



In the Matter of:

SAM BUCALO,

ARB CASE NO. 2021-0030

COMPLAINANT,

ALJ CASE NO. 2018-STA-00082

v.

DATE: August 11, 2021

**TEAMSTERS LOCAL 100
and RON BUTTS,**

RESPONDENTS.

Appearances:

For the Complainant:

Paul O. Taylor, Esq., Truckers Justice Center, Edina, Minnesota

For the Respondents:

**Julie C. Ford, Esq. and John R. Sauter, Esq.; *Doll, Jansen & Ford*;
Dayton, Ohio**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*, Thomas
H. Burrell and Randel K. Johnson, *Administrative Appeals Judges***

DECISION AND ORDER OF REMAND

PER CURIAM. This case arises under the Surface Transportation Assistance Act of 1982 (“STAA” or “Act”), as amended.¹ Sam Bucalo (“Complainant”) filed a whistleblower complaint against Teamsters Local 100 (“Teamsters”) and Ron Butts alleging he was blacklisted from future employment opportunities in retaliation for acts protected by the STAA. The Administrative Law Judge (“ALJ”) issued a

¹ 49 U.S.C. § 31105(a) (2007); *see also* 29 C.F.R. Part 1978 (2020) (the STAA’s implementing regulations).

Decision and Order Granting Respondent's Motion to Dismiss ("D. & O."). Complainant appealed the ALJ's decision. We remand.

BACKGROUND

Complainant worked as the Secretary-Treasurer for Teamsters Local 100 ("Teamsters"), a labor union, for six years until he was voted out of office on December 31, 2016. Following his departure, he worked as a driver for film productions. Drivers for these jobs were hired through Teamsters' exclusive referral service. On November 17, 2017, Complainant called in sick to work. He contends that Teamsters refused to refer him after he called in sick, and that Ron Butts, the Secretary-Treasurer who succeeded him, retaliated against him.

On March 14, 2018, Complainant filed a claim with the Occupational Safety and Health Administration ("OSHA"). On March 28, 2018, OSHA determined Teamsters did not fit the definition of "employer" pursuant to the Act and dismissed the complaint.

On September 12, 2018, Complainant requested a hearing before an ALJ. On July 10, 2020, Teamsters filed a motion to dismiss or for summary judgment. The ALJ granted the motion on April 7, 2021, and dismissed the claim.

Complainant filed a timely appeal to the Administrative Review Board ("ARB" or "Board"). Both parties filed briefs.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated his authority to the Board to issue agency decisions in STAA cases.² The Board reviews an ALJ's grant of summary decision de novo, applying the same standard that is applicable to the ALJ for granting summary decision.³ To be entitled to summary decision, the movant must

² 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).

³ *Hardy v. Mail Contractors of Am.*, ARB No. 2003-0007, 2002-STA-00022, slip op. at 2 (ARB Jan. 30, 2004).

show “there is no genuine dispute as to any material fact and the movant is entitled to decision as a matter of law.”⁴ The ARB views the record in the light most favorable to the non-moving party.⁵

DISCUSSION

The legal burden 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) governs STAA complaints.⁶ To prevail on a STAA complaint, the complainant must show by a preponderance of the evidence that: (1) he engaged in protected activity, (2) he suffered an adverse employment action, and (3) the protected activity was a contributing factor to the adverse employment action.⁷ If a complainant meets his burden of proof, the burden shifts to the respondent to prove by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the protected activity.⁸

The ALJ determined there is no genuine issue of material fact as to whether Complainant is an employee or Teamsters is an employer pursuant to the Act. The ALJ reasoned that Teamsters is a labor organization that provides representation to members with regards to employment terms and benefits, and does not provide any transportation in connection with its business. The ALJ also reasoned that Complainant is not an employee because he “was not employed by a commercial motor carrier.”⁹

⁴ 29 C.F.R. § 18.72(a).

⁵ *Micallef v. Harrah’s Rincon Casino & Resort*, ARB No. 2016-0095, ALJ No. 2015-SOX-00025, slip op. at 3 (ARB July 5, 2018).

⁶ 49 U.S.C. § 31105(b)(1); see 49 U.S.C. § 42121.

⁷ *Beatty v. Inman Trucking Mgmt., Inc.*, ARB No. 2013-0309, ALJ No. 2008-STA-00020, slip op. at 4-5 (May 13, 2014).

⁸ 49 U.S.C. § 42121(b); 49 U.S.C. § 31105(b)(1); *Blackie v. Smith Transp., Inc.*, ARB No. 2011-0054, ALJ No. 2009-STA-00043, slip op. at 8 (ARB Nov. 29, 2012).

⁹ D. & O. at 4.

On appeal, Complainant contests the ALJ's conclusion that Teamsters is not a covered respondent, and that he is not a covered employee. Complainant contends that Teamsters is a covered respondent because it is a "person" pursuant to the Act, and had the authority to affect his employment through the exclusive referral service. Complainant also contends he is an employee because he operated a vehicle in commerce. Lastly, Complainant asserts that the ALJ did not analyze his claim against Ron Butts.

The STAA prohibits any *person* from discharging, disciplining, or discriminating against an employee regarding the pay, terms, or privileges of employment for engaging in protected activity.¹⁰ A "person" is not exclusively restricted to an employer.¹¹ Rather, the Act defines a "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any other organized group of individuals."¹²

The ALJ erred as a matter of law in holding that Teamsters cannot be a covered respondent because it does not meet the Act's definition of an "employer." Rather, the appropriate question is whether Teamsters is a "person" as defined by the Act. Notably, the exclusive referral service in this case presents a unique circumstance. However, the ALJ did not make any findings of fact about whether the referral service provided Teamsters with the ability to discharge, discipline, or discriminate against drivers regarding their pay, terms, or privileges of employment. Thus, the Board remands this case for the ALJ to determine whether Teamsters is a "person" as defined by the Act.

In addition, Complainant also named Ron Butts as a respondent. However, the ALJ did not address Complainant's claim against him. Thus, the Board also

¹⁰ 49 U.S.C. § 31105(a).

¹¹ *Somerson v. AIL Contractors of America, Friday, Eldredge, & Clark, and Oscar Davis, Esq.*, ARB No. 2003-0042, ALJ No. 2003-STA-00011 (ARB Oct. 14, 2003); *Cawthorn v. U.S. Postal Serv.*, ARB No. 2008-0083, ALJ No. 2008-STA-00028 (ARB May 7, 2009).

¹² 29 C.F.R. § 1978.101(k). Further, the regulations, at 29 C.F.R. § 1978.102, "Obligations and prohibited acts," expressly cover a "person" and are not limited to an "employer," as those terms are defined under § 1978.101(k) and (i), respectively.

remands this case to the ALJ in order to determine whether Ron Butts is a “person” as defined by the Act, and to analyze Complainant’s claim against him.

The ALJ also erred as a matter of law in holding that Complainant is not an employee because he was not employed by a commercial motor carrier. The Act’s definition of an “employee” includes “a driver of a commercial motor vehicle.”¹³ However, the ALJ made no factual finding as to whether Complainant drove a commercial motor vehicle. On remand, the ALJ must also determine whether Complainant drove a commercial motor vehicle as defined by 49 U.S.C. § 31101(1), and, if so, to reconsider whether Complainant is an “employee.”

Should the ALJ find that Complainant is an employee, and that either Teamsters or Ron Butts is a “person” as defined by the Act, then we instruct the ALJ to analyze whether Complainant engaged in protected activity, suffered an adverse employment action, and if any protected activity was a contributing factor to the adverse employment action.

Therefore, because the ALJ did not correctly apply the relevant law, and there are several alleged facts about which there remains genuine dispute, we conclude the ALJ erred in granting summary decision for Respondent.

CONCLUSION

We **REVERSE** the ALJ’s Decision and Order Granting Respondent’s Motion to Dismiss, and **REMAND** the case for further proceedings consistent with this opinion.

SO ORDERED.

¹³ 29 C.F.R. § 1978.101(h).