



**In the Matter of:**

**ADRIANO BUDRI,**

**ARB CASE NO. 2020-0065**

**COMPLAINANT,**

**ALJ CASE NO. 2020-STA-00108**

**v.**

**DATE: September 15, 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: James D. McGinley, *Chief Administrative Appeals Judge*;  
Thomas H. Burrell, James A. Haynes, Heather C. Leslie, and Randel K.  
Johnson, *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 August 6, 2020. This is the sixth complaint Budri has filed against Firstfleet.

In his first complaint, filed on March 20, 2017, Budri alleged that Firstfleet fired him in retaliation for STAA-protected activities. The Administrative Law Judge (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 that

any protected activity contributed to Complainant's termination.<sup>1</sup> Complainant appealed the decision, which the Administrative Review Board (ARB or the Board) summarily affirmed.<sup>2</sup> Complainant appealed the Board's decision to the Fifth Circuit, which issued a per curiam affirmance on April 9, 2019.<sup>3</sup> 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, an employment reporting company. 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.<sup>4</sup> 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 later 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.<sup>5</sup>

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. The Board denied Budri's petition for review.<sup>6</sup> Budri appealed to the Fifth Circuit which affirmed the Board's denial on August 25, 2020.<sup>7</sup>

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1 *Budri v. Firstfleet, Inc.*, ALJ No. 2017-STA-0086 (ALJ Feb. 2, 2018).

2 *Budri v. Firstfleet, Inc.*, ARB No. 2018-0025, ALJ No. 2017-STA-0086 (ARB Jun. 19, 2018).

3 *Budri v. U.S. Dep't of Labor*, 764 Fed.Appx. 431 (Mem) (5th Cir. 2019) (unpublished) (Case No. 18-60579).

4 *Budri v. Firstfleet, Inc.*, ALJ No. 2018-STA-00033 (ALJ Jun. 26, 2018).

5 *Budri v. Firstfleet, Inc.*, ARB No. 2018-0055, ALJ No. 2018-STA-00033 (ARB Jul. 30, 2019). 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, which dismissed on December 18, 2019 (Case No. 19-11203).

6 *Budri v. Firstfleet, Inc.*, ARB No. 2020-0021, ALJ No. 2019-STA-00071 (ARB Dec. 16, 2019).

77 See Case No. 20-60073.

The ALJ dismissed the fourth complaint because there was no actionable adverse action (and thus, Complaint failed to state a claim upon which relief could be granted) and because Complainant's conduct warranted dismissal because of his flagrant and defiant failure to comply with the ALJ's orders. The Board denied Budri's petition for review.<sup>1</sup> Budri has appealed this matter to the Fifth Circuit.<sup>2</sup>

The ALJ dismissed the fifth complaint noting that "Complainant allege[d] nothing in his current complaint that was not alleged and fully adjudicated in his four prior complaints. Those allegations are barred by res judicata and issue preclusion and the complaint consequently fails to state a claim upon which relief can be granted."<sup>3</sup> Finally, noting that "[f]rivolous and vexatious law suits threaten the availability of a well-functioning judiciary to all litigants,"<sup>4</sup> the ALJ held that Complainant's complaint failed to allege a claim upon which relief could be granted and was frivolous.<sup>5</sup> The ARB used its discretion to deny the petition for review.<sup>6</sup>

## 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 sixth complaint, the ALJ denied the complaint because Budri's "latest complaint allege[d] no issues that have not already been fully considered . . ." Order of Denial at 2 (ALJ Sept. 8, 2020). Before the ALJ and on appeal, Budri's main argument in this matter is that the ALJ in his case and in the prior cases he filed were not validly appointed under the Appointments Clause of the U.S. Constitution. However, Budri's case was filed and decided after the ALJ's appointments were ratified by the Secretary of Labor on December 21, 2017, making them validly appointed. Furthermore, any appointments clause

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1 *Budri v. Firstfleet, Inc.*, ARB No. 2020-0047, ALJ No. 2020-STA-00037 (ARB Jun. 18, 2020).

2 Case No. 20-60574.

3 ALJ Amended Order of Denial at 4 (ALJ Aug. 5, 2020).

4 *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008).

5 ALJ Amended Order of Denial at 5-6 (ALJ Aug. 5, 2020).

6 *Budri v. Firstfleet, Inc.*, ARB No. 2020-0061, ALJ No. 2020-STA-00090 (ARB August 5, 2020).

challenges he is attempting to make regarding any of his earlier case filings were waived as not made first to the ALJs prior to appeal in the respective cases (and also not the subject of this appeal).<sup>1</sup>

In this matter, before the ALJ and on appeal, Budri has also challenged the validity of the Secretary's ratification of the ALJ appointments. However, the Board's delegation of authority gives us jurisdiction over certain appeals and does not provide for the authority to pass on the validity of the Secretary of Labor's direct actions such as ratification of the ALJ appointments in December 2017. Thus, we view the Secretary's ratification of the appointments of the ALJs serving in the Department as of December 2017 as sufficient to satisfy the Appointments Clause.<sup>2</sup>

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.

We will entertain no further motions or other papers on appeal in this, Budri's sixth complaint.

#### CONCLUSION

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

**SO ORDERED.**

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1 The ARB typically does not entertain arguments that are first raised on appeal. *E.g.*, *Gattegno v. Prospect Energy Corp., et al.*, ARB No. 2006-0118, ALJ No. 2006-SOX-00008, slip op. at 22 (ARB May 29, 2008).

2 *See also Marbury v. Madison*, 5 U.S. 137, 157 (1803) (the appointment of an officer need only be "evidenced by an open, unequivocal act"); *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 604 (3d Cir. 2016) (agency action presumed valid under presumption of regularity).