

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 24 May 2013

Case No.: 2012-STA-00043

In the Matter of:

MANSFIELD JORDAN,

Complainant,

v.

KENAN TRANSPORT, LLC,

Respondent.

ORDER GRANTING JOINT REQUEST TO DISMISS WITH PREJUDICE

This case is before the undersigned Administrative Law Judge pursuant to the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 USC § 31105, as amended. Federal Regulations set forth in 29 CFR Part 1978 and 20 CFR Part 18 apply to this case.

The Complainant filed a complaint on October 24, 2011, alleging that the Respondent retaliated against him in violation of the STAA by suspending his employment on October 4, 2011, and subsequently terminating his employment on October 11, 2011. The complaint was investigated and on July 11, 2012, the Area Director, OSHA, Raleigh Area Office, dismissed the complaint when she issued the Secretary Findings that “there is no reasonable cause to believe that Respondent violated 49 U.S.C. §31105.” On August 10, 2012, the Complainant filed objections to the Secretary’s decision and requested a hearing before an Administrative Law Judge.

A prehearing conference call to set a formal hearing date and related scheduling dates was held of November 9, 2012, with counsel for the Complainant and Respondent. During the prehearing conference it became evident that the alleged protected activity required further clarification by a Bill of Particulars.

On February 28, 2013, Respondent’s counsel notified the Court that the Parties were pursuing amicable resolution of the issues and that mediation was scheduled to commence March 4, 2013.

On May 13, 2013, counsel for the Parties filed a joint “Stipulation of Voluntary Dismissal with Prejudice”. The joint stipulations provided that (1) each party is to bear his or its costs, including attorney’s fees, and (2) the Complainant hereby dismisses this action with prejudice pursuant to Federal Rules of Civil Procedure, Rule 41(a)(10(A)(ii).

After deliberation on the administrative record, this Administrative Law Judge finds that the Complainant has made a voluntary, knowing, and intelligent waiver of his right to formal hearing and request to withdraw his appeal for a formal hearing and dismiss his complaint with prejudice. The interest of justice under the STAA is best served by granting the joint request to dismiss the complaint with prejudice pursuant to 29 CFR §1978.111(c) and thereby making the Area Director, Occupational Safety and Health Administration, Raleigh Area Office, determination of July 11, 2012, the final determination of the Secretary.

ORDER

It is hereby **ORDERED** that –

1. **Complainant’s cause of action is DISMISSED**, pursuant to 29 CFR §1978.111(c), and;
2. **The Area Director, Occupational Safety and Health Administration, Raleigh Area Office, determination of July 11, 2012, is affirmed as the final determination of the Secretary.**

ALAN L. BERGSTROM
Administrative Law Judge

ALB/dlh
Newport News, Virginia