

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

HORANDO GATES,

ARB CASE NO. 2023-0039

COMPLAINANT,

ALJ CASE NO. 2021-STA-00011

ALJ MONICA MARKLEY

v.

DATE: October 6, 2023

UPS FREIGHT,

RESPONDENT.

Appearances:

For the Complainant:

Horando Gates; *pro se*; Scottdale, Georgia

For the Respondent:

Raymond Perez, Esq.; *Jackson Lewis P.C.*; Atlanta, Georgia

Before PUST and WARREN, Administrative Appeals Judges

ORDER OF DISMISSAL

PER CURIAM:

This case arises under the Surface Transportation Assistance Act of 1982 (STAA), as amended.¹ Horando Gates (Complainant) filed a whistleblower complaint against UPS Freight (Respondent) for alleged retaliation. On June 7, 2023, a United States Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Dismissing Complaint (D. & O.), in which she dismissed

¹ 42 U.S.C. § 31105(a), as implemented by the regulations at 29 C.F.R. Part 1978 (2023).

Complainant's claim.² The dismissal was based on the ALJ's finding that Complainant did not establish that his protected activity was a contributing factor in the adverse action taken against him.³ Alternatively, the ALJ also found that Respondent proved by clear and convincing evidence that it would have taken the same adverse action against Complainant in the absence of his protected activity."⁴

On June 21, 2023, Complainant filed a document with the Administrative Review Board (ARB or Board) which appeared to be a copy of the publicly available D. & O. The document did not identify any objections to the ALJ's conclusions or orders as required to constitute a petition for review under STAA's implementing regulations.⁵ In response, on June 29, 2023, the Board issued an Order to Show Cause directing Complainant to file a brief showing cause why his appeal should not be dismissed for his failure to file a petition for review identifying objections to the conclusions or orders of the ALJ.⁶

On July 7, 2023, Complainant responded to the Order to Show Cause and filed a Petition for Review on July 8, 2023. On July 20, 2023, the Board issued a Notice of Appeal Acceptance, Electronic Filing Requirements, and Briefing Schedule (Notice) finding that Complainant had shown good cause and exercising its discretion to accept Complainant's Petition for Review.⁷ Pursuant to the Notice, Complainant's Opening Brief was due within twenty-eight (28) calendar days of the issuance of the Notice.⁸ Complainant did not file an opening brief as ordered.

Consequently, on September 5, 2023, the Board issued an Order to Show Cause (Second Order to Show Cause) ordering Complainant to explain why the Board should not dismiss his appeal for his failing to timely file an opening brief.⁹ The Board cautioned Complainant that if the Board did not receive his response and opening brief on or before September 19, 2023, the Board may dismiss the appeal without further notice.¹⁰ Complainant did not file a response or an opening

² D. & O. at 19.

³ *Id.* at 16-18.

⁴ *Id.* at 18.

⁵ According to the STAA's implementing regulations, parties seeking review of an ALJ decision before the Board should "identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived." 29 C.F.R. § 1978.110(a).

⁶ Order to Show Cause at 2.

⁷ Notice at 1 n.1.

⁸ *Id.* at 4.

⁹ Second Order to Show Cause at 2.

¹⁰ *Id.*

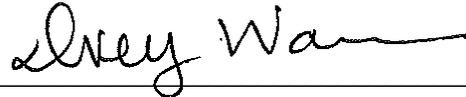
brief as ordered and, to date, the Board has received no filed response from Complainant.

The Board's authority to effectively manage its docket, including its authority to require compliance with ARB briefing orders, is necessary to "achieve [the] orderly and expeditious disposition of cases."¹¹ The Board has the authority to issue sanctions, including dismissal, for a party's failure to comply with the ARB's orders and briefing requirements.¹² Complainant failed to file an opening brief as ordered by the Board. The Board then gave Complainant the opportunity to explain why he had failed to file an opening brief, and explicitly warned him that failure to do so could result in dismissal of his appeal. Again, Complainant did not file a response or an opening brief. Given Complainant's failure to respond to, and comply with, the Board's orders, the Board **DISMISSES** Complainant's appeal.¹³

SO ORDERED.



TAMMY L. PUST
Administrative Appeals Judge



IVEY S. WARREN
Administrative Appeals Judge

¹¹ *Richardson v. BNSF Ry. Co.*, ARB No. 2022-0057, ALJ No. 2022-FRS-00026, slip op. at 2 n.6 (ARB Oct. 26, 2022) (quoting *Jessen v. BNSF Ry. Co.*, ARB No. 2012-0107, ALJ No. 2010-FRS-00022, slip op. at 2 (ARB July 26, 2013)) (quotation omitted).

¹² *Ellison v. Washington Demilitarization Co.*, ARB No. 2008-0119, ALJ No. 2005-CAA-00009, slip op. at 4 (ARB Mar. 16, 2009) (citations omitted), *aff'd sub nom. Ellison v. U.S. Dep't of Lab.*, 384 F. App'x 860, 863 (11th Cir. 2010)).

¹³ In any appeal of this Decision and Order that may be filed, the Board notes that the appropriately named party is the Secretary, Department of Labor, not the Administrative Review Board.