

U.S. Department of Labor

Occupational Safety and Health Administration
1648 Tri-Park Way
Appleton, Wisconsin 54914
(920) 734-4521
(920) 734-2661



September 14, 2005

Field Administrator
Federal Motor Carrier Safety Administration
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461

RECEIVED
SEP 19 2005

US DOT Motor Carrier Safety
Madison Wisconsin

Re: Marten Transport, Ltd. **b3, b7D** -1470-05-009

Dear Sir:

The U.S. Department of Labor has completed its investigation of the complaint in the above-captioned complaint filed under the provisions of the Surface Transportation Assistance Act. A copy of our findings is enclosed for your information.

Should you have any questions, please call.

Sincerely,

ML Melvin R. Lischefski
Area Director

MRL/ccf

Enclosure: Copy of Secretary's Findings



September 14, 2005

(b)(3); (b)(7)(D)

RE: Marten Transport, Ltd./Carter/5-1470-05-009

(b)(3); (b)(7)(D)

This is to advise you that we have completed our investigation of the above-referenced complaint filed by you against Marten Transport, Ltd. (hereinafter referred to as Respondent) under the employee protection provisions of 49 U.S.C. §31105 of the Surface Transportation Assistance Act (STAA). In brief, you claimed that the Respondent discharged you on June 14, 2005, because you voiced safety complaints to management in regards (b)(3); (b)(7)(D) and because you refused to accept a dispatch on June 13, 2005, because you claimed the truck was out-of-compliance with the Federal Motor Carrier Safety Regulations (FMCSR).

Following an investigation of this matter by a duly authorized investigator, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region V, pursuant to 49 U.S.C. §31105 of the STAA and Secretary's Order 5-2002, finds no reasonable cause to believe that the Respondent violated your rights under STAA and issues the following findings.

Secretary's Findings

Respondent is a company within the meaning of 1 U.S.C. §1 and 49 U.S.C. §31105. It is also a commercial motor carrier within the meaning of 49 U.S.C. §31101. Respondent is engaged in transporting cargo on the highways and maintains a place of business in Mondovi, Wisconsin.

Respondent hired you (b)(3); (b)(7)(D) as a driver of a commercial motor vehicle, *to wit*, a truck with a gross vehicle weight rating of 10,001 pounds or more. You were employed by a commercial motor carrier and you drove Respondent's truck over highways in commerce to transport cargo. In the course of your employment, you directly affect commercial motor vehicle safety.

You claim you were discharged on (b)(3); (b)(7)(D) because you complained to management that the truck you retrieved in Scranton, Pennsylvania had numerous safety violations; and because you refused to accept a dispatch on (b)(3); (b)(7)(D) as you claimed the truck was out-of-compliance with the FMCSR. On June 16, 2005, you filed a complaint with the Occupational Safety and Health Administration alleging that Respondent discriminated against you in violation of 49 U.S.C. §31105. This complaint was timely filed.

49 U.S.C. §31105(a)(1)(A) prohibits discharging or otherwise discriminating against an employee if the employee has filed a complaint or begun a proceeding related to a violation of a

commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding. 49 U.S.C. §31105(a)(1)(B) prohibits discharging or otherwise discriminating against an employee if 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 or health; or (ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition.

(b)(3); (b)(7)(D) you retrieved a truck in Scranton, Pennsylvania which had been involved in an accident (i.e. trailer struck an overpass). You contacted the company and reported that some things needed to be fixed on the truck prior to your departure (i.e. oil/coolant levels, washer fluid, fire extinguisher replaced, and washer motor). You stated that the items which required fixing were fixed, you were given a new fire extinguisher. Prior to your departure, you discussed with a Respondent Customer Site Carrier Representative that you weren't happy with the truck as the windshield washers did not work as well as you liked, that there was some cosmetic damage to the outside of the truck, the bunk light was out, and the truck was dirty. You reassured the Carrier Representative that the truck was road worthy and legal to drive; however you wanted it known that you didn't cause the damage to the truck. You then proceed with your dispatch.

On June 4, 2005, you stated you noticed the truck had a leaky wheel seal. You continued to drive to your destination in Michigan. On June 6, 2005, after you made a delivery in Kalamazoo, Michigan, you reported to Respondent's Road Service Leadman that the truck had a wheel seal/oil leak, the wiper motor didn't work, and the truck was dirty. You agreed to drive the truck to Dermody Peterbilt Sales in Grand Rapids, Michigan where the truck could be repaired. Your driver's log indicates you arrived in Grand Rapids at 1:00 p.m. While the truck was in the shop you stayed at your residence in Middleville, Michigan. Repairs to the truck were complete on June 10, 2005, at which time you proceeded on dispatch to Tomah, Wisconsin, with a delivery date of June 12, 2005. You were then to return to Respondent's main terminal in Mondovi, Wisconsin and do a drop and hook with a dispatch going to Bolingbrook, Illinois. You stated the Bolingbrook dispatch was canceled when Respondent's dispatch learned the truck was returning to the main terminal for repairs.

According to your driver's log you arrived at the Respondent's main terminal at 8:30 p.m. on June 12, 2005. Upon your arrival you completed a Driver Vehicle Condition Report where you checked the 5th Wheel, left steer tire had a cut in it, fluorescent light in bunk, high idle switch does not connect to hold at 900 RPM, air valve on king pin release does not release, engine compartment needs cleaning, and oil all over truck needs washing. You did not drive this vehicle out of Respondent's yard after this date.

The Respondent acknowledges that you were not happy with your truck assignment and that you spoke with several employees, including members of management, in regards to a number of concerns you had. The Respondent claims that they addressed your concerns to the best of their ability. On June 14, 2005, you informed Human Resources personnel about your dissatisfaction with the company and that you wanted to resign. You requested an exit interview; however you demanded that management needed to look at the truck prior to your departure despite management's reassurances that it wasn't necessary. You became upset and felt threatened when personnel informed you that they would give you a bus ticket to your home and that any of your belongings that you would not be able to take with you would be shipped to your home. At this point, you requested access to a telephone as you wanted to call the DOT and FMCSA. You were allowed to make a number of calls from the driver's lounge. While the Respondent was allowing you to make your calls, the Director of Human Resources received a call from an

Officer from the Wisconsin State Patrol inquiring as whether or not you were still on their property. When it was reported that you were still on the premises, the Officer advised the company to contact the local authorities and have them present when they asked you to leave. The Respondent denied your allegation had merit stating you indicated you wanted to resign and that your employment was terminated when you refused to depart the premises.

The Investigation revealed that you did raised numerous concerns you had with the truck and company policies to employees and management during your short employment with Respondent. The majority of the issues you raised did not deal directly with FMCSR. The evidence reveals that the Respondent addressed your concerns; specifically the ones which dealt with the FMCSR. The evidence reveals that your vehicle did require some repairs which the Respondent addressed at the time the concerns were raised by you; and that the evidence did not reveal you drove a vehicle which was out-of-service. Furthermore, your claim that you were terminated for refusing a dispatch on June 13, 2005, has no merit as this dispatch was canceled by the dispatcher once they became aware the truck was returning to the terminal for repairs.

In conclusion, you failed to demonstrate that your protected activity was a contributing factor in the termination of your employment at Respondents. Consequently, this complaint is dismissed.

You and Respondent have 30 days from receipt of these Findings and Preliminary Order to file objections and request a hearing on the record, or they will become final and not subject to court review. Objections must be filed in writing with:

Chief Administrative Law Judge
U.S. Department of Labor
Suite 400N, Techworld Building
800 K Street NW
Washington, D.C. 20001-8002
(202) 693-7542, Facsimile (202) 693-7365

with copies to:

Marten Transport, Ltd. (Respondent)
129 Marten Street
Mondovi, WI 54755
(920) 326-5881

Michael G. Connors
Regional Administrator
Occupational Safety and Health Administration
230 South Dearborn Street, Room 3244
Chicago, Illinois 60604.

Melvin R. Lischefski
Area Director
U.S. DOL-OSHA
1648 Tri-Park Way
Appleton, WI 54914

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing held under the Act; rather, each party presents its 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 *de novo* for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments, and testimony 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 STAA. Unless a request for appeal is received by the Administrative Law Judge within the thirty-day period, this notice of determination will become the Final Order of the Secretary of Labor. Respondent is being advised of the determination in this case and the right to a hearing. A copy of this letter has also been sent to the Chief Administrative Law Judge with your complaint. If you decide to request a hearing, it will be necessary for you to send copies of the request to the opposing party and to this office at the address noted above.

If you have any questions, please do not hesitate to call me at (920) 734-4521.

Sincerely,



to Melvin R. Lischefski
Area Director

cc: Respondent
Chief Administrative Law Judge
Federal Motor Carrier Safety Administration