

U.S. Department of Labor

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



IN THE MATTER OF:

RAY O'REILLY,

ARB CASE NO. 2025-0024

COMPLAINANT,

ALJ CASE NO. 2023-CAA-00004

ALJ JERRY R. DeMAIO

v.

DATE: September 29, 2025

INDUSTRIAL AUTOMATION, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Ray O'Reilly; *Pro Se*; Plainville, Connecticut

For the Respondent:

Patrick J. Boyd, Esq. and Maxwell Popkin, Esq.; *The Boyd Law Group, PLLC*; New York, New York

Before JOHNSON, Chief Administrative Appeals Judge, and KAPLAN and BURRELL, Administrative Appeals Judges

DECISION AND ORDER

This case arises from a complaint filed by Complainant Ray O'Reilly alleging Respondent Industrial Automation, Inc. terminated his employment in violation of the whistleblower protections of the Clean Air Act (CAA) and its implementing regulations.¹ Complainant appeals Administrative Law Judge (ALJ) Jerry R. DeMaio's November 20, 2024 Order of Dismissal, which dismissed his complaint with prejudice due to his non-compliance with the ALJ's orders to cooperate with the discovery process. We find the dismissal was not an abuse of the ALJ's discretion and affirm.

¹ 42 U.S.C. § 7622; 29 C.F.R. Part 24 (2025).

BACKGROUND

Complainant, who is self-represented, filed a complaint with the Occupational Safety and Health Administration (OSHA) on December 13, 2021, alleging that Respondent terminated his employment for complaining that air quality in the workplace caused his respiratory problems.² OSHA denied the complaint on March 27, 2023, and Complainant requested a hearing before the Office of Administrative Law Judges (OALJ).³ During the initial conference call on October 18, 2023, the ALJ informed Complainant that in representing himself, he was “responsible for meeting all of the court deadlines and for all of the requirements to move [his] case forward.”⁴ The ALJ’s November 2, 2023 Notice of Assignment, Hearing, and Prehearing Order outlined a discovery schedule⁵ and emphasized that the parties were “expected to cooperate with each other, comply with the provisions of this order, and meet all expected discovery deadlines.”⁶ It warned that “failure, without good cause, to cooperate as required by this order” could result in sanctions including dismissal.⁷

The documents that Complainant sent Respondent in reply to Respondent’s first attempt to obtain answers to its interrogatories and requests for production⁸ fell well short of a sufficient response.⁹ Complainant ignored or supplied largely incomplete, unresponsive, or nonspecific answers to interrogatories 3-8, 10-14,

² See March 27, 2023 OSHA determination letter.

³ *Id.*

⁴ Oct. 18, 2023 Conference Call Transcript at 5-6.

⁵ Notice of Assignment, Hearing, and Prehearing Order at 3.

⁶ *Id.* at 6.

⁷ *Id.*

⁸ Affidavit Accompanying Respondent’s Motion to Dismiss at 1. Respondent first served Complainant with its discovery requests on December 22, 2023. *Id.*

⁹ *Id.* Complainant sent Respondent his discovery responses on approximately February 9, 2024. *Id.*

and 18-19.¹⁰ He further ignored all of Respondent's requests for documents.¹¹ Respondent then sent Complainant a letter dated March 7, 2024, detailing the deficiencies and requesting a meeting to confer on the completion of discovery, to which Complainant apparently did not reply.¹²

During the second conference call in this matter on April 11, 2024, Respondent stated it had been "unable to have a productive discussion" with Complainant about the wanting discovery.¹³ The ALJ addressed Respondent's concerns by informing Complainant of his obligation to cooperate in discovery or explain any inability to do so.¹⁴ The ALJ again warned: "if you fail to cooperate in discovery and to work with [Respondent's attorney] in discovery, you are potentially jeopardizing your own case."¹⁵ While Complainant stated he had "no problem working it out" he also said would not "address an incorrect document with a case number wrong. I've addressed it. When he fixes it, then I'll do it. Not a problem."¹⁶ In spite of his statements that he would comply, Complainant refused to cooperate

¹⁰ Complainant's responses to thirteen of nineteen interrogatories were deficient. Respondent's March 7, 2024 letter to Complainant "Re: *Ray O'Reilly v. Industrial Automation, Inc.*, OALJ No.: 2023-CAA-00004" (Respondent's March 7, 2024 letter to Complainant) at 1-5.

¹¹ Complainant had not responded to Respondent's requests for "subsequent and previous employment records, documentation as to Complainant's healthcare providers, [and] identification and documentation as to persons with knowledge relating to (i) Respondent's alleged refusal to allow Complainant to wear a respirator, (ii) Complainant's alleged request to stop using the OD Grinder, and, (iii) Complainant's difficulty breathing." Order of Dismissal at 2 (citing Respondent's Motion to Dismiss at 2-3).

¹² *Id.*

¹³ April 11, 2024 Conference Call Transcript at 23. Respondent stated: "We made efforts on three separate occasions to call him. On two of those occasions, he hung up on us. On the third, he didn't answer the call, and therein lies our challenge." *Id.*

¹⁴ *Id.* at 23-25.

¹⁵ *Id.* at 25.

¹⁶ *Id.* at 24-25. It is unclear what incorrect case number Complainant was referring to or how any allegedly incorrect case number impacted his ability to supply discovery. The ALJ explained that even though Complainant had a separate matter pending against Respondent in federal district court, the sole matter before him was the Clean Air Act claim and clarified the case number in that matter was 2023-CAA-00004. *Id.* at 3, 9-11. Respondent's letter to Complainant, which outlined the deficiencies in his discovery responses, stated those deficiencies related to case number 2023-CAA-00004. Respondent's March 7, 2024 letter to Complainant at 1.

with Respondent on the exchange of discovery and to complete his discovery responses over the course of the next three months.¹⁷

In the third conference call on July 15, 2024, and two weeks prior to the scheduled hearing date, Complainant confirmed that he received Respondent's letter about his deficient discovery responses.¹⁸ Again, the ALJ told Complainant "make sure that you are moving the case forward" and that if he did not do so, "it could jeopardize your case."¹⁹ The ALJ instructed Complainant that if Respondent's attorneys "are giving you the discovery requests, you need to either produce them or answer them or explain why you cannot or should not. What you can't just do is stonewall them or not provide responses"²⁰ When asked whether he understood, Complainant replied in the affirmative.²¹ Because of the discovery delays, the ALJ rescheduled the hearing for February 3, 2025.²²

Subsequently, Complainant again failed to comply with the ALJ's order to cooperate and provide discovery despite Respondent's fourth deficiency letter and four additional attempts to talk to Complainant by phone to discuss the missing discovery.²³ By the fourth conference call on August 14, 2024, Complainant had withheld the very same, substantial discovery sought for the prior five months.²⁴ The ALJ reminded Complainant of his obligation to furnish the outstanding discovery or to explain its non-production.²⁵

As discovery remained at a standstill despite the ALJ's orders and Respondent's numerous attempts to get Complainant to respond, Respondent filed a

¹⁷ Respondent's May 2, 2024 Letter Detailing Discovery Delays and Failure to Cooperate explains that Complainant yelled and hung up on Respondent's attorneys when they called to discuss discovery with him multiple times. *Id.* at 1-2. Order of Dismissal at 3.

¹⁸ July 15, 2024 Conference Call Transcript (July 15, 2024 Conf. Call Tr.) at 35. Respondent sent Complainant the same deficiency letter again on April 4, 2024, April 18, 2024, and later, on July 18, 2024. Respondent's Motion to Dismiss at 4; Order of Dismissal at 3-4.

¹⁹ July 15, 2024 Conf. Call Tr. at 35-36.

²⁰ *Id.* at 36.

²¹ *Id.* at 37 (The ALJ stated: "So, I know I've said this once before, I will say it again that this discovery process and working together in the discovery process is vital to keeping the case moving forward. Does that all make sense?" Complainant replied, "Yes.").

²² *Id.* at 39.

²³ Order of Dismissal at 3.

²⁴ August 14, 2024 Conference Call Transcript at 58-59, 62-63.

²⁵ *Id.* at 60.

Motion to Dismiss the complaint on October 3, 2024.²⁶ Complainant objected to the motion on October 21, 2024, stating that because of “ongoing motions, continuing negligence and new evidence, we cannot dismiss [sic] this case while awaiting response from the Court.”²⁷ On October 22, 2024, the ALJ issued an order for Complainant to provide a full written response to the motion “clearly address[ing] Respondent’s allegations of his failure to participate in discovery proceedings” and explaining “what good cause reasons exist as to why he cannot or should not respond” to any pending discovery requests within 14 days.²⁸ The order warned Complainant’s failure to timely respond or “address the issues asked for by this Tribunal” could result in the ALJ granting Respondent’s Motion to Dismiss.²⁹

Complainant objected to the Motion to Dismiss on November 6, 2024. The portion of his objection responsive to the ALJ’s order alleges his March 21, 2024 filing complied with the “interrogatories and discovery.”³⁰ Noting that Complainant’s March 21, 2024 filing “provides no specific information about what documents had already been provided by Complainant and how they satisfied or did not satisfy the discovery requests” and was filed before the first conference call covering the discovery deficiencies on April 11, 2024, “it cannot provide any justification or explanation for why Complainant has continued to refuse to participate in Discovery after the Court’s multiple instructions to do so or to otherwise explain why he should not have to.”³¹ The ALJ thus granted Respondent’s Motion to Dismiss.

²⁶ Order of Dismissal at 1; Respondent’s Motion to Dismiss.

²⁷ Order of Dismissal at 1.

²⁸ Omnibus Order on Respondent’s Motion to Dismiss and Complainant’s Motion for Reconsideration at 3.

²⁹ *Id.* 3-4.

³⁰ Order of Dismissal at 4. Complainant’s March 21, 2024 filing was a Motion to Compel related to his Requests for Production, Interrogatories, and Request for Inspection or Examination (to “photograph, record and obtain visual confirmation of signage of ‘OSHA notification of Alleged Hazards’ and/or the correction/s made to address OSHA violations”). This motion was ultimately denied by the ALJ on the basis Complainant sought information duplicative of a resolved OSHA inspection separate from the CAA claim). Order Granting Respondent’s Motion for Reconsideration at 1, 3.

³¹ Order of Dismissal at 4.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to hear appeals from ALJ decisions and issue agency decisions in cases arising under the CAA.³² The Board applies an abuse of discretion standard in reviewing ALJ determinations on procedural issues, evidentiary rulings, and sanctions.³³ An abuse of discretion occurs when an ALJ: (1) bases their decision on an error of law or uses the wrong legal standard; (2) bases their decision on a clearly erroneous factual finding; or (3) reaches a conclusion that, though not necessarily the product of a legal error or a clearly erroneous finding, cannot be located within the range of permissible decisions.³⁴

DISCUSSION

ALJs may sanction parties for their non-compliance with discovery orders by ordering dismissal of the complaint or a default judgment under the OALJ Rules of Practice and Procedure and in exercise of their inherent power to manage the orderly and expeditious disposition of their cases.³⁵ Although such case-ending sanctions are reviewed for an abuse of discretion,³⁶ they “deserve[] closer scrutiny within the abuse-of-discretion framework.”³⁷ For this reason, ALJs “must exercise this power cautiously . . . and should take care in fashioning sanctions for conduct

³² Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13,186 (Mar. 6, 2020); 29 C.F.R. § 24.110 (2025).

³³ *Carter v. BNSF Ry. Co.*, ARB No. 2021-0035, ALJ No. 2013-FRS-00082, slip op. at 7 (ARB Sept. 26, 2022) (citations omitted); *Butler v. Anadarko Petroleum Corp.*, ARB No. 2012-0041, ALJ No. 2009-SOX-00001, slip op. at 2 (ARB June 15, 2012) (citations omitted).

³⁴ *Xia v. Lina T. Ramey & Assoc., Inc.*, ARB No. 2023-0046, ALJ No. 2022-LCA-00013, slip op. at 7-8 (ARB Oct. 7, 2024) (citation omitted).

³⁵ 29 C.F.R. § 18.57(b)(1)(v). The OALJ Rules also provide that ALJs may “take any appropriate action authorized by the [Federal Rules of Civil Procedure]” in exercising “all powers necessary to conduct fair and impartial proceedings.” 29 C.F.R. § 18.12(b)(10); see *Newport v. Fla. Power & Light Co.*, ARB No. 2006-0110, ALJ No. 2005-ERA-00024, slip op. at 4 (ARB Feb. 29, 2008); *Jenkins v. EPA*, ARB No. 2015-0046, ALJ No. 2011-CAA-00003, slip op. at 8 (ARB Mar. 1, 2018).

³⁶ *Jenkins*, ARB No. 2015-0046, slip op. at 7 (citations omitted).

³⁷ *Adm’r, Wage & Hour Div., U.S. Dep’t of Lab. v. Global Horizons Manpower, Inc.*, ARB No. 2009-0016, ALJ No. 2008-TAE-00003, slip op. at 11 (ARB Dec. 21, 2010); see also *Jenkins*, ARB No. 2015-0046, slip op. at 10 (citation omitted) (“Nevertheless, where a lower court’s order of dismissal or default as a discovery sanction is under review, the review is more thorough because the drastic sanction deprives a party completely of its day in court.” (quotations and citations omitted)).

that abuses the judicial process.”³⁸ Additionally, although pro se litigants are to be granted latitude, they are “equally bound to follow the rules of practice and procedure as complainants represented by counsel.”³⁹

In accordance with the factor analysis we outlined in *Keller v. Pittsburgh Baptist Church*, we determine that the ALJ’s dismissal was not the consequence of an abuse of discretion.⁴⁰ At each turn, Complainant disregarded the ALJ’s repeated orders to cooperate with the discovery process or risk jeopardizing his case.⁴¹ From March to October 2024, Complainant ignored Respondent’s numerous attempts to resolve the outstanding discovery or repelled them with hostility.⁴² We agree with the ALJ’s finding that Complainant “demonstrated an unwillingness to meaningfully participate in the resolution of his case,”⁴³ and was thus, in our estimation, willfully non-compliant.⁴⁴ We further conclude that such conduct, in defiance of several ALJ orders to complete his discovery responses without good

³⁸ *Pfeifer v. AM Retail Grp., Inc.*, ARB No. 2023-0009, ALJ No. 2021-SOX-00030, slip op. at 3-4 (ARB Mar. 22, 2023) (citing *Newport*, ARB No. 2006-0110, slip op. at 4).

³⁹ *Xanthopoulos v. Mercer Inv. Consulting*, ARB 2022-0032, ALJ No. 2021-SOX-00017, slip op. at 27 (ARB Sept. 28, 2023) (citing *Jeanty v. Lily Transp. Corp.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 12 (ARB May 13, 2020)).

⁴⁰ *See Keller v. Pittsburgh Baptist Church*, ARB No. 2025-0008, ALJ No. 2023-TAX-00012, slip op. at 8-10 (ARB July 30, 2025).

⁴¹ *See id.* at 9 (“[W]hether the non-compliant party was warned their conduct or failure to comply could result in dismissal or default judgment”).

⁴² *See supra* notes 10-13. Respondent’s fifteen plus calls to Complainant between May 2, 2024, and August 14, 2024 in its effort to resolve discovery “ended with Complainant hanging up and/or insulting our firm’s counsel” Affidavit Accompanying Respondent’s Motion to Dismiss at 2. *See Keller*, ARB No. 2025-0008, slip op. at 9 (“[W]hether the party failed to comply with an order”).

⁴³ Order of Dismissal at 5.

⁴⁴ *Keller*, ARB No. 2025-0008, slip op at 9 (“[T]he culpability, willfulness, or bad faith of the non-compliant party”).

cause for seven months, demonstrated the futility of a lesser sanction⁴⁵ and prejudiced Respondent.⁴⁶ Therefore, “on balance and upon careful review of the entire record, the [*Keller*] factors, taken together” support the conclusion that the sanction of dismissal was warranted here.⁴⁷

Therefore, we find the ALJ did not abuse his discretion in dismissing Complainant’s CAA complaint.⁴⁸

For the foregoing reasons, we **AFFIRM** the ALJ’s dismissal of the complaint.

⁴⁵ *See id.* (“[T]he efficacy of less drastic sanctions”). As the Second Circuit has appellate jurisdiction here, we look to cases in that circuit for further elucidation on the factors in deciding whether the ALJ abused his discretion in dismissing this matter. *See Masi v. Steely*, 242 F.R.D. 278, 286 (S.D.N.Y. 2007) (“The Court has considered lesser sanctions and concluded that they would be futile and ineffective to deter plaintiff from repeating his conduct. Plaintiff has failed to comply with five discovery orders from this Court, despite being warned that he risked incurring the sanction of dismissal.”); *see also Nieves v. City of New York*, 208 F.R.D. 531, 536 (S.D.N.Y. 2002) (“[i]n the absence of any excuse or justification, imposing a lesser sanction and thereby permitting [plaintiff] to maintain this action despite flagrant disregard for discovery orders, would not serve Rule 37’s goal of precluding disobedient parties from obtaining a benefit from disobedience.”).

⁴⁶ *Keller*, ARB No. 2025-0008, slip op at 9 (“whether and to what extent there was prejudice to the opposing party”); *see also United States ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 256 (2d Cir. 2004) (“Prejudice may be presumed” where the delay is lengthy, inexcusable, and contumacious).

⁴⁷ *Keller*, ARB No. 2025-0008, slip op at 10.

⁴⁸ Complainant contends Respondent previously appointed Boyd Law Group to act as his “Human Resources” representatives before he was terminated and that for this reason Respondent’s attorneys were conflicted out and could not represent Respondent. Complainant’s Opening Brief at 2. He also finds fault with Boyd Law Group’s bar license numbers. *Id.* We agree with the ALJ’s determination that there was no conflict of interest because none of the communications between Complainant and Respondent’s attorneys “indicate that [Respondent’s attorneys were] acting as Complainant’s representative at any point.” Order of Dismissal at 5. Neither do we see any issue with respect to the Boyd Law Group’s bar license numbers that would affect this appeal.

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

ELLIOT M. KAPLAN
Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge