



SENT VIA EMAIL: heather.harper@crh.com

September 11, 2024

Heather Harper, Esq.
Deputy General Counsel
CRH Americas, Inc.
900 Ashwood Parkway, Suite 600
Atlanta, GA 30338

Re: W-L Construction & Paving, Inc. et al [REDACTED] 301024290

Dear Ms. Harper:

This is to advise you that we have completed our investigation of the above-referenced complaint against W-L Construction & Paving, Inc., (W-L); West Virginia Paving, Inc.¹; CRH Americas, Inc.; Kelli Samples (Samples); David Dodge²; and Mike Thomas (collectively “Respondents”) filed on October 1, 2023, under the Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105. In brief, Complainant, [REDACTED] alleged that Respondents suspended and terminated him because he raised concerns about exceeding the Hours-of-Service (HOS) rules and for refusing to drive while ill, in violation of STAA.

Following an investigation by a duly authorized investigator, the Acting Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Philadelphia Regional Office, finds there is reasonable cause to believe that Respondents violated STAA and issues the following findings:

Secretary’s Findings

Complainant contends that he suffered an adverse employment action when Respondents suspended him on September 27, 2023 and formally terminated him on October 2, 2023. On October 1, 2023, Complainant filed a complaint with the Acting Secretary of Labor alleging that Respondents retaliated against him in violation of STAA.³ As this complaint was filed within 180 days of the alleged adverse action, it is deemed timely.

¹ The complaint also named West Virginia Paving Inc. as a Respondent, however OSHA’s investigation revealed, this company was not involved in this case. Consequently, the complaint against West Virginia Paving, Inc. is dismissed.

² David Dodge is the President of CRH America’s, Inc. and was a part of discussions leading to Complainant’s termination.

³ OSHA first interviewed Complainant on October 2, 2023, and at that time Complainant verbally amended his complaint to include the October 2, 2023 termination.

Respondents are covered under STAA because Respondents are persons within the meaning of 1 U.S.C. §1 and 49 U.S.C. §31105. Respondent W-L, a road surface paving company, is engaged in transporting products on highways via commercial motor vehicle (CMV), that is, a vehicle with a gross vehicle weight rating of 10,001 pounds or more. Respondents are also employers within the meaning of 49 U.S.C. §31101. CRH is the parent company of W-L Construction. David Dodge is the president of CRH, and one decisionmaker in complainant's termination.

Complainant is covered under STAA because Complainant is an employee within the meaning of 49 U.S.C. §31101. Specifically, Complainant operated a "low-boy" tractor trailer, a CMV, for Respondent W-L.

On July 12, 2023, while driving to work, Complainant bit into his sandwich and broke his tooth. Upon arriving at work, Complainant notified Respondent W-L supervisor Issac See that he would be leaving due to the dental emergency.

On July 13, 2023, Complainant notified Respondent W-L's supervisor he would not be able to work due to pain from the prior day's dental emergency. Complainant did not feel safe operating a CMV under this condition due to his face being swollen and having difficulty with vision. Respondent W-L used this STAA-protected activity against Complainant.

On Friday, July 21, 2023, Complainant completed an 8-hour shift and left. At the time Complainant left, he accumulated 63 hours on-duty for the week--3 hours over the FMCSA HOS rule. About an hour after Complainant left work, Respondent W-L's supervisor asked Complainant to come back to work to haul another load, Complainant notified Respondent that he was off and had been drinking and was unable to drive.

On Thursday, August 31, 2023, Complainant called Respondent W-L's office, notifying them he was coughing up blood and could not continue working. Complainant then proceeded to urgent care.

On September 27, 2023, Respondent W-L's General Manager, Mike Thomas, terminated Complainant. Complainant then contacted Samples from the Human Relations (HR) department for Respondent W-L, alleging he had just been terminated due to his complaints regarding HOS. Samples then changed the termination to a suspension pending an investigation into his complaints. Samples reviewed Complainant's schedule, which included the hours he was paid for.

On January 17, 2024, during her interview with OSHA, Samples stated she reviewed Complainant's schedule and determined that Complainant was terminated for attendance issues.

Complainant was terminated after he was determined to have a total of 10 attendance infractions (absences, tardies, leaving early) from July-September 2023. Of those 10 infractions, OSHA finds that three infractions were absences related to protected refusals to drive under STAA. Respondent's policy is that an employee's employment can be terminated after three "consecutive" absences or no-shows absent proper notification of a supervisor. Respondent does not consistently enforce this policy. Moreover, Complainant never had three consecutive absences or no-shows absent proper notification of a supervisor. Rather, he notified his supervisor when he was going to be late or absent.

On June 7, 2024, Respondent W-L provided their response to OSHA’s Due Process Letter sent pursuant to 29 CFR 1978.104(f). In their defense, Respondent W-L provided a copy of the attendance policy which is in the employee handbook. Respondent W-L Construction & Paving maintains they were unaware of Complainant’s HOS complaints until he notified Samples. Further, Respondent W-L asserts that even absent Complainant’s protected activities, Respondent W-L still would have terminated him due to the attendance issues.

The evidence establishes that Complainant engaged in protected activity when he complained to Respondent W-L’s supervisor Isaac See about violations of the FMCSA HOS rules on or about April 30, 2023. Complainant engaged in further protected activity when, on July 13, 2023, and August 31, 2023, he notified Respondent W-L’s office and Isaac See that he was unable to operate a vehicle because such operation would violate FMCSA regulations 49 C.F.R. § 392.3 (ill or fatigued operator) (July incident) and 49 C.F.R. § 395.3 (hours of service) (August incident) and then refused to operate the vehicle. On September 27, 2023, Complainant was terminated but then suspended pending an investigation into their complaints of reporting HOS violations. On October 2, 2023, Complainant was officially terminated. The reason given was violating Respondent W-L’s attendance policy by leaving early, reporting late, and calling off. OSHA finds that Complainant’s protected activities were a contributing factor in Respondents W-L’s decision to terminate Complainant.

Respondents have failed to demonstrate by clear and convincing evidence that they would have terminated Complainant in the absence of his protected activity. Therefore, OSHA finds that Respondents violated 49 U.S.C. §31105(a)(1)(A) (ban on retaliation for complaining about violations of FMCSA regulations) and 49 U.S.C. § 31105(a)(1)(B)(i) (ban on retaliation for refusal to operate a vehicle because operation would violate FMCSA regulations) and Complainant is entitled to relief.

As a result of Complainant’s illegal termination, he and his family faced mental and financial hardships. [REDACTED]

OSHA believes that Complainant and his family suffered tremendously from Respondents’ illegal conduct and significant compensatory damages for pain and suffering are appropriate.

OSHA also believes that Respondents’ conduct warrants punitive damages. When Complainant brought the apparent STAA violation, i.e., the initial termination which was then changed to a suspension, to HR’s attention, HR had every opportunity to research the legality of their actions. HR failed to correct the violation and terminated Complainant in violation of STAA anyway. This is a wanton disregard for the rights of employees.

PRELIMINARY ORDER

1. Upon receipt of this Secretary's Finding and Preliminary Order, Respondents shall immediately reinstate Complainant to his former position at the same rate of pay as he would have had if he had not been terminated. Such reinstatement shall include all rights, seniority, and benefits that Complainant would have enjoyed had he never been discharged. Such reinstatement is not stayed by an objection to this order.
2. Respondents shall pay Complainant back pay, minus interim earnings, in the amount of \$56,558.95 as of the date of these Findings. Backpay will continue to accrue at the rate of \$1,768.13 per week, until Respondents makes Complainant a *bona fide* offer of reinstatement.
3. Respondents shall pay interest on the back wages in the amount of \$1,759.30, as of the date of these Findings in accordance with 26 U.S.C. § 6621, and thereafter such interest until Respondent makes a *bona fide* offer of reinstatement.
4. Respondents shall pay Complainant compensatory damages in the amount of \$115,694.19, for the following:
 - Out-of-pocket medical expenses in the amount of \$35,694.19.
 - Pain and suffering, including mental distress in the amount of \$80,000.00
5. Respondents shall pay punitive damages to Complainant in the amount of \$10,000.
6. Respondents shall pay Complainant's reasonable attorney's fees.
7. Respondents shall expunge Complainant's employment records of any reference to the exercise of his rights under STAA.
8. Respondents shall remove any and all negative information that it entered on the DAC⁴ Reports for Complainant.
9. Respondents shall not retaliate against Complainant in any manner for instituting or causing to be instituted any proceeding under or related to STAA.
10. Respondents shall post immediately in a conspicuous place in or about Respondents' facilities, including in all places where notices for employees are customarily posted, including Respondent's internal web site for employees or e-mails, if Respondents customarily uses one or more of these electronic methods for communicating with employees, and maintain for a period of at least 60 consecutive days from the date of posting, the attached Notice to Employees, to be signed by a responsible official of Respondents and the date of actual posting to be shown thereon.

⁴ Drive-A-Check, (DAC) tells companies what a Commercial Driver's License (CDL) driver's history is like. It lets them know about the period of service, loads hauled, equipment operated, accidents, traffic violations, and drug and alcohol history. The DAC report allows hiring companies to instantly access a driver's work history and determine if they are a good fit for the company.

11. Respondents shall issue to all Commercial Motor Vehicle (CMV) drivers presently employed, as well as any new CMV drivers hired in the next two years, a copy of the attached OSHA STAA Fact Sheet “Whistleblower Protection for Commercial Motor Vehicle Workers Fact Sheet” (OSHA FS 3946).

Respondents and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

PRIMARY: OALJ-Filings@dol.gov
Secondary method (if unable to file via email):
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Department of Labor
800 K Street NW, Suite 400 North
Washington, D.C. 20001-8002
Phone: (202) 693-7300
Fax: (202) 693-7365

Copied to:

Regional Administrator
Occupational Safety & Health Administration
ATTN: ARA-WPP
Philadelphia Regional Office
1835 Market Street
Mailstop OSHA-RO/19
Philadelphia, PA 19106-2968

And:

All parties to this case.

In addition, please be advised that the U.S. Department of Labor does not represent any private party in the hearing; rather, each private party presents his or her own case. In a STAA case in which OSHA has issued merit findings, the Assistant Secretary of Labor for Occupational Safety and Health, represented by the appropriate Regional Solicitor’s Office, ordinarily is the prosecuting party, but the Complainant may also litigate. The hearing is an adversarial proceeding before an ALJ in which the parties are allowed an opportunity to present their evidence for the record. The ALJ who conducts the hearing will issue a decision based on the evidence and arguments presented by the parties. Review of the ALJ’s decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under the Act. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint.

The rules and procedures for the handling of STAA cases can be found in Title 29 of the Code of Federal Regulations, Part 1978, and may be obtained at www.whistleblowers.gov.

Sincerely,



Michael Mabee
Assistant Regional Administrator
Whistleblower Protection Program

cc: [REDACTED]
Paul O. Taylor, Esq. Counsel for Complainant
(VIA Email: paul.taylor@truckersjusticecenter.com)
Chief Administrative Law Judge, USDOL
Federal Motor Carrier Safety Administration

Whistleblower Protection for Commercial Motor Vehicle Workers

Truck drivers and other workers affecting commercial motor vehicle safety or security are protected from retaliation for reporting, or engaging in activities related to, certain commercial motor vehicle safety, health or security conditions.

On August 3, 2007, the *Surface Transportation Assistance Act* (STAA), 49 U.S.C. § 31105, was amended by *The Implementing Recommendations of the 9/11 Commission Act* (Public Law 110-53) to include new rights, remedies and procedures.

Covered Employees

In general, STAA covers private-sector drivers (including independent contractors while personally operating a commercial motor vehicle) and other workers (including mechanics and freight handlers) involved in activities directly affecting commercial motor vehicle safety or security. A commercial motor vehicle covered by STAA is defined as any self-propelled or towed vehicle used on the highway in commerce principally to transport cargo or passengers. To qualify for coverage, such a vehicle must also:

- Have a vehicle weight rating or gross vehicle weight of at least 10,001 pounds (whichever is greater);
- Be designed to transport more than 10 passengers, including the driver; or,
- Transport materials deemed hazardous by the Secretary of Transportation in a quantity requiring placarding (posting) under applicable regulations.

Protected Activity

If you are covered under STAA, your employer may not discharge you or in any manner retaliate against you for:

- filing a complaint or initiating or participating in a proceeding related to the violation of a commercial motor vehicle safety or security rule; or
- cooperating with certain federal safety or security investigations; or

- providing information in an investigation by a federal, state, or local regulatory or law enforcement agency relating to any accident or incident resulting in injury or death or property damage that occurred in connection with commercial motor vehicle transportation.

In addition, under STAA, your employer may not discharge you or in any manner retaliate against you for refusing to operate a vehicle because to do so would violate a federal commercial motor vehicle rule related to safety, health, or security, or because you had a reasonable apprehension of serious injury to yourself or to the public related to a vehicle's safety or security condition. STAA also prohibits your employer from discharging or otherwise retaliating against you for accurately reporting hours of service (HOS). (For more detail about federal HOS requirements, please visit the Federal Motor Carrier Safety Administration's website www.fmcsa.dot.gov). You may also be covered if you were perceived as having engaged in the activities described above. In addition, you may also be protected under STAA if you have been harassed or coerced about following safety regulations.

What Is Retaliation?

Retaliation is an adverse action against an employee because of activity protected by STAA. Retaliation can include several types of actions, such as:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidation
- Reassignment affecting promotion prospects

- Reducing pay or hours
- Making threats

Deadline for Filing Complaints

Complaints must be filed within 180 days after the alleged retaliatory action occurred or after the date on which the employee became aware of the action.

How to File a STAA Complaint

An employee can file a STAA complaint with OSHA by visiting or calling his or her local OSHA office, sending a written complaint to the closest OSHA office, or filing a complaint online. No particular form is required and complaints may be submitted in any language. Written complaints may be filed by fax, electronic communication, hand delivery during business hours, U.S. mail (confirmation services recommended), or other third-party commercial carrier.

The date of the postmark, fax, electronic communication, telephone call, hand delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office is considered the date filed.

To file a complaint electronically, please visit www.osha.gov/whistleblower/WBComplaint.html.

To contact an OSHA area office, please call 1-800-321-OSHA (6742) to be connected to the closest area office. Or visit our website at www.osha.gov/html/RAmap.html and click on your state to find your local OSHA office address and contact information.

When OSHA receives a complaint, the agency will first review it to determine whether certain basic requirements are met, such as whether the complaint was filed on time. If so, the complaint will then be investigated according to the procedures required by 29 CFR Part 1978.

Results of the Investigation

If the evidence supports an employee's complaint of retaliation, OSHA will issue an order requiring the employer to, as appropriate, put the employee

back to work, pay lost wages, restore benefits, and other possible relief. The exact requirements will depend on the facts of the case. If the evidence does not support the employee's complaint, OSHA will dismiss the complaint.

After OSHA issues a decision, the employer and/or the employee may request a full hearing before an administrative law judge of the Department of Labor. The administrative law judge's decision may be appealed to the Department's Administrative Review Board. The employee may also file a complaint in federal court if the Department does not issue a final decision within 210 days. See 49 U.S.C. § 31105.

To Get Further Information

For a copy of STAA, 49 U.S.C. § 31105, the regulations (29 CFR 1978), and other information, go to www.whistleblowers.gov.

OSHA's Whistleblower Protection Programs enforces the whistleblower provisions of more than twenty federal whistleblower laws. To learn more about the whistleblower statutes which OSHA enforces, view our "Whistleblower Statutes Desk Aid" at www.whistleblowers.gov/whistleblower_acts-desk_reference.pdf.

For information on the Office of Administrative Law Judges procedures and case law research materials, go to www.oalj.dol.gov and click on the link for "Whistleblower."

For information on commercial motor vehicle safety laws and regulations, visit the Federal Motor Carrier Safety Administration's (FMCSA) website at www.fmcsa.dot.gov. To file a substantive safety or security complaint with FMCSA, please visit nccdb.fmcsa.dot.gov/nccdb/home.aspx.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education, and assistance. For more information, visit www.osha.gov.

This is one in a series of informational fact sheets highlighting OSHA programs, policies or standards. It does not impose any new compliance requirements. For a comprehensive list of compliance requirements of OSHA standards or regulations, refer to Title 29 of the Code of Federal Regulations. This information will be made available to sensory-impaired individuals upon request. The voice phone is (202) 693-1999; teletypewriter (TTY) number: (877) 889-5627.



U.S. Department of Labor



DWPP FS-3946 04/2018



NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

W-L Construction & Paving, Inc., and CRH Americas, Inc. have been ordered to make whole an employee who was found to have been retaliated against for exercising their rights under the Surface Transportation Assistance Act, 49 U.S.C. § 31105. The companies have been ordered to take affirmative action to ensure the rights of its employees under employee whistleblower protection statutes including the STAA.

PURSUANT TO THAT ORDER, W-L CONSTRUCTION & PAVING, INC., AND CRH AMERICAS, INC. WILL NOT:

Discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)-

- (1) provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Motor Carrier Safety Administration or any other provision of Federal law relating to commercial motor carriers under this subtitle or any other law of the United States;
- (2) has filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Motor Carrier Safety Administration or any other provision of Federal law relating to commercial motor carriers safety under this subtitle or any other law of the United States;
- (3) testified or is about to testify in such a proceeding; or
- (4) assisted or participated or is about to assist or participate in such a proceeding

Signature of Company Official

Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE
MUST REMAIN POSTED AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY
OTHER MATERIAL.**