

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX



June 12, 2017

Mr. Lewis Seals, Jr.

Re: Greyhound Lines, Inc./Seals/4-1760-17-015

Dear Mr. Seals:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by Mr. Lewis Seals, Jr. (Complainant) against Greyhound Lines, Inc. (Respondent) on November 7, 2016 under the Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105. In brief, Complainant alleged that Respondent harassed him eventually leading to his constructive discharge in retaliation for raising various safety concerns.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IV, finds that there is no reasonable cause to believe that Respondent violated the STAA and issues the following findings:

Secretary's Findings

Complainant's employment with Respondent ended on or about November 7, 2016. On November 7, 2016, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of the STAA. As this complaint was filed within 180 days of the alleged adverse action, it is deemed timely.

Respondent is a person within the meaning of 1 U.S.C. §1 and 49 U.S.C. §31105. Respondent is also a commercial motor carrier within the meaning of 49 U.S.C. §31101. Respondent is engaged in transporting products on the highways via commercial motor vehicle, that is, a vehicle designed to transport more than 10 passengers including the driver.

Complainant is an employee within the meaning of 49 U.S.C. §31101. In the course of his employment, Complainant directly affected commercial motor vehicle safety, in that he drove Respondent's vehicles over highways to transport passengers.

Complainant was employed by Respondent as an extra-board driver, meaning that he was assigned to take extra runs and cover for regular drivers. Complainant asserts that in July 2016, he reported to management that he was being "harassed" by fellow drivers, as a result of his high on-time percentage and basic adherence to company policies.

Complainant submitted a leave request on or about July 18, 2016 asking for time off between July 28 and August 1, 2016; due to scheduling conflicts, management could not approve leave for the exact days requested. However, management did approve alternate leave days from August 1 through August 5, 2016. After being notified that he could not take the requested leave, Complainant booked off as being fatigued on July 28, 2016. Complainant did not book back on or contact Respondent from July 29 to August 1, 2016. As a result of Complainant's booking off, failure to book back on, and his lack of communication, Respondent sent Complainant a letter directing him to report to his supervisor on August 9, 2016. During this meeting Complainant was asked why he failed to answer phone calls from Respondent and Complainant was reported to have answered that he was frustrated and needed time off.

On August 6, 2016, Complainant was given an assignment from Atlanta, GA to Nashville, TN. Complainant reported to management that the bus' brakes were faulty and parked the bus. When the Complainant was approached by a management official, he failed to comply with the supervisor's instructions and subsequently refused to complete his assignment using an alternate bus, despite the fact that the vehicle did not have any discernable safety-related problems.

Thereafter, on August 30, 2016, Complainant was assigned a route from St. Louis, MO to Salina, KS; however after his arrival (and a 2-hour delay), he booked off as fatigued. Then, on September 16, 2016, Complainant refused to drive his scheduled charter bus after noticing that a tail light was out. Once the tail light was replaced, he continued his refusal. When management attempted to discuss the situation with Complainant, he abruptly left the office exclaiming that Respondent was harassing him. Due to Respondent's inability to garner a statement from Complainant, he was held out of service. As Complainant failed to report back to work, he was not placed back in service.

On November 7, 2016, Complainant tendered his resignation via email.

Complainant contends that the aforementioned management actions amounted to harassment that led to Complainant's constructive discharge. Respondent argues that Complainant neither engaged in protected activity nor suffered an adverse action; however, even assuming that those prima facie elements do exist, Respondent proffered sufficient evidence to demonstrate that the actions taken by Respondent were for legitimate, non-retaliatory reasons.

Furthermore, although Complainant argues that his resignation amounts to a constructive discharge, there was insufficient evidence to support a finding that Respondent deliberately created working conditions that were so difficult or unpleasant that a reasonable person in similar circumstances would have felt compelled to resign.

Consequently this complaint is dismissed.

Respondent 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
USDOL-Office of Administrative Law Judges
800 K Street NW, Suite 400
Washington, D.C. 20001-8002
Telephone: (202) 693-7300
Fax: (202) 693-7365

With copies to:

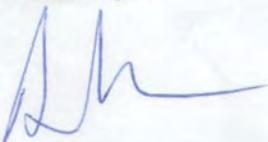
Andrew Young, Esq.
Seyfarth Shaw LLP
131 S. Dearborn Street, Suite 2400
Chicago, IL 60603

And

Kurt Petermeyer, Regional Administrator
U.S. Department of Labor – OSHA
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303

In addition, please be advised that the U.S. Department of Labor does not represent any party in the hearing; rather, each party presents his or her own case. 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. 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 STAA. 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,



Antione Robinson
Assistant Regional Administrator

cc: Respondent's attorney
Chief Administrative Law Judge, USDOL
DOT