



In the Matter of:

ADRIANO KRUEL BUDRI,

ARB CASE NO. 2018-0055

COMPLAINANT,

ALJ CASE NO. 2018-STA-00033

v.

DATE: March 25, 2019

FIRSTFLEET, INC.,

RESPONDENT.

Appearances:

For the Complainant:

Adriano Kruel Budri; *pro se*; Burleson, Texas

For the Respondent:

C. Eric Stevens, Esq.; *Little Mendelson, P.C.*; Nashville, Tennessee;
and Greg McAllister, Esq.; *Little Mendelson, P.C.*; Dallas, Texas

Before: William T. Barto, *Chief Administrative Appeals Judge*; James A. Haynes and Daniel T. Gresh, *Administrative Appeals Judges*

FINAL DECISION AND ORDER

PER CURIAM. Adriano Kruel Budri, the Complainant, filed a complaint with the United States Department of Labor's Occupational Safety and Health Administration (OSHA) on January 23, 2018 against FirstFleet, Inc., the Respondent. Complainant alleged that Respondent, his employer, had violated the employee protection provisions of the Surface Transportation Assistance Act (STAA)

of 1982, as amended and re-codified,¹ when it reported a February 16, 2017 accident involving Complainant and his subsequent termination as a truck driver to a consumer reporting agency which provided employment references to trucking companies. Complainant argued that this was in retaliation for his having previously identified and raised safety concerns. The STAA prohibits employers from discriminating against employees when they report violations of commercial motor vehicle safety rules or when they refuse to operate a vehicle when such operation would violate those rules.²

A Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) granting Respondent's motion for summary decision and dismissed the complaint on the basis that it had been untimely filed. Subsequently, the ALJ denied Complainant's motion for reconsideration. We agree with the ALJ and summarily affirm his decision.

We limit our comments to the most critical points. First, we review a decision granting summary decision de novo.³ We view the evidence presented by the pleadings in the light most favorable to Complainant (the non-moving party) to determine whether there are any genuine issues of material fact and whether the Respondent was entitled to judgment as a matter of law.⁴

A STAA complaint must be filed within 180 days after an alleged violation of the STAA.⁵ Complainant acknowledges he filed his STAA complaint 225 days after he learned about Respondent's report about him to the consumer reporting agency. D. & O. at 4. The inescapable conclusion is that the complaint was untimely filed.

Complainant asserts that his complaint should nevertheless be accepted because the adverse report was still publicly available in January and August of

¹ 49 U.S.C. § 31105 (2007), as implemented at 29 C.F.R. Part 1978 (2018); *see* 49 U.S.C. § 42121 (2000).

² *See* 49 U.S.C. § 31105(a).

³ *Hardy v. Mail Contractors of Am.*, ARB No. 2003-0007, 2002-STA-00022, slip op. at 2 (ARB Jan. 30, 2004).

⁴ *Lee v. Schneider Nat'l, Inc.*, ARB No. 2002-0102, ALJ No. 2002-STA-00025, slip op. at 2 (ARB Aug. 28, 2003).

⁵ 49 U.S.C. § 31105(b); 29 CFR § 1978.102(d).

2018 and, as such, constitutes a continuing violation of the STAA. He argues that this continuing violation should reset the time limit for filing his complaint and thereby allow this Board to consider his complaint as timely filed. This argument fails because, as the ALJ explained, Complainant had 180 days from when he first learned about the negative information to file his STAA claim. The statute does not expressly provide that a claim of a continuous violation extends the filing deadline, and in any event the instant facts support the ALJ's conclusion that there is no continuous violation in this matter.⁶

CONCLUSION

The ALJ properly dismissed this complaint because it was untimely. Accordingly, the ALJ's decision to dismiss the complaint is **AFFIRMED** and this complaint is hereby **DISMISSED**.

SO ORDERED.

⁶ D. & O. at 4 (citing *Eubanks v. A.M. Express, Inc.*, ARB No. 2008-0138, ALJ No. 2008-STA-00040, slip op. at 6-7 (ARB Sept. 24, 2009). However, DOL regulations also provide that “[t]he time for filing a complaint may be tolled for reasons warranted by applicable case law.” 29 C.F.R. § 1978.102(d). Complainant did not argue any grounds for tolling the deadline for filing his STAA complaint to the ALJ, and it is unclear whether the issue has been raised on appeal. Even if it has been raised, the ARB, as an appellate body, generally declines to consider arguments raised for the first time on appeal. There is no reason in this case to depart from that practice. *Seehusen v. Mayo Clinic*, ARB No. 2012-0047, ALJ No. 2011-STA-00018, slip op. at 4 (ARB Sept. 11, 2013) (citation omitted).