

Truck Driver Receives Win from ARB in STAA Whistleblower Case

By [Joseph E. Abboud](#)
November 9, 2016

On August 30, the Administrative Review Board ([ARB](#)) decided *Dick v. Tango Transport*, ruling in favor of the whistleblower – a truck driver for Tango Transport named Curtis Dick – and reinforcing the strength of whistleblower protections critical to the safety of the commercial trucking industry.

Case Background

Curtis Dick filed an OSHA complaint against his employer, Tango Transport, for [violations of the whistleblower protection provisions of the Surface Transportation Assistance Act of 1982 \(STAA\)](#). Dick was a truck driver who made numerous complaints about mechanical issues with his assigned trucks and his manager's frequent interruptions of his legally required breaks. After suffering a work-related injury, Dick took leave under the Family and Medical Leave Act ([FMLA](#)). While on leave, Tango terminated Dick, prompting him to file his complaint with OSHA.

Soon afterwards, Tango reinstated Dick. However, upon returning to work, Dick faced retaliation from his new manager, getting fewer and worse work assignments than before. He filed multiple retaliation complaints against his new manager and continued to receive unfavorable assignments, which he often refused to complete. After being placed on probation and threatened with termination, Dick resigned.

The STAA Whistleblower Claim

After OSHA initially determined that Dick's complaint lacked merit, Dick petitioned for an administrative law judge (ALJ) hearing. The ALJ dismissed Dick's complaint, finding that he did not engage in [protected activity](#) and that his resignation did not amount to a "[constructive discharge](#)" attributable to Tango. The ALJ noted that Dick's complaints about his manager's interruption of his rest breaks did not involve a "specific" safety regulation. Furthermore, the ALJ held that Dick did not have a reasonable belief that such "de minimis" interruptions of his rest breaks would constitute a violation of a motor vehicle safety regulation. In addition, the ALJ held that Dick's repeated complaints about mechanical issues with his trucks were not protected activity because Tango eventually conducted repairs on the truck.

Deciding to reverse that decision, the ARB emphasized that the STAA does not require a whistleblower to complain about a specific safety regulation. Rather, the complaint must be "related to" safety regulations. This, the ARB held, should be read broadly to encompass even mistaken beliefs about what constitutes a violation of a safety regulation. Furthermore, the ARB held that a whistleblower's protected activity does not lose protection simply because an employer takes corrective action. Finally, the ARB noted that the ALJ failed to consider the constructive discharge standard articulated in the ARB's recent decision in *Dietz v. Cypress Semiconductor Corp.* By threatening Dick with termination, Tango led Dick to reasonably believe that his discharge was imminent, such that his resignation could be attributable to Tango.

An Important Victory

The ARB's decision provides an important reminder that the STAA whistleblower protections are construed broadly to empower commercial truck drivers to speak out against dangerous practices. An STAA whistleblower is still protected even if the employer does not violate a specific safety regulation or if it remedies the dangerous practice.