstage/g.php?MTID=e7dbc7a29dbb7f5ec26f4a717032cfb02>

US Toll Free 1-877-465-7975

US Toll 1-210-795-0506

Access code: 199 118 1372

Password for all meetings: Welcome!68

Information for webinars on the new system will also be available on the OALJ (www.dol.gov/agencies/oalj), the ARB (www.dol.gov/agencies/arb), and the new EFS (<https://efile.dol.gov/>) websites.

Filing Your Appeal Online

If you e-file your appeal on or before 5 p.m. on December 3, 2020, you must use the Board's current Electronic File and Service Request (EFSR) system at dol-

appeals.entellitrak.com. Again, the Board’s current EFSR system will go offline at 5 p.m. Eastern Time on December 3, 2020, for deployment related activities. Please plan your filings accordingly. Information regarding registration for access to the EFSR system, a step by step user guide, and answers to FAQs are found at that website link. If you have any questions or comments, please contact Boards-EFSR-Help@dol.gov

Beginning on Monday, December 7, 2020, at 8:30 a.m., the U.S. Department of Labor will implement a new eFile/eServe system (“EFS”) at <https://efile.dol.gov/>. If you use the current website link, dol-appeals.entellitrak.com, you will be directed to the new system. Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the current EFSR system, will need to create an account at login.gov (if they do not have one already). Second, users who have not previously registered with the EFSR system will then have to create a profile with EFS using their login.gov username and password. Existing EFSR system users will not have to create a new EFS profile. All users can learn how to file an appeal to the Board using EFS by consulting the written guide at <https://efile.dol.gov/system/files/2020-11/file-new-appeal-brb.pdf> and the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-brb>.

BE SURE TO REGISTER IN ADVANCE! Again, you may preregister for EFS from November 9, 2020, until 5:00 pm EST on December 3, 2020. Establishing an EFS account under the new system should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>.

If you file your appeal online, no paper copies need be filed. **You are still responsible for serving the notice of appeal on the other parties to the case.**

Filing Your Appeal by Mail

You may, in the alternative, including the period when EFSR and EFS are not available, file your appeal using regular mail to this address:

U.S. Department of Labor
Administrative Review Board
ATTN: Office of the Clerk of the Appellate Boards (OCAB)
200 Constitution Ave. NW
Washington, DC 20210–0001

Access to EFS for Non-Appealing Parties

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and creating an EFS profile. Written directions and a video tutorial on how to request access to an appeal are located at:

<https://efile.dol.gov/support/boards/request-access-an-appeal>

After An Appeal Is Filed

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

Service by the Board

Registered users of EFS will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, on or after December 7, 2020, at 8:30 a.m., you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.