

**U.S. Department of Labor**

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



**IN THE MATTER OF:**

**ALEX ROBLES,**

**ARB CASE NO. 2024-0034**

**COMPLAINANT,**

**ALJ CASE NO. 2023-STA-00016**

**ALJ JOHN M. HERKE**

**v.**

**DATE: July 15, 2025**

**QUIRCH FOODS, LLC,**

**RESPONDENT.**

**Appearances:**

***For the Complainant:***

**Alex Robles; *Pro Se*; Hammond, Louisiana**

***For the Respondent:***

**Bayardo E. Alemán, Esq.; Rayda Alemán, Esq.; *Alemán Law*; Coral Gables, Florida**

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

## **DECISION AND ORDER AFFIRMING DISMISSAL**

This case arises under the employee-protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended.<sup>1</sup> Complainant Alex Robles filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA), alleging that Respondent Quirch Foods LLC, violated the STAA. OSHA determined there was no violation, after which Complainant requested a hearing. The Administrative Law Judge (ALJ) assigned to the case dismissed Complainant's case after Complainant removed the matter

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<sup>1</sup> 49 U.S.C. § 31105(a); *see also* 29 C.F.R. Part 1978 (2025) (the STAA's implementing regulations).

pursuant to 49 U.S.C. § 31105(c) to the United States District Court for the Eastern District of Louisiana. Complainant, pro se, filed a Petition for Review with the Administrative Review Board (ARB or Board). For the following reasons, we **AFFIRM** the ALJ's decision and deny Complainant's appeal.

### BACKGROUND

Complainant filed a claim with OSHA under the STAA, 49 U.S.C. § 31105. OSHA dismissed the claim, determining there was no reasonable cause to believe Respondent violated the STAA by terminating Complainant. The parties pursued arbitration. Meanwhile, Complainant requested a hearing with an ALJ. Before the ALJ, Complainant and Respondent had difficulty completing discovery, resulting in the ALJ ordering Complainant to produce documents and respond to interrogatories. The ALJ also ordered Complainant to sit for a deposition.

During a hearing regarding the ALJ's discovery orders, Complainant indicated he wished to file contempt proceedings against the ALJ and the Secretary of Labor for colluding with Respondent's counsel.<sup>2</sup> The ALJ stayed the case while Complainant pursued these options.<sup>3</sup>

On January 26, 2024, Complainant informed the ALJ that he had filed a complaint in federal district court on January 25, 2024.<sup>4</sup> The ALJ asked Complainant to file a copy of the federal complaint by February 9, 2024, which Complainant did on or about February 7, 2024.<sup>5</sup> Accordingly, on March 26, 2024, the ALJ, noting more than 60 days had passed since the filing in federal court, there had been no objection or other opposition filed with the ALJ, and there had been no remand order from the District Court, dismissed the case.<sup>6</sup> Complainant appealed this dismissal to the ARB.

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<sup>2</sup> Procedural Order Staying Case for Ninety Days (ALJ Oct. 31, 2023) at 1.

<sup>3</sup> *Id.*

<sup>4</sup> Order of Dismissal (D. & O.) at 1 (citing *Robles v. Quirch Foods LLC*, Case No. 2:24-cv-00251 (E.D. La. Jan. 25, 2024) (hereinafter Jan. 25 E.D. La. Compl.)).

<sup>5</sup> The Complainant filed the first page of the district court complaint with the ALJ.

<sup>6</sup> *Id.*

## JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB authority to hear appeals from ALJ decisions and issue agency decisions in cases arising under the STAA.<sup>7</sup> We review the ALJ's dismissal de novo.<sup>8</sup>

## DISCUSSION

The STAA provides that an employer may not discharge or otherwise retaliate against an employee with respect to the employee's compensation, conditions, or privileges of employment because the employee engaged in STAA protected activity.<sup>9</sup> Complaints filed under the STAA are governed by the legal burdens of proof set forth in the employee-protection provision of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21).<sup>10</sup>

To prevail on a STAA claim, a complainant must prove by a preponderance of the evidence that he engaged in protected activity, that his employer took an adverse employment action against him, and that the protected activity was a contributing factor in the unfavorable personnel action.<sup>11</sup> In light of our disposition of this matter, we limit our discussion to the issue of whether the ALJ correctly dismissed the case under the STAA's kick-out or removal provision.

The STAA contains a kick-out provision whereby a whistleblower may remove the matter to federal district court.<sup>12</sup> Under this provision, if the Secretary has not issued a final decision within 210 days, an employee may bring an action at law or equity in the appropriate district court, which "shall have jurisdiction over such an action . . . ."<sup>13</sup> Complainant filed the OSHA complaint on May 18, 2022; the

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<sup>7</sup> 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).

<sup>8</sup> *Gladden v. Proctor & Gamble Co.*, ARB No. 2022-0012, ALJ No. 2021-SOX-00012, slip op. at 9 (ARB May 9, 2023) (citations omitted).

<sup>9</sup> 49 U.S.C. § 31105(a)(1); 29 C.F.R. § 1978.102(a).

<sup>10</sup> 49 U.S.C. § 31105(b)(1); *see* 49 U.S.C. § 42121(b).

<sup>11</sup> 49 U.S.C. § 42121(b)(2)(B)(iii).

<sup>12</sup> 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114(a).

<sup>13</sup> 49 U.S.C. § 31105(c); *accord* 29 C.F.R. § 1978.114(a).

210-day period was reached on December 14, 2022; and Complainant filed a federal district court complaint on January 25, 2024. Because Complainant filed in federal court under STAA's kick-out provision and more than 210 days had passed, the ALJ dismissed Complainant's case on March 26, 2024.

In Complainant's brief to the ARB, he attempts to argue the elements of his case and matters outside of the jurisdiction of the Department of Labor, without addressing the fact that he removed the claim to federal court.<sup>14</sup> Respondent counters the ARB does not have jurisdiction over the case because of the kick out and that all of Complainant's arguments on the merits are irrelevant for this reason.<sup>15</sup>

We agree with Respondent. The STAA provides that "if the Secretary of Labor has not issued a final decision within 210 days after the filing of the complaint and if the delay is not due to the bad faith of the employee, the employee may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy . . . ."<sup>16</sup>

We acknowledge Complainant's pro se status.<sup>17</sup> However, it is clear that Complainant intended the complaint he filed in U.S. District Court as a kick out. In a category entitled "Basis for Jurisdiction," Complainant indicated to the District Court that the kick out was ripe under STAA because the Secretary had failed to issue a final decision within the 210-day period.<sup>18</sup> Among other remedies, Complainant asked the District Court to award damages, lost wages, compensatory

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<sup>14</sup> See generally Complainant Brief.

<sup>15</sup> Respondent Quirch Foods, LLC's Response Brief at 8-9.

<sup>16</sup> 49 U.S.C. § 31105(c); accord 29 C.F.R. § 1978.114(a).

<sup>17</sup> The Board "construes arguments for self-represented litigants liberally in deference to their lack of training in the law,' while 'also refrain[ing] from becoming an advocate for the pro se litigant.'" *Kossen v. Asia Pac. Airlines*, ARB No. 2023-0047, ALJ No. 2023-AIR-00001, slip op. at 7 n.32 (ARB May 30, 2025) (quoting *Williams v. QVC, Inc.*, ARB No. 2020-0019, ALJ No. 2018-SOX-00019, slip op. at 7 n.43 (ARB Jan 17, 2023)).

<sup>18</sup> Jan. 25 E.D. La. Compl. at 2.

damages, and other remedies consistent with STAA.<sup>19</sup> We, therefore, affirm the ALJ's dismissal of the case.<sup>20</sup>

### CONCLUSION

Accordingly, given that Complainant filed a de novo complaint in this action in the U.S. District Court as provided in 49 U.S.C. § 31105(c) and 29 C.F.R. §1978.114(a), we hereby **AFFIRM** the ALJ's decision and **DISMISS** Complainant's appeal.

**SO ORDERED.**

**THOMAS H. BURRELL**  
**Administrative Appeals Judge**

**RANDEL K. JOHNSON**  
**Chief Administrative Appeals Judge**

**ELLIOT M. KAPLAN**  
**Administrative Appeals Judge**

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<sup>19</sup> *Id.*

<sup>20</sup> 49 U.S.C. § 31105(c); 29 C.F.R. § 1978.114(a); *see also Budri v. Firstfleet, Inc.*, ARB No. 2018-0055, ALJ No. 2018-STA-00033, slip op. at 2 (ARB July 30, 2019).