Truck Safety Whistleblowers Secure Another Victory from Labor ARB

July 10, 2012

The Administrative Review Board ("ARB") of the U.S. Department of Labor ("DOL") reversed the decision of an OSHA Administrative Law Judge ("ALJ") dismissing a case brought by two truckers under the Surface Transportation Assistance Act ("STAA") and remanded the case for further proceedings. The case, Lindell Beatty and April Beatty v. Inman Trucking Management, Inc., decided on June 28, 2012, involved a couple who alleged that they were blacklisted by Inman Trucking via negative comments on each of their Drive-A-Check Employment Reports ("DACs") in retaliation for repeated safety complaints they made. The ALJ determined that they were not blacklisted and that Inman Trucking's comments on their DACs had nothing to do with the Beatys' safety complaints. The ARB reversed the ALJ's determination that the Beatys were not blacklisted, and remanded the case for further factual findings to determine whether or not the Beatys' protected activity contributed to the negative notations Inman Trucking placed on their DACs. According to the ARB decision, the Beatys worked for Inman Trucking from August 2004 to December 2005. They first complained of an exhaust leak in their truck in late October, 2005. They followed this with another exhaust leak complaint on December 6, 2005. On December 14, 2005, the Beatys came into Inman Trucking's offices, and exchanged words with Al Grover, Inman's safety director. Grover told the Beatys that Inman was going to fire them if they refused to take a trip for any reason (but then qualified that statement to “other than a safety reason”). That same day, Inman terminated the Beatys' employment. On that day or the next, Inman also filled out DAC reports for the Beatys, citing “excessive complaints, company policy violation, personal contact requested and other” as the reasons that Inman terminated their employment. The ALJ first determined that the Beatys were not, in fact, blacklisted. Following their termination with Inman, the Beatys applied for truck driving jobs with U.S. Express and Cargill Trucking. Their applications were rejected. The ALJ stated, however, that “[t]he Beatys merely speculate that the comments filed by Respondent were the cause of them later not being hired by Cargill and U.S. Express.” As such, the ALJ found that the Beatys did not sustain their burden in proving that they were blacklisted. The ARB disagreed. Relying on its 1994 decision in Earwood v. Dart Container Corp., the Court held that whether or not their DACs were the deciding factor that prevented them from successfully obtaining comparable employment was not dispositive. Rather, the determination to make was whether the DACs “had a tendency to impede and interfere with [the Beatys’] employment opportunities.” The Board went on to explain that “[E]ffective enforcement of the Act requires a prophylactic rule prohibiting improper references to an employee’s protected activity whether or not the employee has suffered damages or loss of employment opportunities as a result.” Finding little question that the negative DACs met this burden, the ARB reversed the ALJ’s ruling that the DACs did not constitute blacklisting. The Board then turned to the ALJ’s determination that the Beatys’ safety complaints were not a contributing factor to Inman’s negative DAC reports. While it did not reverse the ALJ determination, the Board did determine that the ALJ improperly required a showing of animus on the part of Inman Trucking to prove causation, and further determined that the ALJ had made insufficient findings of fact. Specifically, the Board held that the ALJ should: a) reconcile what it characterized as “conflicting evidence of record” regarding their supervisor’s motivations for terminating the Beatys; and b) examine more closely the temporal proximity between the Beatys’ December 6 safety report and their December 14 termination. Accordingly, the Board remanded the case to the ALJ for further
proceedings.