

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 27 June 2005**

Case No. 2005-STA-11

In the Matter of

CLARENCE E. FRALEY,

Complainant,

v.

TRANSERVICE LOGISTICS, INC.,

Respondent.

**ORDER VACATING REMAND**

The above-captioned matter is currently pending before the undersigned. On May 20, 2005, pursuant to a request by the parties, I issued an Order remanding this matter to the Area Director for the Occupational and Safety and Health Administration for further proceedings before that office.

On June 6, 2005 I received a letter<sup>1</sup> from the Regional Solicitor stating, in effect, that the Assistant Secretary and the Area Director were ignoring my Order averring that there was no legal authority for effectuating a remand before that office. However, the Solicitor cited no authority for its position. The implementing regulations of the Surface Transportation and Assistance Act at 29 C.F.R. Part 1978, et

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<sup>1</sup>Attorneys that practice law like real lawyers would have made a motion for reconsideration of my remand order setting forth reasons, supported by authority, as to why such an order was not appropriate. Indeed, the Rules of Procedure before the Office of Administrative Law Judges provides that "Any application for an order or any other request shall be made by motion . . . ." (20 C.F.R. §18.6) This "letter" practice by the Solicitor's office that I have observed over the years in many program areas, in my opinion, reflects an ineptitude or arrogance, perhaps both, that I find truly annoying.

seq. neither provides for nor precludes remand orders from one adjudicatory body to another, but there seems to be ample precedent for the procedure. See *White v. "Q" Trucking Company*, 93-STA- 28 (ALJ Nov. 9, 1993); *Rowland v. Easy Rest Bedding, Inc.*, 93-STA-19 (ALJ May 6, 1994); *Clement v. Milwaukee Transport Services, Inc.*, 2000-STA-8 (ALJ June 20, 2000). Moreover, the Administrative Review Board (ARB) routinely remands matters to this Office, despite the lack of express regulatory authority.

Since receipt of the Solicitor's letter, the Complainant has submitted a request for withdrawal of his complaint and a settlement agreement has been submitted for consideration. Accordingly, for reasons unrelated to the Solicitor's letter, my remand order of May 20, 2005, is vacated.

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DANIEL J. ROKETENETZ  
Administrative Law Judge