

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, Georgia 30303



JUN 20 2019

Jacinta F. Porter, Esq.
Frost Brown Todd, LLC
Lexington Financial Center
250 W. Main Street, Suite 2800
Lexington, KY 40507-1749
Attorney for
Freight Rite, Inc.
Todd Myers, individually
Dustin Hendricks, individually

Re: Freight Rite, Inc. et al./Collins/4-1760-18-046
DOT # 1379054

Dear Ms. Porter and Messrs. Myers and Hendricks:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Clint Collins (Complainant) against Freight Rite, Inc. and Regional Manager Todd Myers, individually, and General Manager Dustin Hendricks, individually (collectively Respondents), on January 31, 2016, under the employee protection provisions of the Surface Transportation Assistance Act, 49 U.S.C. §31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No.110-53 (STAA). In brief, Complainant alleged that Respondents terminated his employment for refusing to operate a commercial motor vehicle due to hazardous road conditions on January 16, 2018.

Following an investigation of this matter by a duly authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration, Region IV, finds there is reasonable cause to believe that Respondents violated 49 U.S.C. §31105, and issues the following findings:

Secretary's Findings

Freight Rite, Inc., Regional Manager Todd Myers, an individual, and General Manager Dustin Hendricks, an individual, are each persons within the meaning of 1 U.S.C. §1 and 49 U.S.C. §31105. Respondent Freight Rite, Inc. is a commercial motor carrier within the meaning of 49 U.S.C. §31101. Respondents Myers and Hendricks are management officials of Freight Rite, Inc. Respondents, collectively, are engaged in transporting products on the highways via commercial motor vehicle, that is, a vehicle with a gross vehicle weight rating of 10,001 pounds or more. Respondents maintain a place of business in Toledo, OH.

Complainant is an employee within the meaning of 49 U.S.C. §31105. In the course of his employment, Complainant directly affected commercial motor vehicle safety, in that he drove Respondents' trucks over highways in commerce to deliver various commodities. Complainant

timely filed a whistleblower retaliation complaint with OSHA under STAA against Respondents, a covered employer and its agents.

Respondents hired Complainant as a commercial motor vehicle driver in September 2017. Complainant remained duly employed with Freight Rite, Inc. until he suffered the adverse action noted in his complaints and discussed herein.

49 U.S.C. § 31105(a)(1)(A)(i) prohibits discharging or otherwise discriminating against an employee because “the employee ...has filed a complaint...related to a violation of a commercial motor vehicle safety...regulation...”

49 U.S.C. §31105 (a)(1)(b)(ii) provides that an employee may refuse to operate a vehicle “because the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s hazardous safety or security condition.”

49 C.F.R. § 392.14 requires that operators of commercial motor vehicles exercise “extreme caution . . . when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. . . . If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated.” 49 C.F.R. § 392.14;¹ (“Department of Transportation regulations prohibit the operation of a commercial vehicle in snow, ice or sleet if the weather is sufficiently severe.”) (citing 49 C.F.R. § 392.14).

OSHA’s investigation has determined there is reasonable cause to believe Respondents violated STAA as follows:

Complainant engaged in activity protected by STAA when he refused to drive a commercial motor vehicle in winter weather conditions that caused hazardous safety conditions on the public roads on January 16, 2018. Climatological reports issued by the National Weather Service for Lexington, KY for January 15 and January 16, 2018 indicated several inches of snow fell in the area, and local media outlets reported “slick conditions” and multiple crashes involving semi-trucks causing delays along the interstate. Also on that date, the Lexington City police department and the Boyle County Sheriff’s Office warned citizens not to drive on the roadways unless necessary due to the weather conditions.

Respondents had direct knowledge of Complainant’s protected activity because he notified both Hendricks and Myers personally about his safety concerns. Further, Hendricks and Myers each admit that Complainant notified them that he did not believe it was safe to operate a commercial motor vehicle given the road conditions. Respondents also acknowledge that, after further

¹ “Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.” 49 C.F.R. § 392.14

discussion, Complainant continued to refuse to drive his assigned route/dispatch on grounds that it was not safe to drive due to the weather and road conditions.

After Complainant told Hendricks and Myers that he would not drive because of the road conditions, Respondents told Complainant if he did not complete the route they would charge him \$500 for dropping the route and cancel his contract altogether. Complainant continued to refuse to drive because of the unsafe road conditions, and Respondents terminated Complainant's employment. Myers specifically admitted that his decision to terminate Complainant's employment included Complainant's refusal to drive on January 16, 2018. Additionally, the very close temporal proximity between the Complainant's protected activities and the Respondents' adverse actions – both occurred on the same day – creates a strong inference that Respondents' decisions were motivated by discriminatory animus toward Complainant's protected activity.

Respondents' Position

Respondents state they terminated Complainant based on a "totality of circumstances", which included his refusal to drive on January 16, 2018, and performance issues. While Respondents admit that Complainant refused to drive on January 16, 2018, on grounds that it was unsafe due to the wintery weather conditions, they assert the conditions were not "sufficiently dangerous" to justify Complainant's refusal. Essentially, Respondents argue Complainant's apprehension was not objectively reasonable and thus his refusal is not protected. To bolster their position, Respondents note that other drivers who were operating in the same general vicinity completed their assigned routes and did not raise any safety concerns regarding the weather.² Respondents also proffered evidence of customer complaints about Complainant and clerical errors in his paperwork. However, altogether the evidence supports Respondent decided to terminate Complainant's employment only after, and because, he engaged in protected activity.

In sum, the preponderance of the evidence shows: 1) Complainant engaged in protected activity when he refused to operate a commercial motor vehicle based on his objectively reasonable apprehension of danger to himself or the public because of weather conditions; 2) Respondents had knowledge of Complainant's refusal and the basis for that refusal; 3) Respondents took adverse employment actions against Complainant; and 4) Respondents' admissions and the close proximity between the protected activity and adverse action, as well as the other evidence described above, demonstrate the requisite causal connection between Complainant's protected activity and Respondents' decision to terminate his employment. Notably, as explained above, Respondents affirmatively admit that Complainant's refusal to drive on January 16, 2018, led directly to the decision to terminate Complainant's contract. Finally, Respondents' attempt to discount the legitimacy of Complainant's refusal to operate is not supported by the evidence and does not negate either the subjective or objective reasonableness of Complainant's refusal.

Thus, the preponderance of the evidence demonstrates that Complainant's engagement in activity protected by STAA was, at minimum, a contributing factor to Respondents' adverse actions; Respondents have failed to submit clear and convincing evidence to the contrary. Consequently,

² In contrast to Respondent's evaluation of weather conditions, and as noted above, the pertinent climatological reports indicate frozen precipitation. Additionally, local law enforcement and media outlets were urging people to stay off the roads due to slick conditions and numerous vehicular accidents.

there is sufficient evidence to demonstrate that Respondents violated the whistleblower protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105.

On January 28, 2019, OSHA issued a Due Process Letter to Respondents notifying them of the available evidence as required by 29 C.F.R. §1978.104(f). The letter outlined OSHA's initial findings and advised Respondents that, based on the evidence gathered up to that date, OSHA had reasonable cause to believe that Respondents violated the whistleblower protection provision of STAA. Respondents were provided with the opportunity to meet with OSHA and provide additional evidence, so long as they contacted OSHA about their desire to do so within 10 days of receipt of this letter. On March 21, 2019, Respondents, through their legal representative, notified OSHA that they would not be submitting anything further.

Because of his termination, Complainant's personal income has been reduced significantly. Additionally, the Complainant has suffered mental anguish and undue stress due to his termination and consequential financial hardships.

Respondents exhibited reckless disregard for the law and complete indifference to Complainant's statutory worker protection rights when they immediately retaliated against him for refusing his route based on subjectively and objectively reasonable safety concerns associated with the hazardous road conditions. Respondents' lack of regard to the law and worker rights warrant punitive damages in this case.

In the absence of clear and convincing evidence indicating that Respondents would have taken the same adverse action even if Complainant had not engaged in protected activity, OSHA finds reasonable cause to believe that Respondents violated 49 U.S.C. 31105(a)(1)(A)(i) and issues the following order to remedy the violation(s):

Preliminary Order

1. Upon receipt of this Secretary's Findings and Preliminary Order, Respondents shall immediately reinstate Complainant to his former position with all the pay, seniority, benefits, and other rights he enjoyed before his discharge.
2. Respondents shall pay Complainant back wages, minus interim earnings, for the time of his termination date until Respondents make a bona fide offer of reinstatement to Complainant. The back wages are calculated at a weekly rate for Complainant of \$874.14; and is included in the attached spreadsheet:
3. Respondents shall pay Complainant interest in accordance with IRS Code 26 U.S.C. §6621, which sets the interest rate for underpayment of federal taxes. These amounts shall continue to accrue until paid in full.
4. Respondents shall pay Complainant compensatory damages in the amount of \$50,000.00 for emotional distress, pain and suffering.
5. Respondents shall pay Complainant attorney fees associated with this matter in the amount of \$5,871.85.

6. Respondents shall pay Complainant punitive damages in the amount of \$100,000 for their reckless disregard for the law and indifference to Complainant's rights.
7. Respondents shall expunge from Complainant's personnel records any adverse references relating to Complainant's termination and/or any of the facts at issue in this case.
8. In responding to any inquiry regarding Complainant's employment with Respondents, Respondents, as well as their agents, representatives, employees, and/or all those in active concert with any of the Respondents, shall not make any adverse statements with respect to Complainant's termination and/or any of the facts at issue in this case.
9. Respondents, as well as their agents, representatives, employees, and/or all those in active concert with any of the Respondents, shall not engage in any future retaliation or discrimination against Complainant or their representatives in any manner for instituting or causing to be instituted any proceeding under or related to the referenced Act.
10. Respondents shall post immediately the attached "Notice to Employees" and "Fact Sheet" in a conspicuous place in or about Respondents' facility, including all places where notices for employees are customarily posted, including on a website for employees, if there is one, and maintain for a period of at least 60 consecutive days from the date of posting, said Notice to Employees to be signed by a responsible official of Freight Rite, Inc. and the date of actual posting to be shown thereon.
11. Respondents shall train its managers and employees about their worker protection rights under the STAA without fear of retaliation. Respondents shall complete the training within 60 days of the date of this Order. Within 30 days of the date of the training's completion, Respondents will provide OSHA with proof of such training by mailing the materials and list of attendees to Antione Robinson, Assistant Regional Administrator for Whistleblower Protection Programs, U.S. Department of Labor, OSHA, 61 Forsyth Street, S.W., RM 6T50, Atlanta, GA 30303.

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:

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
PH: (202) 693-7300; Facsimile: (202) 693-7365

With copies to:

Mr. Clint Collins

c/o Paul Taylor, Esq.
Truckers Justice Center
5100 Edina Industrial Blvd.
Suite 230
Edina, MN 55439

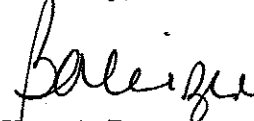
Kurt Petermeyer, Regional Administrator
U. S. Department of Labor, OSHA
61 Forsyth Street, SW, RM 6T50
Atlanta, GA 30303

U.S. Department of Labor
Office of the Regional Solicitor
61 Forsyth Street, SW, Suite 7T10
Atlanta, GA 30303

In addition, please be advised that the hearing is an adversarial proceeding before an Administrative Law Judge (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. This decision will become final unless one of the parties files a timely appeal with the Administrative Review Board (ARB), to which the Secretary of Labor has delegated responsibility for reviewing final agency decisions under STAA. Note, however, that the order of reinstatement is effective immediately upon receipt of these findings, and is not stayed pending review by the ALJ.

A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of the complaint. The rules and procedures for the handling of STAA cases can be found in Title 29, code of Federal Regulations, Part 1978, and may be obtained at www.whistleblowers.gov.

Sincerely,


for Kurt A. Petermeyer
Regional Administrator

cc: Chief Administrative Law Judge, USDOL
Federal Motor Carrier Safety Administration, USDOT
Directorate of Whistleblower Protection Programs, USDOL



NOTICE TO EMPLOYEES



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

FREIGHT RITE, INC., TODD MYERS, and DUSTIN HENDRICKS have been ordered to make whole an employee who was found to have been retaliated against for exercising rights under the employee protection provisions of the Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105, as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No.110-53. The above-mentioned Respondents have also taken affirmative action to ensure the rights of its employees under employee whistleblower protection statutes including STAA.

PURSUANT TO THAT ORDER, FREIGHT RITE, INC., TODD MYERS, and DUSTIN HENDRICKS AGREE THAT IT WILL NOT:

Discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because -

(A)(i) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order, or has testified or will testify in such a proceeding; or

(ii) the person perceives that the employee has filed or is about to file a complaint or has begun or is about to begin a proceeding related to a violation of a commercial motor vehicle safety or security regulation, standard, or order;

(B) the employee refuses to operate a vehicle because -

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security; or

(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's hazardous safety or security condition;

(C) the employee accurately reports hours on duty pursuant to chapter 315;

(D) the employee cooperates, or the person perceives that the employee is about to cooperate, with a safety or security investigation by the Secretary of Transportation, the Secretary of Homeland Security, or the National Transportation Safety Board; or

(E) the employee furnishes, or the person perceives that the employee is or is about to furnish, information to the Secretary of Transportation, the Secretary of Homeland Security, the National Transportation Safety Board, or any Federal, State, or local regulatory or law enforcement agency as to the facts relating to any accident or incident resulting in injury or death to an individual or damage to property occurring in connection with commercial motor vehicle transportation.

FREIGHT RITE, INC., TODD MYERS, and DUSTIN HENDRICKS

DATE

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