



In the Matter of:

EDWIN GONZALEZ,

ARB CASE NO. 01-102

COMPLAINANT,

ALJ CASE NO. 01-STA-18

v.

DATE: December 12, 2001

**LAGONE PIPELINE & UTILITY
CONTRACTING DIVISION,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

FINAL DECISION AND ORDER

Complainant Edwin Gonzalez filed the instant complaint with the Labor Department's Occupational Safety and Health Administration ("OSHA")^{2/} alleging that Respondent Lagone Pipeline & Utility Contracting Division ("Lagone") terminated his employment in violation of the employee protection provisions of the Surface Transportation Assistance Act ("STAA"), 49 U.S.C.A. §31005 (West 1997). OSHA investigated the matter and found no merit to the complaint. Gonzalez objected to that determination and the matter was referred to an Administrative Law Judge ("ALJ") for a hearing, pursuant to 29 C.F.R. §1978.105 (2001).

The ALJ found that Gonzalez engaged in activity protected by the STAA and that his protected activity was a factor in Lagone's decision to terminate his employment. However, the ALJ further found that Lagone would have terminated Gonzalez's employment even if he had not engaged in the protected activity. Therefore, the ALJ recommended that Gonzalez's complaint be dismissed.

The ALJ's decision is before the Board pursuant to the automatic review procedures under 29 C.F.R. §1978.109(c)(1). Pursuant to 29 C.F.R. §1978.109(c)(2), the Board invited both parties

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

^{2/} OSHA is the agency within the Department charged with investigating complaints that an employer has violated the STAA's whistleblower protection provisions. 29 C.F.R. §1978.102(c) (2000).

to file briefs in support of, or in opposition to, the ALJ's recommended decision. Neither party elected to file briefs.

Under the STAA implementing regulations, the Board is bound by the factual findings of the ALJ if those findings are supported by substantial evidence on the record considered as a whole. 29 C.F.R. §1978.109(c)(3). The Board reviews the ALJ's conclusions of law *de novo*. *Johnson v. Roadway Express, Inc.*, ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000) citing *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

We have reviewed the record in this matter and the ALJ's Recommended Decision and Order. The ALJ's finding that Gonzalez would have been terminated even absent protected activity is supported by substantial evidence on the record considered as a whole. We therefore adopt and attach the ALJ's recommendation and **DISMISS** Gonzalez's complaint.

SO ORDERED.

PAUL GREENBERG
Chair

RICHARD A. BEVERLY
Alternate Member