



Issue Date: 10 July 2009

CASE NO.: 2008-STA-00062

In the Matter of:

**JOHN BEHRMANN,
Complainant,**

v.

**DEPENDABLE CARRIERS and
ALEKSANDAR TODOSIJEVIC,
Respondents.**

RECOMMENDED ORDER OF DISMISSAL

A hearing in the instant case, which has been brought under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended (49 U.S.C. §31101 *et seq.*, with implementing regulations appearing at 29 C.F.R. Part 1978) is currently scheduled to be held in Chicago, Illinois, on July 29 to 30, 2009.

On July 8, 2009, by facsimile, Complainant filed a Motion for Dismissal Without Prejudice in which he moved this tribunal “to dismiss his complaint and this proceeding without prejudice.” In the Motion, Complainant stated that Respondent Dependable Carriers, Inc.’s authority to operate as a motor carrier had been revoked effective May 19, 2009 and, according to Respondent Todosijevic, it had ceased operations that same month, and there were no funds available to pay Complainant. As a result, Complainant determined that it would be a waste of time and resources to pursue a claim against insolvent Respondents. Complainant stated that he had contacted Respondent Todosijevic who authorized him to advise this tribunal that Respondents did not oppose the motion.

Although the regulations do not address the issue of whether a complaint may be withdrawn after referral to the Office of Administrative Law Judges, 29 C.F.R. § 1978.111(c) provides:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Administrative Review Board, United States Department of Labor. The judge or the Administrative Review Board, United States Department of Labor, as the case

may be, shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

Thus, when a complainant seeks to withdraw his or her complaint, the 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). *See also, e.g., Husen v. LLK Transport, Inc.*, ALJ No. 2005-STA-1, ARB No. 06-094 (Feb. 28, 2007). I will therefore grant the motion as so construed and will also reinstate the Secretary's findings by issuance of this recommended Order.

Prior to creation of the Administrative Review Board, the Secretary provided that an Order dismissing an STAA proceeding based on withdrawal was a final Order; however, review before the Board is automatic and the Board has issued final dismissal Orders in such cases. *Compare Shown v. Wilson Truck Corp.*, 1992-STA-6 (Sec'y Apr. 30, 1992) with *Myers v. G-n-S Astle Trucking, Inc.*, ALJ No. 2008-STA-037, ARB No. 08-096 (Feb. 27, 2009). Accordingly, good cause having been shown,

ORDER

IT IS HEREBY ORDERED that the hearing set for July 29 to 30, 2009 in Chicago, Illinois be, and hereby is **CANCELED**; and

IT IS FURTHER ORDERED that Complainant's request to withdraw his objections to the Secretary's findings is **APPROVED**, the Secretary's findings are **REINSTATED**, and this case is hereby **DISMISSED WITHOUT PREJUDICE**.

A

PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

NOTICE OF REVIEW: The administrative law judge's Recommended Order, 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, 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.

