U.S. Department of Labor

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

IN THE MATTER OF:

FOUAZ SIDDIQUI,

COMPLAINANT,

v.

TRANSIT ADMINISTRATIVE CENTER, INC.,

RESPONDENT.

ARB CASE NO. 2024-0012

ALJ CASE NO. 2021-NTS-00001
ALJ NORAN J. CAMP

DATE: January 14, 2025

Appearances:

For the Complainant:
Nicholas Woodfield, Esq. and R. Scott Oswald, Esq.; *The Employment Law Group, P.C.*; Washington, District of Columbia

For the Respondent:
Kristin D. Tauras, Esq.; *McKenna Storer*; Chicago, Illinois

Before THOMPSON and ROLFE, Administrative Appeals Judges

DECISION AND ORDER

ROLFE, Administrative Appeals Judge:

This case arises under the National Transit Systems Security Act of 2007 (NTSSA or Act),[1] and its implementing regulations.[2] Complainant Fouaz Siddiqui alleges that Respondent Transit Administrative Center, Inc. (TAC) unlawfully terminated his employment because he took actions protected by the NTSSA.

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[1] 6 U.S.C. § 1142.

[2] 29 C.F.R. Part 1982 (2024).

The NTSSA prohibits "[a] public transportation agency, [or] a contractor or a subcontractor of such agency," from discriminating against an employee for engaging in activity protected by the Act.[3] On December 27, 2023, a United States Department of Labor Administrative Law Judge (ALJ) issued a Decision and Order Dismissing Complaint (D. & O.), finding that Siddiqui had not shown that TAC was a "contractor" or "subcontractor" of a public transportation agency. Complainant appealed the D. & O. to the Administrative Review Board (ARB or Board). Because Siddiqui has not identified any evidence or put forth any argument that would allow us to disturb the ALJ's decision, we affirm the ALJ.

BACKGROUND

Chicago licenses companies called "Affiliations" to provide branding, dispatch, insurance, and other services to taxicab owners.[4] Several Affiliations, in turn, contract with Respondent TAC for cashiering, accounting, and other back-of-house services.[5] Although TAC and Affiliations provide services to taxicab owners and drivers, they do not own or operate taxicabs themselves.[6]

PACE is a regional public transportation provider in and around Chicago.[7] PACE provides paratransit services to disabled riders through the "Taxi Access Program" (TAP[8]), which gives eligible riders access to private taxicab rides.[9] Eligible riders use a TAP swipe card issued by PACE to pay the taxicab drivers for their ride.[10] The drivers then go to their Affiliations' cashier, like TAC, to "cash out" and collect their portion of the fare.[11] PACE subsequently pays the Affiliations,

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3 6 U.S.C. § 1142(a).

4 D. & O. at 6-7; Hearing Transcript (Tr.) at 154-55.

5 D. & O. at 6-7.

6 D. & O. at 6-7; Tr. at 162-63.

7 D. & O. at 8 n.7.

8 Below and on appeal, Siddiqui refers to both PACE's local "Taxi Access Program" and to the federal "Transportation Alternatives Program," discussed in more detail below. For clarity, the acronym "TAP" in this decision only refers to PACE's Taxi Access Program.

9 D. & O. at 3, 8.

10 *Id.* at 8.

11 *Id.* at 7-9.

which in turn reimburse TAC, for TAP fares.[12] Although TAC cashed out TAP fares for drivers on behalf of Affiliations, TAC indisputably did not contract with PACE.[13]

Siddiqui worked for TAC as a cashier supervisor.[14] Among other duties, he cashed out drivers for TAP fares.[15]

According to witnesses at the hearing, TAC instructed staff, including Siddiqui, in an email on May 13, 2020, and in a staff meeting on May 14, 2020, that they could not cash out drivers with "holds" on their accounts.[16] Witnesses also testified that TAC instructed staff at the May 14, 2020 meeting to look for TAP fraud or other unusual or irregular fares before cashing out drivers.[17] Siddiqui asserts that he objected to these mandates at the May 14 meeting, insisting that TAC was required under local taxicab rules and regulations to cash out drivers within 24 hours of the completion of the fare.[18] Siddiqui also asserts that he reiterated his concerns about the timeliness of cashing out TAP fares to his supervisor on or about May 21, 2020.[19]

On May 16, 2020, a taxicab driver, Jamiu Sokoya, attempted to cash out nearly $6,000 in TAP fares for a 12-day period.[20] The cashier on duty refused to cash out Sokoya because he had a hold on his account and because his TAP fares appeared fraudulent.[21] Indeed, two days later, PACE notified TAC that Sokoya was under investigation for TAP fraud.[22] Despite the hold, despite the potential fraud, and despite the fact that the cashier on duty had told Siddiqui that he had already

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12 *Id.* at 8.

13 *Id.* at 3.

14 *Id.* at 10.

15 *Id.* at 7, 10.

16 *Id.* at 8, 10-12.

17 *Id.* at 11-12.

18 *Id.* at 11; Complainant's Post-Hearing Brief (Comp. Post-Hearing Br.) at 3-5.

19 Tr. at 71-72; Comp. Post-Hearing Br. at 8.

20 D. & O. at 15-16.

21 *Id.* at 16.

22 *Id.*; Joint Exhibit 6.

refused to cash out the driver, Siddiqui called Sokoya, asked him to return, and cashed him out on May 16, 2020.[23]

TAC terminated Siddiqui's employment on May 28, 2020.[24] TAC maintains it did so because he violated the company's clear mandate to not pay out drivers with holds on their accounts.[25]

Siddiqui filed a whistleblower complaint with the Department's Occupational Safety and Health Administration (OSHA) on October 26, 2020.[26] Siddiqui alleges that TAC terminated his employment because he raised concerns about withholding payments and cashed out Sokoya in accordance with local taxicab rules and regulations.[27] On November 6, 2020, OSHA issued a final determination, concluding that TAC was not a covered employer under the NTSSA and that Siddiqui did not engage in activity protected by the Act.[28] Siddiqui objected to OSHA's determination, and the matter was assigned to the ALJ.[29]

The ALJ conducted a hearing, after which the parties submitted post-hearing briefs.[30] Among other things, TAC argued that it was not a contractor or subcontractor of a public transportation agency under the NTSSA.[31] TAC also argued that Siddiqui's concerns about the timeliness of TAP payments were not protected under the NTSSA.

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23 D. & O. at 16-17.

24 D. & O. at 18-20.

25 *Id.*; Respondent's Post-Hearing Brief (Resp. Post-Hearing Br.) at 18.

26 D. & O. at 2.

27 *Id.* at 19; Comp. Post-Hearing Br. at 15.

28 D. & O. at 2.

29 *Id.*

30 *Id.* at 3.

31 Resp. Post-Hearing Br. at 5-12. At times during these proceedings, it also appeared that Siddiqui believed he had engaged in other forms of protected activity, including when he allegedly raised concerns about taxicabs operating without insurance. *E.g.*, Complainant's Online Whistleblower Complaint at 3; Complainant's Exceptions to Secretary's Findings at 1. However, by the time he filed his Post-Hearing Brief, Siddiqui focused exclusively on his actions concerning the timeliness of cashing out TAP fares. Comp. Post-Hearing Br. at 12-14.

As relevant here, the NTSSA protects employees who report conduct that they reasonably believe constitutes "a violation of any Federal law, rule, or regulation relating to public transportation safety or security," or who "refuse to violate or assist in the violation of any Federal law, rule, or regulation relating to public transportation safety or security."[32] TAC argues that Siddiqui's concerns about the timeliness of payments under the local paratransit program were not protected because they did not implicate federal laws, rules, or regulations or matters of "safety or security."[33]

On December 27, 2023, the ALJ issued the D. & O., finding that TAC had not shown that it was a covered entity under the NTSSA.[34] The ALJ observed that the parties stipulated that TAC did not contract with PACE directly, and found that Siddiqui failed to show that TAC subcontracted with PACE or some other public transportation agency through another entity.[35] The ALJ did not reach TAC's other arguments. Siddiqui appealed the ALJ's D. & O. to the Board on January 4, 2024.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Board the authority to issue final agency decisions under the NTSSA.[36] In NTSSA cases, the Board reviews questions of law de novo, but is bound by the ALJ's factual findings if they are supported by substantial evidence.[37] Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[38] The

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32 6 U.S.C. § 1142(a)(1)-(2).

33 Resp. Post-Hearing Br. at 16-18.

34 D. & O. at 21-25.

35 *Id.*

36 *See* Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary's discretionary review of ARB decisions)), 85 Fed. Reg. 13,186 (Mar. 6, 2020); 29 C.F.R. § 1982.110(a).

37 29 C.F.R. § 1982.110(b); *Harte v. Metro. Transp. Auth./N.Y. Auth.*, ARB No. 2017-0002, 2015-NTS-00002, slip op. at 3 (ARB Aug. 20, 2019) (reissued with corrected case caption Sept. 6, 2019).

38 *Morrell v. DLH Holdings Corp.*, ARB No. 2023-0030, ALJ No. 2020-SOX-00005, slip op. at 9 (ARB Sept. 23, 2024) (internal citation and quotations omitted).

complainant carries the burden of proving that the respondent is covered under the NTSSA.[39]

DISCUSSION

To be subject to liability under the NTSSA, TAC must be a "contractor" or "subcontractor" of a public transportation agency.[40] Siddiqui asserts that TAC was a subcontractor of PACE because it contracted with the Affiliations, who, in turn, contracted with PACE[41] as part of the TAP.[42]

Although Siddiqui established that TAC contracted with the Affiliations, we agree with the ALJ that Siddiqui failed to produce sufficient evidence that would allow the ALJ to conclude that the Affiliations, in turn, contracted with PACE. Siddiqui did not identify or produce any contract, written or otherwise, between the Affiliations and PACE, or offer any testimony or other evidence that would allow the ALJ to find that such a contract existed. As the ALJ aptly summarized, "the missing piece of Siddiqui's argument is the contract itself."[43]

Siddiqui urges the Board to infer that the Affiliations contracted with PACE merely from the fact that the Affiliations participated in the TAP and accepted payments under that program.[44] But, fatally, Siddiqui has not adequately explained how participation in that local program, alone, made the Affiliations a "contractor" of PACE under the NTSSA. Siddiqui did not identify: any arrangements or agreements, written or otherwise, between the Affiliations and PACE; any evidence as to how the Affiliations' participation in the TAP was defined, regulated, or structured; or any other evidence as to the precise nature of the relationship

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39 *See Hall v. CVS Health*, ARB No. 2022-0003, ALJ No. 2020-FDA-00007, slip op. at 3 (ARB Mar. 15, 2022) (citations omitted).

40 6 U.S.C. § 1142(a).

41 We need not, and do not, decide whether PACE is a "public transportation agency" under the NTSSA.

42 Complainant's Memorandum Brief in Support of His Petition for Review (Comp. Br.) at 5 ("TAC is a covered *sub*contractor of a public transportation agency because TAC has contracts with affiliations to process federal money, and those affiliations have contracts with PACE, a public transportation agency, to process those same federal funds." (emphasis in original)).

43 D. & O. at 22.

44 Comp. Br. at 7.

between PACE and the Affiliations, whether as part of the TAP or otherwise. Siddiqui also did not offer evidence as to the mechanism(s) by which PACE paid the Affiliations, including how and under what rules, terms, or conditions PACE paid the Affiliations for TAP fares.

As he did with the ALJ below, Siddiqui instead cites the definitions of "contract" and "third party contract" from a Federal Transit Administration (FTA) Circular in support of his argument that TAC is covered under the NTSSA.[45] But Siddiqui has not explained how the Circular in any way relates to deciding issues of coverage under the NTSSA, and any such relationship is not evident based on the Circular's content.

Indeed, the Circular does not refer to the NTSSA generally, or to the definition of contractor or subcontractor under the NTSSA specifically, and it does not otherwise indicate it is intended as guidance in determining the scope of coverage under the NTSSA.[46] The Circular also does not refer to TAC, Affiliations, PACE, the TAP, or any entity or program tied to this case. Furthermore, the Circular states that it offers guidance for contracts funded by the FTA.[47] Complainant did not show that PACE used FTA or other federal funds to finance

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45 *Id.* at 5, 7 (citing FED. TRANSIT ADMIN. CIRCULAR 4220.1F, THIRD PARTY CONTRACTING GUIDANCE (2013), https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/Third%20Party%20Contracting%20Guidance%20%28Circular%204220.1F%29.pdf).

46 Although the Circular does not refer to the NTSSA, Siddiqui observes that an NTSSA Investigator's Desk Aid (Desk Aid) refers to the Circular's definition of "third party contract." *Id.* at 5 (citing INVESTIGATOR'S DESK AID TO THE NATIONAL TRANSIT SYSTEMS SECURITY ACT WHISTLEBLOWER PROTECTION PROVISION (2020), https://www. https://www.whistleblowers.gov/sites/default/files/NTSSA-Desk-Aid-FINAL-08-26-2020.pdf). The Desk Aid's sole reference to the Circular is in the context of an example of coverage involving a manufacturer hired to provide brake pads to a public transportation agency. DESK AID at 6 n.1. That example is not similar or relevant to the question of TAC's coverage here.

47 CIRCULAR 4220.1F at 1 ("This circular provides contracting guidance for recipients of Federal assistance awarded by the Federal Transit Administration (FTA) when using that Federal assistance to finance its procurements (third party contracts)."), 10 (defining "third party contract" as a contract "financed with Federal assistance awarded by FTA").

the TAP or to pay Affiliations for paratransit taxicab rides.[48] Thus, we agree with the ALJ that the Circular's definition of "third-party contract" is irrelevant here.[49]

Furthermore, even if the Circular was relevant to the issue of coverage under the NTSSA, Siddiqui has not shown that TAC or the Affiliations held a "contract" or "third party contract" with PACE as the Circular itself construes those terms. The Circular defines a "contract" as a "mutually binding legal relationship" which must, unless "otherwise authorized," be "**in writing**."[50] Again, Complainant has not identified any agreement, let alone a written agreement, between the Affiliations and PACE. Likewise, while Siddiqui theorizes that "contracts" and "third party contracts" under the Circular may include "job orders," "purchase orders," or "purchase[s] by credit card," and can "become[ ] effective by written acceptance or performance,"[51] he has not pointed to any actual evidence of a job order, purchase order, or some other "contract" between PACE and the Affiliations recognized by the Circular.

Finally, Siddiqui urges the Board to consider the remedial purposes behind the NTSSA's whistleblower program. He accuses the ALJ of applying "exceedingly narrow interpretation[s]" of the terms "contractor" and "subcontractor" under the NTSSA, and cites the Supreme Court's decision in *Lawson v. FMR LLC*[52] to argue that the Board should "extend[ ]" the definition of those terms to cover TAC in this case.[53] We disagree with Siddiqui's characterization of the ALJ's decision: Siddiqui's claim fails not because the ALJ took an overly narrow or restrictive view of coverage under the statute but solely because Siddiqui did not offer enough evidence to allow the ALJ to assess the nature of the relationship between the Affiliations and PACE.

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48 Siddiqui insists that PACE received federal funds for the TAP through the FTA's Transportation Alternatives Program. Comp. Post-Hearing Br. at 2; Comp. Br. at 2, 5. The federal Transportation Alternatives Program, which was at least partially repealed in 2015, offered funds to states for projects like "on-road and off-road trail facilities," "safe routes for non-drivers," "construction of turnouts, overlooks, and viewing areas," and the like. 23 U.S.C. § 101(a)(29) (2012) (amended 2015 and 2021); 23 U.S.C. § 213(b)(1) (2012) (repealed 2015). Siddiqui did not cite any evidence that federal funds from the Transportation Alternatives Program went to PACE for the TAP.

49 D. & O. at 22.

50 CIRCULAR 4220.1F at 6 (emphasis added).

51 *Id.* at 6, 10.

52 571 U.S. 429 (2014).

53 Comp. Br. at 8-9.

Lawson, moreover, does not support Siddiqui's position. In that case, which arose under the Sarbanes-Oxley Act,[54] the Supreme Court determined that employees of contractors of publicly traded companies were entitled to the same whistleblower protections as individuals employed directly by publicly traded companies.[55] Neither party here disputes that employees of contractors and subcontractors are entitled to the same protections as employees of a public transportation agency under the NTSSA. Instead, the issue here is whether TAC meets the definition of a contractor or subcontractor of a public transportation agency.[56] *Lawson* does not help answer that question.

CONCLUSION

On the facts of this case, Siddiqui has not put forth any evidence or argument that would permit us to disturb the ALJ's decision under our standard of review. We therefore **AFFIRM** the ALJ's D. & O.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

ANGELA W. THOMPSON
Administrative Appeals Judge

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54 18 U.S.C. § 1514A.

55 *Lawson,* 571 U.S. at 433.

56 As noted above, TAC also argued to the ALJ that Siddiqui's concerns regarding the timeliness of TAP payments were not protected under the NTSSA because they did not implicate federal rules or laws or matters of "public safety or security." Resp. Post-Hearing Br. at 17-18. Although TAC's argument is compelling, the ALJ did not reach the issue. Consequently, we decline to reach the issue as well.