



In the Matter of:

WILLIAM E. GRIFFIN, JR.,

ARB CASE NO. 98-065

COMPLAINANT,

ALJ CASE NO. 96-STA-8

v.

DATE: February 3, 1998

**CONSOLIDATED FREIGHTWAYS
CORPORATION OF DELAWARE
d/b/a CF MOTORFREIGHT,**

RESPONDENT.^{1/}

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER OF DISMISSAL

This case arises under the employee protection provision of the Surface Transportation Assistance Act (STAA), 49 U.S.C.A. §31105 (a)(1)(A) (1994), prohibiting adverse employment action against an employee for filing a complaint or commencing a proceeding relating to a violation of a commercial motor vehicle safety regulation, standard, or order.

Complainant, William E. Griffin, Jr. (Griffin), asserts that Respondent, Consolidated Freightways (CF), engaged in a pattern of harassment against him for making an internal complaint and filing a union grievance involving the safety of a tractor. He asserts that this harassment consisted of thirty-eight incidents involving the intentional assignment of unsafe equipment to him. T. 109-10, 141, 149, 188, 295-96, 300-01. The Recommended Decision and

^{1/} The caption is corrected to reflect Respondent's proper name and spelling. See Respondent's post-trial brief, Dec. 9, 1996, at 1; Respondent's trial brief, Sept. 23, 1996, at 1; Respondent's objections to Complainant's statement of issues and witness list, June 6, 1996, at 1.

Order (R. D. and O.) of the Administrative Law Judge (ALJ) dismissed Griffin's complaint. R. D. and O. at 33.^{2/} The ALJ concluded:

that Complainant has failed to demonstrate that any of the assignments made to him which are the subject of this complaint were grounded in discrimination. On pre-trip inspections or after completing trips, Complainant reported vehicles [which] were unsafe to operate, [and] Respondent's mechanics or management staff addressed his concerns, when notified. Respondent has not threatened, disciplined or directed Complainant to stop reporting unsafe conditions or writing up his safety concerns after completing a dispatch. There is no evidence from which even an inference can be drawn that any assignment was made to him with knowledge of an existing safety violation, or intent to discriminate. Moreover, there is not a scintilla of evidence that Complainant was treated differently than other employees.

R. D. and O. at 32-33.

The record in this case has been thoroughly reviewed. The ALJ's comprehensive findings of fact, R. D. and O. at 9-25, 28-30, are supported by substantial evidence on the record as a whole and therefore are conclusive pursuant to 29 C.F.R. §1978(c)(3) (1996). *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44-46 (2nd Cir. 1995); *Beveridge v. Waste Stream Environmental, Inc.*, ARB Case No. 97-137, ALJ Case No. 97-STA-15, ARB Fin. Dec. and Ord. of Dism., Dec. 23, 1997, slip op. at 2; *Andreae v. Dry Ice, Inc.*, ARB Case No. 97-087, ALJ Case No. 95-STA-24, ARB Fin. Dec. and Ord., July 17, 1997, slip op. at 1-2; *Shute v. Silver Eagle Co.*, ARB Case No. 97-060, ALJ Case No. 96-STA-19, ARB Fin. Dec. and Ord., June 11, 1997, slip op. at 1.^{3/}

We agree with the ALJ that the adverse employment actions alleged in this case (e.g. assigning defective equipment) are actionable under the STAA at 49 U.S.C. §31105(a)(1)(A)

^{2/} The ALJ denied Griffin's request to amend his complaint to include his removal from service pending mandatory psychological counseling. R. D. and O. at 4-6. This matter became the subject of a separate STAA proceeding, *Griffin v. Consolidated Freightways Corp. of Delaware d/b/a CF Motorfreight*, ARB Case No. 97-148, ALJ Case Nos. 97-STA-10, 97-STA-19, ARB Fin. Dec. and Ord., Jan. 20, 1998, where we found that "the decision to assess Griffin's fitness under the motor carrier regulations was both legitimate and prudent, as expert opinion bore out." *Id.* at 8.

^{3/} Since this case was fully tried on the merits, whether Griffin made a *prima facie* showing, R. D. and O. at 26-30, is irrelevant. *U.S. Postal Service Bd. of Gvs. v. Aikens*, 460 U.S. 711, 715 (1983); *Frechin v. Yellow Freight Systems, Inc.*, ARB Case No. 97-147, ALJ Case No. 96-STA-34, ARB Fin. Dec. and Ord., Jan. 13, 1998, slip op. at 1; *Beveridge v. Waste Stream Environmental, Inc.*, ARB Fin. Dec. and Ord. of Dism., Dec. 23, 1997, slip op. at 3 n.4 and cases cited.

as alleged discrimination regarding terms or privileges of employment. R. D. and O. at 9, 28-29; *Frechin v. Yellow Freight Systems, Inc.*, Case No. 96-STA-9, ARB Fin. Dec. and Ord., Aug. 9, 1996, slip op. at 1-2 (allegation that complainant was assigned a less desirable truck in retaliation for complaining about defective brake line in trailer). We also agree with the ALJ, however, that Griffin did not prove by a preponderance of the evidence that the alleged adverse employment actions were motivated by his protected activity. *Beveridge v. Waste Stream Environmental, Inc.*, ARB Fin. Dec. and Ord. of Dism., Dec. 23, 1997, slip op. at 5-6; *Abraham v. Lawnwood Regional Medical Center*, ARB Case No. 97-031, ALJ Case No. 96-ERA-13, ARB Fin. Dec. and Ord., Nov. 25, 1997, slip op. at 6-7; *Skelley v. Consolidated Freightways Corp., d/b/a CF Motorfreight*, Case No. 95-SWD-001, ARB Fin. Dec. and Ord. of Dism., July 25, 1996, slip op. at 6.

We agree with the ALJ's holding that Griffin was not subjected to disparate treatment. As the ALJ stated:

Inasmuch as the nature of Respondent's business necessitates that it rely on its drivers to [n]otify it of safety issues relating to equipment, [sic] between routine maintenance inspections, driver safety reports are an integral part of Respondent's standard operating procedures. It cannot be determined from the documents Mr. Griffin submitted how the frequency of the incidents complained of after he filed his March 23, 1995 safety complaint differ from the number of safety concerns he reported to management either pre or post trip before the filing of that complaint. Such an inquiry would be highly relevant in a case such as this one, where the claim is based, in part, on a claim of differential treatment because of the filing of safety complaints. Similarly, Mr. Griffin did not present evidence which would establish that employees who did not engage in protected activity under the STAA were not assigned equipment with safety problems, or were in any way treated differently in the assignment of such equipment than he was. Complainant has not presented any direct evidence that Respondent's officials and managers threatened or attempted to intimidate him because of his safety complaints. On the contrary, the record reflects that with regard to every incident which Mr. Griffin brought to the attention of Respondent's dispatcher or operations manager on site, or its human resources and safety managers, Respondent was responsive to Mr. Griffin, fully crediting his concerns and taking prompt action to ensure that its equipment was in compliance with federal safety regulations. In short, I find no evidence in this record which would support a finding that any of the actions complained of by Mr. Griffin were so pervasive as to alter the working conditions of his employment.

R. D. and O. at 29-30; *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d at 46 (employee failed to prove that he was subjected to disparate treatment or that employer acted out of animus towards him).

In sum, Griffin did not prove by a preponderance of the evidence that CF discriminated against him in contravention of the STAA. Accordingly, we accept the ALJ's findings and **DISMISS** the complaint.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member