



**Issue Date: 19 August 2011**

**CASE NO.: 2011-STA-39**

**IN THE MATTER OF**

**DARYL SLOAN**

**Complainant**

**v.**

**SIMON CONTRACTORS**

**Respondent**

**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS**

This proceeding arises under the Surface Transportation Assistance Act of 1982, 49 U.S.C. § 31105 (herein the STAA) and the regulations promulgated thereunder at 29 C.F.R. Part 1978. The STAA prohibits covered employers from discharging or otherwise discriminating against employees with regard to their terms and conditions of employment who have engaged in certain protected activities with regard to their terms and conditions of employment.

On July 14, 2011, Respondent filed a Motion to Dismiss For Failure to File a Complaint by June 30, 2011, as required by the Pre-Hearing Order in this matter. Respondent seeks dismissal of this Complaint for failure to prosecute this case.

On July 14, 2011, an Order issued to Complainant to show cause by August 1, 2011, why Respondent's motion should not be granted.

On June 13, 2011, in a Notice of Hearing and Pre-Hearing Order (herein Order), the undersigned ordered Complainant to file a Complaint alleging in detail the nature of his protected activity and each and every alleged violation of the Act as well as the relief sought in this matter on or before June 30, 2011.

29 C.F.R. § 18.6 provides, in pertinent part:

(d) (2) If a party or an officer or agent of a party fails to comply with an order . . . of the administrative law judge, the administrative law judge . . . may take such action in regard thereto as is just, including but not limited to the following:

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order . . . was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Complainant has not filed a complaint by June 30, 2011, or at any time thereafter. Accordingly, I find Complainant is non-compliant with the June 13, 2011 Pre-Hearing Order and has failed to adequately prosecute this matter.

Considering the foregoing, I find that Respondent is entitled to dismissal in this matter and its Motion to Dismiss the Appeal of Daryl Sloan is hereby **GRANTED**.

Accordingly,

**IT IS HEREBY ORDERED** that Respondent's Motion to Dismiss the Appeal of Daryl Sloan be, and it is **GRANTED**, and that Complainant's Complaint is hereby **DISMISSED** with prejudice.

**IT IS FURTHER ORDERED** that the formal hearing scheduled in this case on September 21, 2011, in Cheyenne, Wyoming, be, and it hereby is, **CANCELLED**.

**ORDERED** this 19<sup>th</sup> day of August, 2011, at Covington, Louisiana.

**A**

LEE J. ROMERO, JR.  
Administrative Law Judge

**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).