

U.S. Department of Labor

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



IN THE MATTER OF:

AUSTIN J. DOMEBO,

ARB CASE NO. 2024-0026

COMPLAINANT,

ALJ CASE NO. 2023-STA-00004

CHIEF ALJ STEPHEN R. HENLEY

v.

DATE: March 27, 2026

OKMULGEE READY MIX CO.,

RESPONDENT.

Appearances:

For the Complainant:

Paul O. Taylor, Esq. and Peter L. LaVoie, Esq.; *Truckers Justice Center*; Edina, Minnesota

For the Respondent:

Bill Barksdale, Esq.; *The Barksdale Law Firm, P.C.*; Okmulgee, Oklahoma

Before BURRELL and KIKO, Administrative Appeals Judges

DECISION AND ORDER

This case arises under the Surface Transportation Assistance Act of 1982 (STAA), as amended, and its implementing regulations.¹ Complainant Austin Domebo filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that Respondent Okmulgee Ready Mix Co. retaliated against him for engaging in STAA protected activity. Following a formal video hearing, the United States Department of Labor Chief Administrative Law Judge (Chief ALJ) issued a Decision and Order Denying the Complaint (D. & O.) on February 9, 2024. Complainant petitioned the

¹ 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2025).

Administrative Review Board (ARB or Board) for review. For the following reasons, we summarily affirm the Chief ALJ's D. & O.

BACKGROUND

Respondent employed Complainant as a concrete delivery driver from approximately December 1, 2021, to July 26, 2022.² On July 25, 2022, Complainant reported safety concerns to Respondent regarding an air brake defect and a blown tire, which arose during two separate job assignments involving two different trucks. During Complainant's first delivery assignment, he reported an air brake defect in Truck No. 30 to Respondent's dispatcher after the truck's air system lost all pressure, causing the emergency brakes to engage.³

After restoring sufficient air pressure to release the emergency brakes and completing the concrete pour, Complainant attempted to return the truck to Respondent's terminal.⁴ On his return trip to the terminal, the truck lost all air pressure again, and Complainant reported the incident to the dispatcher.⁵ The dispatcher attempted to contact Complainant via radio, telephone call, and text message, but Complainant did not answer or respond.⁶ Complainant eventually restored sufficient air pressure and drove the truck back to the terminal.⁷

After Complainant returned to the terminal, he had an exchange with Respondent's plant manager regarding the truck's condition and his concerns about driving similarly maintained vehicles.⁸ Following this exchange, Complainant took about a thirty-to-forty-minute break and did not wash out the truck.⁹ Generally, drivers are responsible for cleaning out leftover concrete by washing the inside of the drum with water if it was not washed out at the jobsite to prevent damage to the truck.¹⁰ Later that afternoon, Complainant was assigned to a second delivery in a different truck, Truck No. 52.¹¹

² See D. & O. at 1, 3.

³ *Id.* at 4-5.

⁴ *Id.* at 5.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 6.

⁸ *Id.*

⁹ *Id.* at 6, 6 n.20.

¹⁰ *Id.* at 6, 6 n.19.

¹¹ *Id.* at 6.

While traveling to the second jobsite, Complainant experienced a tire blowout.¹² Complainant reported the blown tire to the dispatcher, continued driving to the jobsite, and requested for the tire to be replaced once he arrived at the jobsite.¹³ The plant manager met Complainant at the jobsite, brought a new hose and spray nozzle for the truck because the existing hose was damaged from the tire, and stated that he did not want to pay for a service call to have the tire replaced at the jobsite.¹⁴ Complainant advised that he felt unsafe driving the truck back to the terminal, but ultimately, drove the truck back to the terminal.¹⁵

Upon returning from the second jobsite, Complainant did not complete his required end-of-day duties.¹⁶ Specifically, Complainant failed to wash out the concrete truck, install the replacement hose and nozzle, return his delivery ticket to the dispatcher, park the truck in its designated location, or notify supervisory personnel prior to leaving the worksite.¹⁷ A different driver washed the truck out and brought the delivery ticket to the dispatcher.¹⁸ Later that evening, Complainant texted the dispatcher stating that he hoped he still had a job.¹⁹

On July 26, at approximately 5:50 a.m., the dispatcher replied to Complainant's text message that he still had a job.²⁰ However, around that same time, the plant manager learned that Complainant did not complete his end-of-day duties.²¹ When Complainant reported to work around 6:00 a.m., the plant manager told Complainant that his services were no longer needed, instructed him to return his uniforms, and expressed to Complainant that "he needed team players."²² A heated exchange then occurred between Complainant and the plant manager.²³ The dispatcher eventually intervened and directed Complainant to leave the terminal.²⁴

¹² *Id.*

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 7.

¹⁵ *Id.*

¹⁶ *Id.* at 7-8.

¹⁷ *Id.* at 7-8, 8 n.26-28.

¹⁸ *Id.* at 8 n.28.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 9.

²³ *Id.*

²⁴ *Id.*

Prior to these events, Complainant had no disciplinary record and had made other complaints about issues with vehicles he operated.²⁵ Those issues were resolved without any disciplinary action.²⁶

On September 26, 2022, Complainant filed a complaint with OSHA alleging that Respondent violated the STAA when it terminated his employment in retaliation for complaining about driving unsafe vehicles.²⁷ On April 4, 2024, OSHA issued Secretary's Findings and dismissed the complaint.²⁸ Complainant filed objections to the Secretary's Findings and requested a hearing before the Office of Administrative Law Judges (OALJ).²⁹ On February 9, 2024, the Chief ALJ issued the D. & O.

Complainant timely filed a petition for review with the Board. Both parties filed briefs.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to review appeals from ALJ decisions and to issue agency decisions in cases arising under the STAA.³⁰ In STAA cases, the Board reviews questions of law presented on appeal de novo, but is bound by the ALJ's factual findings if they are supported by substantial evidence.³¹ Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."³²

DISCUSSION

The STAA's whistleblower protection provision provides that a person may not discharge, discipline, or discriminate against an employee regarding the pay,

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 1.

²⁸ *Id.*

²⁹ *Id.*

³⁰ 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. 13186 (Mar. 6, 2020).

³¹ 29 C.F.R. § 1978.110(b); *Halliday v. Transp. Express, Inc.*, ARB No. 2023-0024, ALJ No. 2020-STA-00067, slip op. at 11 (ARB Oct. 7, 2024) (citing *Dick v. USAA*, ARB No. 2022-0063, ALJ No. 2018-STA-00054, slip op. at 10 (ARB Apr. 16, 2024)).

³² *Halliday*, ARB No. 2023-0024, slip op. at 11 (citing *Stokes v. Albertson's, LLC*, ARB No. 2022-0007, ALJ Nos. 2020-STA-00080, -00082, slip op. at 5 (ARB May 20, 2022)).

terms, or privileges of employment because the employee has engaged in statutorily protected activity.³³ To prevail on a STAA claim, a complainant must prove by a preponderance of the evidence that: (1) they engaged in protected activity; (2) the employer took adverse employment action against them; and (3) the protected activity was a contributing factor in the adverse employment action.³⁴ If the employee meets his burden of proof, the employer may avoid liability by proving by clear and convincing evidence that it would have taken the same unfavorable action in the absence of the protected activity.³⁵

The Chief ALJ found that Complainant engaged in protected activity and that there was temporal proximity between Complainant's complaints and his employment termination,³⁶ but that his protected activity did not contribute in any way to his termination.³⁷ The Chief ALJ concluded that the termination "was based solely on the potential damage to equipment, lack of communication, and disruption to other employees that conducted Complainant's end of day routine."³⁸

Complainant argues on appeal that the Chief ALJ erred in finding that his protected activity was not a contributing factor in his termination. Specifically, Complainant avers that: (1) the Chief ALJ failed to properly apply the contributing factor standard and instead relied on a "proximate cause" standard;³⁹ (2) the Chief ALJ erred by finding that an intervening event diminished the temporal proximity between Complainant's protected activity and termination;⁴⁰ (3) the Chief ALJ failed to consider and resolve strong evidence of Respondent's animus toward Complainant's protected activity;⁴¹ and (4) the Chief ALJ's findings are not supported by substantial evidence.⁴²

³³ 49 U.S.C. § 31105(a)(1); *see also* 29 C.F.R. § 1978.102(a). STAA complaints are governed by the legal burdens of proof set forth in the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21). 49 U.S.C. § 31105(b)(1); 49 U.S.C. § 42121(b).

³⁴ 49 U.S.C. § 42121(b)(2)(B)(iii); 29 C.F.R. § 1978.109(a); *Halliday*, ARB No. 2023-0024, slip op. at 12 (citations omitted).

³⁵ 49 U.S.C. § 42121(b)(2)(B)(iv); 29 C.F.R. § 1978.109(b); *Halliday*, ARB No. 2023-0024, slip op. at 12 (citations omitted).

³⁶ D. & O. at 11-14.

³⁷ *Id.* at 14-16.

³⁸ *Id.* at 16.

³⁹ Complainant's Brief on Review (Comp. Br.) at 10-13.

⁴⁰ *Id.* at 13-15.

⁴¹ *Id.* at 15-18.

⁴² *Id.* at 18.

Upon careful consideration of the parties' briefs on appeal and review of the evidentiary record as a whole, we conclude that substantial evidence supports the Chief ALJ's finding that Complainant's protected activity was not a contributing factor in his termination. None of Complainant's arguments establish that the Chief ALJ abused his discretion or committed reversible error in his contributing factor analysis.⁴³ As demonstrated in the D. & O., substantial evidence supports the finding that Complainant's termination was based on the events occurring after the second job—specifically, that Complainant left Respondent's terminal without notifying or communicating with supervisory personnel and without completing his end-of-day duties, which could have resulted in damage to the truck.⁴⁴ Additionally, prior to these end-of-day events, Complainant was not disciplined for earlier safety complaints and, in fact, was assigned a second job after raising a complaint earlier that day.⁴⁵ Accordingly, we affirm the Chief ALJ's findings.

⁴³ We note Complainant's concern with the Chief ALJ's reference to "proximate cause." The Board has interpreted that use of the term "proximate cause" does not impose a heightened or additional burden on a complainant beyond the statutory contributing factor standard. *Klinger v. BNSF Ry. Co.*, ARB No. 2019-0013, ALJ No. 2016-FRS-00062, slip op. at 9 n.58 (ARB Mar. 18, 2021). Rather, proximate cause serves to distinguish legally cognizable causation from mere sequential causation, ensuring that liability is grounded in conduct that has legal significance. *See id.*; *see also Koziara v. BNSF Ry. Co.*, 840 F.3d 873, 877-78 (7th Cir. 2016). Assuming, arguendo, that the Chief ALJ erred by referring to proximate cause, any such error was harmless because the Chief ALJ expressly concluded that Complainant's protected activity "did not contribute in any way" to the termination. D. & O. at 16. This language unequivocally indicates that Complainant failed to meet his burden under the contributing factor standard, as his activity played no role in the adverse action.

We further note that the Chief ALJ acknowledged Complainant's animus argument at the outset of the "Contributing Factor Causation" section, and that argument was implicitly rejected in the Chief ALJ's reasoning. *See id.* at 13, 15 (noting that Respondent resolved prior safety complaints without disciplinary action and provided job assignments and other reassurances following such complaints).

⁴⁴ *Id.* at 14-15.

⁴⁵ *Id.* at 15.

CONCLUSION

For the reasons stated above, we summarily **AFFIRM** the Chief ALJ's D. & O. Accordingly, Complainant's complaint is **DENIED**.

SO ORDERED.

THOMAS H. BURRELL
Administrative Appeals Judge

PHILIP G. KIKO
Administrative Appeals Judge