



In the Matter of:

**BERNARD ZIEGENHORN,**

**ARB CASE NO. 2019-0076**

**COMPLAINANT,**

**ALJ CASE NO. 2017-STA-00077**

**v.**

**DATE: December 15, 2020**

**RUAN LOGISTICS CORP.,**

**RESPONDENT.**

**Appearances:**

*For the Complainant:*

**John A. Singer, Esq.; *Winstein, Kavensky & Cunningham, LLC*; Rock Island, Illinois**

*For the Respondent:*

**Deborah M. Tharnish, Esq. and Sarah K. Franklin, Esq.; *Davis Brown Law Firm*; Des Moines, Iowa**

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

## **DECISION AND ORDER**

PER CURIAM. This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended.<sup>1</sup> Bernard Ziegenhorn (Complainant) filed a whistleblower complaint against his former employer, Ruan Logistics Corporation (Ruan or Respondent), alleging that Ruan

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

unlawfully terminated his employment in retaliation for filing an hours-of-service complaint with the Federal Motor Carrier Safety Administration (FMCSA). The Administrative Law Judge (ALJ) issued a Decision and Order Dismissing the Complaint (D. & O.) for failure to establish that the protected activity was a contributing factor in Ruan’s decision to terminate Ziegenhorn’s employment. We affirm.

### BACKGROUND

Bernard Ziegenhorn worked as a truck driver for Ruan, a trucking company, from June 22, 2010, until his dismissal on October 7, 2016.<sup>2</sup> Ziegenhorn primarily drove trucks from Muscatine, Iowa to South Bend, Indiana for one of Ruan’s “main customers, HNI Corporation (HNI) and its furniture brand HON Company (HON).”<sup>3</sup> On May 26, 2015, sixteen months before Ziegenhorn’s discharge, Ruan received the first in a series of anonymous and defamatory letters. Subsequent letters, sent to either Ruan or its customers, HNI and HON, made serious allegations against Ruan.<sup>4</sup>

The first two anonymous letters, received by Ruan on May 26, 2015, and June 25, 2015, complained about Ruan supervisors at the Muscatine facility.<sup>5</sup> Close to that time, on April 16, 2015, and June 15, 2015, Ziegenhorn called Ruan’s ethics hotline to complain about management at the Muscatine facility.<sup>6</sup> On July 7, 2015, and July 9, 2015, HNI and HON received anonymous letters, this time alleging that a member of Ruan’s management had engaged in sexual harassment.<sup>7</sup>

In July 2015, Lucas Wolfe, a Ruan Operations executive, reported that Ruan had investigated the accusations in the letters, meeting with 60 drivers in

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<sup>2</sup> D. & O. at 3. At the ALJ hearing, the parties contested whether the Complainant quit or Ruan terminated his employment. The ALJ found that Ruan discharged Ziegenhorn, and the parties do not contest the issue on appeal. *Id.* at 8.

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

<sup>4</sup> *Id.* at 3-5. The ALJ notes that additional letters were sent after Ziegenhorn’s discharge, which were also sent to another Ruan customer. *Id.* at 5, n. 6.

<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 4.

Muscatine, and found no merit in the letters' claims.<sup>8</sup> Subsequently, the anonymous letters ceased until April 2016, when HON received a letter alleging Ruan engaged in fraudulent billing.<sup>9</sup>

On July 15, 2016, Ziegenhorn filed an anonymous FMCSA complaint against Ruan.<sup>10</sup> The FMCSA complaint alleged that on July 8, 2016, there was an hours-of-service incident on Ziegenhorn's run from Muscatine to South Bend, which occurred due to "poor dispatching practices by Respondent."<sup>11</sup> By September 14, 2016, certain Ruan staffers knew or suspected that Ziegenhorn filed the FMCSA complaint.<sup>12</sup>

On September 23, 2016, Ruan received another anonymous letter, this time with a handwritten envelope.<sup>13</sup> Ronald Hanson, a Ruan Senior Executive, had investigated the letters since May 2015 and "suspected early on that Complainant had been the author."<sup>14</sup> Hanson obtained samples of Ziegenhorn's handwriting and compared them to the envelope's handwriting, which confirmed Hanson's prior suspicion that the anonymous letters were drafted by Ziegenhorn.<sup>15</sup> On October 7, 2016, Ruan terminated Ziegenhorn's employment.<sup>16</sup> On October 11, 2016, the Occupational Safety and Health Administration (OSHA) received a complaint from Ziegenhorn alleging that Respondent had unlawfully retaliated against him for the FMCSA complaint.<sup>17</sup> OSHA dismissed the claim. Ziegenhorn objected to OSHA's findings and requested a hearing before an ALJ.

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* The ALJ found that the Complainant engaged in protected activity when he filed the FMCSA complaint, which was uncontested in the prior proceeding. *Id.* at 6.

<sup>11</sup> *Id.* at 4, 6. Subsequently, Anthony Batcheller, the FMCSA safety investigator, conducted a 10-day investigation into Ruan, which concluded on August 5, 2016. *Id.* at 4-5. Batcheller "did not write up any violations for the Muscatine route through Chicago," which was the focus of Ziegenhorn's complaint. *Id.* at 5.

<sup>12</sup> *Id.* at 5, 9.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 5. Hanson claimed "he was now almost certain" of Ziegenhorn's authorship. *Id.*

<sup>16</sup> *Id.* at 3, 8.

<sup>17</sup> *Id.* at 2.

The ALJ assigned to the case held a hearing and thereafter dismissed Ziegenhorn's complaint. The ALJ found that Ziegenhorn provided "scant evidence supporting [his] version of events" for causation, thereby failing to prove by a preponderance of the evidence that the protected activity was a contributing factor to the termination of his employment.<sup>18</sup>

The ALJ highlighted how the close temporal proximity between the FMCSA complaint and Ziegenhorn's discharge was undercut by the subsequent intervening event of Hanson's handwriting assessment, which was of even closer temporal proximity to the date of discharge.<sup>19</sup> In addition, the ALJ found that Hanson credibly testified about the handwriting analysis, and how he had independently determined Ziegenhorn authored the anonymous letters, which was "the sole reason" for Ziegenhorn's discharge.<sup>20</sup>

Assuming *arguendo* that Ziegenhorn met his burden of proof, the ALJ also found that clear and convincing evidence established that Ruan would have terminated Ziegenhorn's employment "on the belief that he was the source" of the "defamatory letters even in the absence of the protected activity."<sup>21</sup> Ziegenhorn appealed his case to the Administrative Review Board (ARB or Board).

#### JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated authority to the Administrative Review Board to issue agency decisions under the STAA.<sup>22</sup> The ARB reviews questions of law presented on appeal *de novo*, but is bound by the ALJ's factual determinations as long as they are supported by substantial evidence.<sup>23</sup> Substantial evidence means

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<sup>18</sup> *Id.* at 13.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.* at 12-13.

<sup>21</sup> *Id.* at 13. Moreover, the ALJ expressed that "ample evidence in the record indicates that" Hanson's determination was based on "an honestly held belief." *Id.* at 14.

<sup>22</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. 13186 (Mar. 6, 2020); *see* 29 C.F.R. § 1978.110(a).

<sup>23</sup> 29 C.F.R. § 1978.110(b); *Jacobs v. Liberty Logistics, Inc.*, ARB No. 2017-0080, ALJ No. 2016-STA-00007, slip op. at 2 (ARB Apr. 30, 2019) (reissued May 9, 2019) (citation omitted).

“such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”<sup>24</sup>

### DISCUSSION

Upon consideration of the parties’ briefs on appeal, and having reviewed the evidentiary record as a whole, we conclude that the ALJ’s decision in favor of Ruan is supported by substantial evidence in the record. None of Ziegenhorn’s arguments demonstrate that the ALJ abused his discretion or committed reversible error. We agree with the ALJ’s finding that Ziegenhorn did not carry his burden to prove that his protected activity was a contributing factor in the termination of his employment. We further agree with the ALJ that Ruan would have taken the adverse action even if Ziegenhorn had not engaged in protected activity because the defamatory letters were a very serious concern for the company, and Hanson had an “honestly held belief” that Ziegenhorn authored the letters.<sup>25</sup> Accordingly, we summarily **AFFIRM** the ALJ’s decision and **DENY** the Complaint.

**SO ORDERED.**

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<sup>24</sup> *Consol. Edison Co. of N.Y. v. N.L.R.B.*, 305 U.S. 197, 229 (1938).

<sup>25</sup> D. & O. at 14.