

U.S. Department of Labor

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



IN THE MATTER OF:

DALE DETIE,

ARB CASE NO. 2024-0041

COMPLAINANT,

ALJ CASE NO. 2022-STA-00038

ALJ SEAN M. RAMALEY

v.

DATE: March 25, 2026

TRANSWOOD, INC.,

and

MARK MILLER,

RESPONDENTS.

Appearances:

For the Complainant:

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

For the Respondent:

Christopher E. Hoyme, Esq., and Nicholas B. McGrath, Esq.; *Jackson Lewis P.C.*; Omaha, Nebraska

Before BURRELL and KIKO, Administrative Appeals Judges

DECISION AND ORDER

This case arises under the Surface Transportation Assistance Act of 1982 (STAA), as amended.¹ On May 1, 2024, Administrative Law Judge (ALJ) Sean M. Ramaley issued a Decision and Order (D. & O.) Denying Whistleblower Complaint. The ALJ found that while Complainant Dale DeTie established that he engaged in protected activity when he filed complaints relating to commercial vehicle safety in

¹ 49 U.S.C. § 31105(a), as implemented by the regulations at 29 C.F.R. Part 1978 (2025).

April 2021, he failed to establish that he engaged in protected activity by refusing to operate a commercial vehicle on April 24, 2021. The ALJ further found that Complainant failed to establish that Respondents TransWood, Inc., and Mark Miller took any adverse action against him because he engaged in protected activity and that even if he had, Respondents proved that they would have taken the same action against Complainant in the absence of any protected activity. We affirm.

BACKGROUND AND PROCEDURAL HISTORY

Complainant worked for Respondent for approximately four months, from January 2021, until his discharge on April 25, 2021.² He worked as a truck driver, filling trucks with gasoline and diesel fuel, and delivering the fuel to convenience stores and gas stations.³ Complainant received a dispatch sheet at the beginning of each shift which listed the delivery locations and the type and quantity of fuel to be delivered.⁴ Complainant did not have the ability to choose different loads than those listed on the dispatch sheets he was assigned.⁵ Drivers were trained to call dispatch if the amount on the dispatch sheet exceeded the maximum volume.⁶ To begin a job, Complainant would personally load fuel into his truck.⁷ A loading matrix was available as a reference for drivers to know the weight limits.⁸

Throughout his employment with Respondent, Complainant had poor attendance, continually having problems with showing up for work, being on time, and working his whole shift.⁹ Several text messages between Complainant and Walter Hornbeck, lead driver trainer and a supervisor, in January and February 2021 reflect that Complainant was late or absent from work.¹⁰ Respondent Miller, a manager with Respondent, gave Complainant an attendance write-up letter on March 25, 2021, in which he stated that Complainant had “constant late starts” which caused delivery delays and that Complainant had been late ten times in

² D. & O. at 3.

³ *Id.*

⁴ *Id.* at 5.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 6-7.

¹⁰ *Id.* at 6. Walter Hornbeck was a lead driver trainer and a supervisor with Respondent TransWood. *Id.* at 5, 8.

March.¹¹ Complainant signed the attendance write-up letter.¹² Miller also met with Complainant in person to address the attendance issues.¹³ On April 4, 2021, Complainant received another attendance write-up letter, which Complainant signed.¹⁴ The second write-up reflected that Complainant had called off three times in three weeks, the first of which was a “no show . . . no notification provided.”¹⁵ After this write-up, Complainant refused to work two shifts due to a pay discrepancy.¹⁶ Complainant continued to have attendance problems after the two write-ups.¹⁷

On April 1, 2021, Complainant received a group text from a co-worker that indicated that loads were overweight.¹⁸ After receiving this text, Complainant began to question the weight of the loads he was being assigned.¹⁹ He raised the issue of overweight loads with Hornbeck, who directed him to weigh his empty truck on April 2, 2021, and told him that any points Complainant received for a ticket would not go on his license.²⁰

Although Miller was aware of a general concern among drivers about overweight loads due to the text message, Complainant did not raise complaints about overweight loads directly with Miller.²¹ In response to the group text, Miller sent out a memorandum to address the concern that trucks would be overweight, in

¹¹ *Id.* at 6. Mark Miller, in addition to being a Respondent in this matter, is a manager with Respondent TransWood. *Id.* at 3.

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 7.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 7-8, 16. While not explained further, presumably knowing the weight of an empty truck and then of the fuel being loaded onto the truck, would allow a driver to appropriately load a legal weight of fuel onto a truck.

²¹ *Id.* at 15 (the ALJ found “that there [wa]s insufficient evidence that Complainant filed complaints directly with Mr. Miller.”).

which he stated that if drivers were “not comfortable hauling over 7500 ULSD and 8500 gasoline then by all means continue to haul this size load.”²²

On April 24, 2021, Complainant began his shift, fueled up his truck to the fuel level listed on the dispatch sheet, drove the truck back to the terminal, and left to go home. He did not notify dispatch or anyone at Respondent before leaving.²³ He did not raise concerns with dispatch about the load being overweight, did not seek a lighter load, and did not fill the tanker to a weight that would have been within the allowable weight limits.²⁴ About 40-45 minutes after he left, he texted Hornbeck and said, “Hey Walter, I took off early because of the load weight. Still unsure about it. Just worried about points. Didn’t have anything on the dispatch sheet that wasn’t.”²⁵ Hornbeck responded to Complainant in part “Dale you don’t even bother to talk to the dispatchers . . . taking off and gone home due to this gotta stop.”²⁶

The next day, April 25, 2021, Miller fired Complainant.²⁷ In the text exchange between Complainant and Miller, Miller told Complainant that “walking off last night without even speaking to dispatch was job abandonment.”²⁸ Complainant responded, in part “I told Walter there’s another issue my check before last is short again also I’ve been overcharged on my physical,” and “[s]o I’m fired because of the lack of transparency and being short on my check and complaining about it I got to work and I don’t get paid you see the dilemma.”²⁹

In this text exchange, Complainant never mentioned overweight loads and did not dispute that he failed to tell dispatch before he left.³⁰ The text ended with Complainant disputing that he walked off the job and that he had only had a “no show” once, and Miller indicating that they could discuss the next day if Complainant wanted to provide documentation to support his statements.³¹ Miller

²² *Id.* at 8. A greater amount of weight was allowed in certain geographical areas, but the lesser amount was legal regardless of the geographical area being driven in. *Id.* at 8-9.

²³ *Id.* at 9, 17.

²⁴ *Id.* at 17.

²⁵ *Id.* at 10, 17.

²⁶ *Id.* at 10.

²⁷ *Id.* at 14, 17.

²⁸ *Id.* at 17.

²⁹ *Id.* at 10-11, 17.

³⁰ *Id.* at 11, 17.

³¹ *Id.* at 11.

followed up with Complainant the next day and told him that he would be in the office, but Complainant did not respond.³² Miller signed Complainant’s final write-up, which stated “abandoned job, Drove back to yard from Phillips, parked truck and left without contacting dispatch. Either by phone or by simply walking into office to discuss with dispatcher on duty,” and indicated Complainant was “Terminated for Job Abandonment.”³³

Complainant filed a complaint with the Occupational Safety and Health Administration (OSHA) on June 14, 2021.³⁴ On March 10, 2022, OSHA dismissed the complaint because it was unable to find reasonable cause to believe a violation occurred.³⁵ Complainant filed objections with the Office of Administrative Law Judges and an ALJ was assigned.³⁶

The ALJ held a videoconference hearing on May 15, 2023.³⁷ The ALJ found that Complainant proved he filed protected complaints about overweight loads with a supervisor, Hornbeck.³⁸ However, with regard to the alleged refusal to drive because operating the vehicle would violate a regulation related to commercial motor vehicle safety, the ALJ found that Complainant did not establish that he refused to operate his vehicle due to weight concerns.³⁹ With regard to a refusal to drive because the employee had a reasonable apprehension of a serious injury to the employee or the public because of the vehicle’s condition, the ALJ found that Complainant did not seek correction and could not qualify for protection.⁴⁰

Regarding contributing factor causation, the ALJ found that the protected safety complaints did not contribute to Complainant’s firing and that Complainant was fired for abandoning his job without notice.⁴¹ In the alternative, the ALJ found that Respondent would have fired Complainant absent protected activity for both

³² *Id.* at 11.

³³ *Id.* at 12.

³⁴ *Id.* at 2.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 15.

³⁹ *Id.* at 17.

⁴⁰ *Id.*

⁴¹ *Id.* at 20.

attendance problems and walking off the job without notifying dispatch on April 24, 2021.⁴² Thus, the ALJ denied the complaint.

On May 10, 2024, Complainant filed a Petition for Review with the Administrative Review Board (ARB or Board). The parties each filed briefs.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the ARB to issue final agency decisions in STAA cases.⁴³ The Board reviews an ALJ's factual determinations under the substantial evidence standard.⁴⁴ The Board reviews the ALJ's legal conclusions de novo.⁴⁵

DISCUSSION

To prevail on a STAA retaliation complaint, a complainant must prove by preponderance of the evidence that: (1) he engaged in protected activity; (2) he suffered an unfavorable personnel action; and (3) the protected activity was a contributing factor in the unfavorable personnel action.⁴⁶ If the complainant 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 absence of the protected activity.⁴⁷ STAA protected activity includes refusing to

⁴² *Id.* at 21.

⁴³ *Holovatyuk v. EM Cargo, LLC*, ARB No. 2021-0046, ALJ No. 2020-STA-00071, slip op. at 8 (ARB Jan. 12, 2022) (citing Secretary's Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020)).

⁴⁴ *Id.* (citations omitted).

⁴⁵ *Id.* (citation omitted).

⁴⁶ *See* 49 U.S.C. § 31105(a) ("A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because" the employee engages in activities protected by the STAA.); § 31105(b) ("All complaints initiated under this section shall be governed by the legal burdens of proof set forth in section 42121(b)," which provides at (2)(B)(iii) that a complainant must demonstrate that protected activity "was a contributing factor in the unfavorable personnel action alleged in the complaint."); 29 C.F.R. § 1978.109(a) ("A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.").

⁴⁷ *See* 49 U.S.C. § 31105(b) ("All complaints initiated under this section shall be governed by the legal burdens of proof set forth in section 42121(b)," which provides at

operate a commercial motor vehicle because doing so would violate a regulation, standard, or order of the United States related to commercial motor vehicle safety or health.⁴⁸

1. Protected Activity

Complainant contests the ALJ finding that he did not refuse to drive under 49 U.S.C. §31105(a)(1)(B)(i), which concerns a refusal to operate a vehicle because operating the vehicle would violate a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security.⁴⁹

Complainant argues that the ALJ improperly relied on the fact that Complainant did not contact his dispatcher about his refusal because his report to Hornbeck after he left was enough to communicate his refusal and reasoning to a supervisor under the STAA.⁵⁰

(2)(B)(iv) that “[r]elief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.”); 29 C.F.R. § 1978.109(b) (“[R]elief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.”). This is generally referred to as the “same action defense” or an employer’s affirmative defense.

⁴⁸ 49 U.S.C. § 31105(a)(1)(B)(i). Other STAA-protected activities not directly relevant in this appeal include filing a complaint about a violation of a commercial motor vehicle safety or security regulation, standard, or order (§ 31105(a)(1)(A)(i)), which the ALJ found Complainant did engage in and has not been challenged on appeal (D. & O. at 15-16), and refusing to operate a vehicle because the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition (§ 31105(a)(1)(B)(ii)). Regarding § 31105(a)(1)(B)(ii), “an employee’s apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the hazardous safety or security condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the hazardous safety or security condition.” 49 U.S.C. § 31105(a)(2).

⁴⁹ Complainant’s Opening Brief (Comp. Br.) at 16-20. Complainant has not argued on appeal that he engaged in protected activity by refusing to operate a vehicle because he had a reasonable apprehension of a serious injury to the employee or the public because of the vehicle’s unsafe condition, and so we consider it waived. A party typically waives any arguments it does not specifically raise. *See* 29 C.F.R. § 1978.110(a) (“The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived.”).

⁵⁰ Comp. Br. at 19.

However, the ALJ found that there was “no evidence that Complainant questioned the assigned weight prior to walking off the job.”⁵¹ The ALJ noted that Complainant failed to contact dispatch, not only as evidence that Complainant failed to communicate with Respondent about his refusal, but as evidence that he did not leave the worksite that day because of an overweight load. We view the ALJ’s statement as reasoning that if there had been an overweight load, under Respondent’s training practices, Complainant would have and should have called dispatch about it, and since he did not, this provided support to the ALJ’s finding that Complainant did not leave because of an overweight load.

Further, when Miller texted Complainant the next day stating that Complainant had walked off without speaking to dispatch and labeling that job abandonment, Complainant did not dispute that he walked off without speaking to dispatch and did not state to Miller that his reason for leaving had anything to do with load weight.⁵² Instead, he referenced a short paycheck.⁵³

Moreover, Complainant filled the truck to the amount on the dispatch sheet and then drove it back to the terminal. As noted by the ALJ, Complainant did not have to fill the truck to an amount he considered to be overweight—under the Respondent’s policies, he was permitted to fill it to an amount that was always legally permissible, regardless of geographical location.

Weighing all of the evidence, the ALJ concluded that Complainant failed to meet his burden to establish that he refused to operate his vehicle because of concerns he had about an overweight load. This amounts to a finding by the ALJ that Complainant did not have a reasonable (subjective or objective) belief that there would have been a violation had he operated his vehicle.⁵⁴ For the reasons given by the ALJ, the ALJ’s findings are supported by substantial evidence in the record and are affirmed—Complainant failed to prove that he engaged in protected activity under the refusal-to-operate provisions of the STAA.

⁵¹ D. & O. at 17.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *See Berg v. S&H Express*, ARB No. 2017-0075, ALJ No. 2015-STA-00014, slip op. at 5 (ARB June 4, 2020) (citing *Jeanty v. Lily Transp. Corp.*, ARB No. 2019-0005, ALJ No. 2018-STA-00013, slip op. at 4-5 (ARB May 13, 2020)) (“Under [49 U.S.C. § 31105(a)(1)(B)(i)], the protection afforded includes refusals where the operation of a vehicle would violate safety laws under the employee’s reasonable belief of the facts at the time she refuses to operate a vehicle, and the reasonableness of the refusal must be subjectively and objectively determined.”).

We note one error by the ALJ regarding protected refusals. The ALJ stated as an additional reason for finding no protected activity that Complainant did not qualify for protection because he did not seek correction under § 31105(a)(2). This provision only applies to one half of the refusal provision—§ 31105(a)(1)(B)(ii)’s refusal for a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition—and does not apply to § 31105(a)(1)(B)(i)’s refusal because operating the vehicle would violate a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security.⁵⁵

Although refusal because there would be a violation does not require that the employee give the employer the opportunity to correct, we clarify that the employee must still communicate the refusal to the employer. It would make little sense if an employee was protected in refusing to operate a vehicle when he or she simply leaves the worksite and goes home. The statutory language logically presupposes some form of communication of the refusal in its statement that “[a] person may not . . . discriminate against an employee . . . *because* the operation violates a regulation, standard or order of the United States related to commercial motor vehicle safety, health, or security.”⁵⁶ For one action to be “because” of the other, a communication of the refusal is necessary.⁵⁷ In this matter, while Complainant arguably satisfied the communication requirement in his message to Hornbeck after he left, Complainant’s argument that he engaged in a protected refusal under 49 U.S.C. § 31105(a)(1)(B)(i) fails for another reason.

An additional requirement for protection under 49 U.S.C. § 31105(a)(1)(B)(i), is that Complainant had to prove that he reasonably believed that operating the

⁵⁵ 49 U.S.C. § 31105(a)(2); *Juarez v. Ready Trucking Co.*, Case No. 1986-STA-00027, slip. op. at 2-3 (Sec’y July 7, 1988) (“The requirement that the employee seek correction of the unsafe condition applies only . . . where the refusal to drive is based on a reasonable apprehension of injury due to the unsafe condition of the vehicle. It does not apply to the refusal to drive in violation of a Federal safety rule or regulation.”).

⁵⁶ 49 U.S.C. § 31105(a)(1)(B)(i) (emphasis added).

⁵⁷ *See Berg*, ARB No. 2017-0075, slip op. at 5 (“To be protected, a refusal must be based on a reasonable concern . . . and employees must communicate [it] . . . to the employer.”); *see also Calhoun v. U.S. Dep’t of Lab.*, 576 F.3d 201, 213 (4th Cir. 2009) (internal quotations and citations omitted) (“[H]owever broadly we construe the statute, [c]learly there is a point at which an employee’s concerns and comments are too generalized and informal to constitute” protected activity under the STAA.). While this language concerns the STAA’s complaint clause, the logic follows for the refusal clause as well, that a “silent departure” does not suffice for engaging in protected activity.

vehicle would have violated a regulation, standard, or order of the United States related to commercial motor vehicle safety or health. The ALJ concluded that Complainant did not have this belief when he left Respondent's premises on April 24, 2021.⁵⁸ As we have stated, this finding is supported by substantial evidence, and we note that it is conclusive on the issue. On appeal, Complainant has pointed to no evidence supporting that if he had driven the dispatched load on April 24, 2021, he reasonably believed it would have been a violation. Indeed, Complainant's own text about the dispatch he was assigned that he claims as protected activity, shows a lack of confidence about whether there would have been a violation—"still unsure about it [the load weight]."⁵⁹ The ALJ's protected activity finding that there was no protected refusal to operate is affirmed.

2. Contributing Factor Causation

Complainant also contested the ALJ's finding that he failed to prove contributing factor causation based on his argument that he engaged in a protected refusal to operate under the STAA.⁶⁰ However, because we affirm the ALJ's protected activity finding regarding the alleged refusal, Complainant's argument fails. The ALJ's findings that Complainant failed to prove contribution are supported by substantial evidence in the record. Specifically, substantial evidence supports the ALJ finding that Miller fired Complainant because Complainant abandoned his job without notice and not for any reports about overweight loads. The ALJ's finding that Complainant failed to prove contributing factor causation is affirmed.

3. Respondent's Same Action Defense

Complainant argues that Respondents could not make a conclusive demonstration that it was "highly probable or reasonably certain" that they would have fired Complainant in the absence of protected activity and that Respondent's motivations in terminating Complainant were not legitimate.⁶¹ We disagree. Again,

⁵⁸ D. & O. at 17 (finding that Complainant failed to prove "that he refused to operate his vehicle on April 24, 2021, due to weight concerns.").

⁵⁹ *Id.* at 10; Complainant's Exhibit 1.

⁶⁰ Comp. Br. at 20-24.

⁶¹ *Id.* at 26, 28. Complainant also appears to object to the ALJ making alternative findings on Respondents' affirmative defense. Comp. Br. at 24. The ALJ acted within his discretion to consider arguments asserted before him and which were supported by the record.

Complainant's arguments hinge on an inapposite conclusion that the ALJ was incorrect with respect to refusal-to-operate protected activity on April 24, 2021. However, we have affirmed this ALJ finding.

The ALJ found that had Complainant met his burden to show contributing factor causation, Respondents would still have avoided liability because they showed by clear and convincing evidence that they would have taken the same action regardless of any protected activity.⁶² That is to say, Respondents showed by clear and convincing evidence that they would have fired Complainant because he walked off the job without notifying dispatch in violation of Respondent's policy, and because of his prior attendance issues, which were numerous in a four-month period of time.⁶³ Indeed, it appears that from January to April 24, 2021, Complainant had two attendance write-up letters showing that Complainant "had constant late starts and had been late ten times in March," and "that he had called off three times in three weeks, the first of which was a 'no show . . . no notification provided.'"⁶⁴ Substantial evidence in the record includes Complainant's attendance and no-show issues as supported by texts, write-ups, and Miller's credible testimony about them.⁶⁵ Because substantial evidence supports the ALJ's finding regarding Respondents' same action defense, it is affirmed.

⁶² D. & O. at 20.

⁶³ *Id.* at 19 (stating that there was no dispute "that Complainant left work on April 24, 2021 without notifying dispatch, which violated company policy."), 21.

⁶⁴ *Id.* at 20.

⁶⁵ *Id.* (citing Hearing Transcript at 120-21, 191; Respondents' Exhibit (RX) 5; RX 6).

CONCLUSION

Because Complainant failed to prove several required elements of his STAA claim and because we affirm the ALJ's alternative finding that Respondents proved that they would have taken the same action absent any protected activity, we **AFFIRM** the ALJ's Decision and Order Denying Whistleblower Complaint.

SO ORDERED.

PHILIP G. KIKO
Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge