



Issue Date: 16 February 2012

Case No.: **2011-STA-00025**

In the Matter of:

JOHN GRIFFITH,
Complainant,

v.

WESTERN EXPRESS, INC,
Respondent.

DECISION AND ORDER DISMISSING COMPLAINT

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. Section 31105 (formerly 49 U. S. C. § 2305), and its implementing regulations found at 29 C. F. R. Part 1978. Section 405 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.

This case was referred to the undersigned Administrative Law Judge in April 2011.

The Complainant has had difficulty in finding counsel. The undersigned has informed him on several occasions that complainant’s attorneys in whistleblower cases are only due fees when their client wins and the Judge approves a fee to be paid by the Respondent.

On February 1, 2012, the Complainant stated:

Yesterday I consulted with the lawyer whom I mentioned during the 10 January 2012 conference call as being the “last train in the station.” He thinks it’s a solid case. He’s ready to sign up. I liked him.

Unfortunately, my goals and expectations can not be met within a fee I can afford and my circumstances. Where was this lawyer five months ago, I thought to myself.

So, with that as background, I'm writing now to request dismissal of the case – as agreed.

Your Honor, I'm fully aware that I could have appeared pro se. Let history record that I folded, in protest of lack of support that I've observed from whistleblower and employment law lawyers all across the country, for whistleblowers, in general.

I gave this my best shot. I didn't ask for a handout. I just needed a helping hand.

A party may move for a dismissal when that party feels that it is in their best interest.

The undersigned concurs in the Complainant's request. Therefore, this case is DISMISSED without prejudice.

A

Richard K. Malamphy
Administrative Law Judge

RKM/dlh
Newport News, Virginia

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; 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. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time 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, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

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. §§ 1978.109(e) and 1978.110(a). 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. §§ 1978.110(a) and (b).