



ADRIANO BUDRI,

ARB CASE NO. 2018-0055

COMPLAINANT,

ALJ CASE NO. 2018-STA-00033

v.

DATE: July 30, 2019

FIRSTFLEET, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Adriano K. Budri; *pro se*; Burleson, Texas

For the Respondent:

C. Eric Stevens, Esq.; *Little Mendelson, PC*; Nashville, Tennessee; and
Greg McAllister, Esq.; *Little Mendelson, PC*; Dallas, Texas

Before: William T. Barto, *Chief Administrative Appeals Judge*; James A. Haynes and Daniel T. Gresh, *Administrative Appeals Judges*

**ORDER VACATING FINAL DECISION AND ORDER
AND DISMISSING COMPLAINT**

PER CURIAM: On January 23, 2018, the Complainant, Adriano Budri, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, FirstFleet, Inc., retaliated against him in violation of the employee protection provisions of the Surface Transportation Assistance Act¹ and its implementing regulations.² A

¹ 49 U.S.C. § 31105 (2007).

² 29 C.F.R. Part 1978 (2018).

Department of Labor (DOL) Administrative Law Judge (ALJ) granted FirstFleet's motion for summary decision and dismissed Budri's complaint because he found that Budri's complaint was untimely filed. The ALJ subsequently issued an order denying Budri's motion for reconsideration. On March 25, 2019, we issued a Final Decision and Order affirming the ALJ's decision.

On June 27, 2018, Budri filed a petition for review with the Administrative Review Board, which the Board accepted for review.³ Before the Board had issued a final decision in this matter, Budri apparently filed an action on February 19, 2019, for de novo review of the matter in a United States district court⁴ as authorized by statute and regulation.⁵ The Board only learned of this filing five months later on July 24, 2019, after we had issued a Final Decision and Order, when Budri informed the Board via fax of the filing.

The regulations provide that “[w]ithin seven days after filing a complaint in federal court, a complainant must file with the Assistant Secretary, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint.”⁶ Notwithstanding the Complainant's failure to comply with these regulatory requirements,⁷ it is evident that the Board no longer has jurisdiction to

³ The Secretary of Labor has delegated authority to the ARB to conduct appellate review of ALJ decisions in cases arising under the STAA and to issue final agency decisions in these matters (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 84 Fed. Reg. 13072 (Apr. 3, 2019).

⁴ The Board takes official notice that Budri filed his complaint on February 19, 2019, in the United States District Court for the Northern District of Texas (Dallas). *Budri v. FirstFleet, Inc.*, Case No. 3:19-cv-00409-N-BH.

⁵ 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114(a) (“If there is no final order of the Secretary, 210 days have passed since the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy.”).

⁶ 29 C.F.R. § 1978.114(b).

⁷ To date, Budri has not complied with 29 C.F.R. § 1978.114 (b) by providing the Board with a copy of his district court complaint.

adjudicate this appeal. Accordingly, we hereby **VACATE** our Final Decision and Order issued on March 25, 2019, and **DISMISS** Budri's complaint.

SO ORDERED.