



**Issue Date: 17 February 2012**

**CASE NO.: 2011-STA-00051**

**IN THE MATTER OF**

**DEMOND PINNEKINS,  
Complainant**

**v.**

**AMIR ENTERPRISES, INC.  
DBA A LOGISTICS,  
Respondent**

**DECISION AND ORDER**  
**GRANTING SUMMARY DECISION**  
**AND DISMISSING COMPLAINT**

This matter arises under the employee protection provisions of the Surface Transportation Assistance Act (the STAA), 49 U.S.C. § 31105, and its implementing regulations, 29 C.F.R. Part 1978, brought by Demond Pinnekins (Complainant) against Amir Enterprises, Inc., dba A Logistics (Respondent). Complainant alleges Respondent terminated him in violation of the STAA.

Complainant filed a complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) in June 2011, alleging he was fired by Respondent in retaliation for engaging in numerous activities believed to be protected under the STAA. After an investigation by OSHA, Complainant was notified by letter dated August 8, 2011, that there was no reasonable cause to believe that Respondent violated the STAA. Complainant filed a request for a formal hearing with the Office of Administrative Law Judges on August 24, 2011.

Respondent filed a Motion for Summary Decision on November 28, 2011, arguing Complainant was not terminated for any activity protected by the STAA. An Order to Show Cause was issued by the Court on January 9, 2012, allowing Complainant thirty days to respond to the Court's Order and Respondent's Motion. Complainant was specifically advised that "Failure to file a response within 30 days shall be deemed an acknowledgment as to the accuracy of the facts stated in the motion and may result in dismissal of the complaint." As of the date of this Order, Complainant has not responded as ordered by the Court.

## DISCUSSION

An administrative law judge may enter summary decision for either party on an issue if the pleadings, affidavits, material obtained by discovery or otherwise, or matters officially noticed show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. 29 C.F.R. § 18.40(d). The non-moving party may not rest upon mere allegations, speculation or denials in his pleadings, but must set forth specific facts through affidavits, material obtained by discovery or otherwise, on each issue upon which he would bear the ultimate burden of proof. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 256 (1986). The response must set forth specific facts showing that there is a genuine issue of material fact for the hearing. 29 C.F.R. § 18.40(c).

Congress included section 405(b) in the STAA for the purpose of insuring that employees in the commercial motor transportation industry who make safety complaints, participate in proceedings, or refuse to commit unsafe acts, do not suffer employment consequences because of these actions. See Roadway Express, Inc. v. Dole, 929 F.2d 1060 (5th Cir. 1991) (citing 128 Cong. Rec. 29192, 32510 (1982)). Consequently, the STAA protects all employees of commercial motor carriers from discharge, discipline, or discrimination for filing a complaint about commercial motor vehicle safety, testifying in a proceeding on safety, or refusing to operate a commercial motor vehicle when operation would violate a Federal safety rule or when the employee reasonably believes it would result in serious injury to himself or others. See 49 U.S.C. §31105(a)

To establish a prima facie case under the STAA, a complainant must demonstrate that (1) he engaged in protected activity, (2) he was subjected to an adverse employment action, and (3) the adverse action was taken because of his protected activity. Yellow Freight Sys., Inc. v. Reich, 27 F.3d 1133, 1138 (6th Cir. 1994). After a prima facie case is established, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the employment decision. Moon v. Transportation Drivers, Inc., 836 F.2d 226, 229 (6th Cir. 1987). If the employer articulates a non-discriminatory reason for the adverse employment action, the complainant bears the burden of showing that the employer's reason is pretextual and the real reason for the adverse action was retaliation. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507 (1993).

Attached to the Motion for Summary Decision is a sworn statement from Complainant which he filed as a wage claim with the Texas Workforce Commission. In this sworn document, Complainant states the following: "I quit because he wanted to charge me for mechanical break down on his truck and would not give me my week and a hole check of 650." As stated by this Court in the Order to Show Cause, Complainant's failure to file a response within 30 days shall be deemed an acknowledgment as to the accuracy of the facts stated in the motion. Accordingly, the Court finds the undisputed evidence shows Complainant *quit* his job because Respondent wanted to charge him for a mechanical breakdown on a truck and would not pay Complainant his wages. The Court further finds the undisputed evidence shows that Respondent did not take any adverse action against Complainant for any activity protected by the STAA.

**ORDER**

Respondent's Motion for Summary Decision is hereby **GRANTED** and the complaint of Demond Pinnekins is hereby **DISMISSED**.

**So ORDERED.**

**A**

**LARRY W. PRICE  
ADMINISTRATIVE LAW JUDGE**

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**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).