



In the Matter of:

ADRIANO BUDRI,

ARB CASE NO. 2020-0047

COMPLAINANT,

ALJ CASE NO. 2020-STA-00037

v.

DATE: June 30, 2020

FIRSTFLEET, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Adriano Budri; *pro se*; Burleson, Texas

For the Respondent:

C. Eric Stevens, Esq.; *Little Mendelson, P.C.*; Nashville, Tennessee

**Before: Thomas H. Burrell, *Acting Chief Administrative Appeals Judge*,
James A. Haynes, Heather C. Leslie, and James D. McGinley,
*Administrative Appeals Judges***

DECISION AND ORDER

PER CURIAM. Complainant, Adriano Budri, filed the instant complaint with the United States Department of Labor's Occupational Safety and Health Administration on February 7, 2020. Budri alleged that his employer, Firstfleet, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended and re-codified, when on June 12, 2017, it provided negative information about his driving history to Tenstreet LLC,¹ that Complainant discovered on October 12, 2019, would remain on his driver's report. The STAA prohibits employers from discriminating against employees when they

¹ Tenstreet is a company that provides data about truck drivers to potential employers.

report violations of commercial motor vehicle safety rules or when they refuse to operate a vehicle when such operation would violate those rules. 49 U.S.C. § 31105 (2007); 29 C.F.R. Part 1978 (2019); *see* 49 U.S.C. § 42121 (2000).

BACKGROUND

This is the fourth complaint Budri has filed against Firstfleet based on the same underlying facts. In his first complaint, filed on March 20, 2017, Budri alleged that Firstfleet fired him in retaliation for STAA-protected activities. The ALJ issued a decision and order granting Respondent's motion for summary decision because he concluded that there was no genuine issue of material fact which would allow for the conclusion that any protected activity contributed to Complainant's termination. *Budri v. Firstfleet, Inc.*, ALJ No. 2017-STA-0086 (ALJ Feb. 2, 2018). Complainant appealed the decision, which the Administrative Review Board (ARB or the Board) summarily affirmed. *Budri v. Firstfleet, Inc.*, ARB No. 2018-0025, ALJ No. 2017-STA-0086 (ARB Jun. 19, 2018). Complainant appealed the Board's decision to the Fifth Circuit, which issued a per curiam affirmance. Complainant petitioned for writ of certiorari to the United States Supreme Court, which was denied.

In his second complaint, Budri alleged that Respondent had taken additional adverse action against him in retaliation for protected activities when it reported negative information about him to Tenstreet. The ALJ issued a decision granting Respondent's motion to dismiss having concluded the Budri's complaint was untimely because he had learned about Firstfleet's report to Tenstreet more than 180 days before filing of the complaint. *Budri v. Firstfleet, Inc.*, ALJ No. 2018-STA-00033 (ALJ Jun. 26, 2018). The ALJ concluded that the reporting agency's retention of the information did not create a continuous violation so the complaint was untimely. Complainant appealed the decision to the Board, which summarily affirmed the ALJ decision. However, the Board vacated that decision because Complainant informed the Board that he had filed a District Court complaint without notifying the Board, removing the Board's jurisdiction.² *Budri v. Firstfleet, Inc.*, ARB No. 2018-0055, ALJ No. 2018-STA-00033 (ARB Jul. 30, 2019).

² The District Court also concluded that it had no jurisdiction and dismissed the complaint, and upon Respondent's motion for Rule 11 sanctions, reprimanded and warned Complainant that sanctions would result if he filed any future litigation against Respondents arising out of the same facts in any federal court without prior judicial authorization. *Budri v. Firstfleet, Inc.*, 2019 WL 5587181 (N.D. Tex. Sept. 20, 2019); 2019 WL 5578975 (N.D. Tex. Oct. 29, 2019). Complainant appealed to the Fifth Circuit on November 4, 2019. *Budri v. Firstfleet, Inc.*, ALJ No. 2019-STA-00071, slip op. at 4, n.13 (ALJ Dec. 16, 2019) (citing Case No. 19-11203).

The ALJ in the third complaint granted Respondent's motion to dismiss after explaining that Budri had failed to timely file his complaint based on Tenstreet's retention of information Respondent provided to it beyond the statutory filing deadline. In a decision regarding the third complaint, the Board noted that a STAA complaint must be filed within 180 days after an alleged violation of the STAA. 29 C.F.R. § 1978.102(d). The Board denied Budri's petition for review.

JURISDICTION

The ARB has jurisdiction to review the ALJ's decision pursuant to 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).

DISCUSSION

In this fourth complaint, the ALJ dismissed the complaint noting that "maintenance and/or re-disclosure by a third party of information provided by an employer does not constitute new or continuous adverse action," and that because of this, there was no actionable adverse action. D. & O. at 9. The ALJ dismissed for this reason because Complainant failed to state a claim upon which relief could be granted. *Id.* The ALJ also dismissed for the additional reason that Complainant's conduct warranted dismissal because of his flagrant and defiant failure to comply with the ALJ's orders. *Id.* at 9-10.

The Board has discretion to deny petitions for review under the STAA. 29 C.F.R. 1978.110(b) ("If . . . the ARB denies review, the decision of the ALJ will become the final order of the Secretary."). In this circumstance, we exercise that discretion.

CONCLUSION

Accordingly, we **DENY** Complainant's petition for review.

SO ORDERED.