

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 25 August 2009

Case No.: **2006-STA-00029**

In the matter of

STEVEN BURROWS,
Complainant,

v.

J. B. HUNT TRANSPORT, INC.,
Respondent.

RECOMMENDED ORDER DISMISSING COMPLIANT

This proceeding involves a complaint under the “whistleblower” employee protection provisions of Section 405 of the Surface Transportation Assistance Act of 1982 (the Act), as amended, 49 U.S.C. § 31105 (formerly 49 U.S.C. § 2305), and its implementing regulations found at 29 C.F.R. Part 1978. Section 32205 of the Act provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when the operation would be a violation of these rules.

A hearing was scheduled for April 24-27, 2007 in Fayetteville, Arkansas. The parties requested a continuance to continue discovery and the hearing was tentatively rescheduled for the week of May 19, 2009 in Little Rock, Arkansas. On August 11, 2009, the Complainant submitted a Motion for Voluntary Dismissal with prejudice of his case. Respondent has filed no objection to the dismissal.

Pursuant to 29 C.F.R. § 1978.111(c), a complainant may file a written withdrawal of objections to the Secretary’s preliminary findings with an Administrative Law Judge at any time before the findings or order becomes final. Thus, where a complainant seeks to withdraw his or her complaint, the Complainant’s request is construed as a withdrawal of objections to the Secretary’s preliminary findings. Mysinger v. Rent-A-Driver, 1990-STA-23 (Sec’y Sept. 21, 1990).

Accordingly, the undersigned recommends that the request of Complainant to withdraw his objections to the Secretary's findings be **GRANTED** and that this matter be **DISMISSED** with prejudice, pursuant to 29 C.F.R. § 1978.111(c).

A

RICHARD K. MALAMPHY
Administrative Law Judge

RKM/ahk
Newport News, Virginia

NOTICE OF REVIEW: The administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order Approving Withdrawal of Objections and Dismissing Claim, the parties may file briefs with the Administrative Review Board ("Board") in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.