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Vague Complaints Fail to Add Up to STAA Violation, According to ARB

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The Administrative Review Board (ARB) of the Department of Labor (DOL) recently ruled that a transportation worker's general complaint that a vehicle is unsafe will not constitute protected activity under federal law. In *Leaks v. Arctic Glacier*, ARB No. 15-079, ALJ No. 2014-STA-80 (ARB Feb. 7, 2017), the ARB reviewed a complaint brought under the Surface Transportation Assistance Act (STAA), a statute signed into law in 1982 containing an anti-retaliation provision that protects employees from retaliation for opposing or refusing to engage in violations of commercial motor vehicle safety laws. The ARB's decision in *Leaks* offers insight into what types of evidence are required to establish protected activity under the statute.

About Leaks v. Arctic Glacier

Nathan Leaks began working as a driver for Arctic Glacier in July 2013, making local ice deliveries. He typically drove an International model tractor attached to a 45-foot trailer on his routes. The month after Mr. Leaks was hired, Arctic Glacier sent its International tractor to the shop for repairs and temporarily replaced it with a Freightliner model tractor. Mr. Leaks complained that the gears did not shift smoothly on the Freightliner and informed his supervisor that he did not feel safe driving it.

The supervisor offered to give Mr. Leaks additional training with the Freightliner and instructed him to report any mechanical issues with the truck. The parties later disputed whether Mr. Leaks' supervisor then asked him whether he wanted to continue working for Arctic Glacier or asked him if he wanted to continue driving the Freightliner. In either event, Mr. Leaks answered "no" to one of these questions and his supervisor responded by asking him to turn in his keys, effectively terminating him. Mr. Leaks subsequently filed a complaint alleging that his termination constituted unlawful retaliation under the STAA. The DOL administrative law judge (ALJ) who heard the case dismissed Mr. Leaks' complaint, finding that he had failed to establish that he engaged in protected activity under the statute.

In reaching its conclusion, the ALJ determined that Mr. Leaks' testimony that he'd refused to work because he felt the Freightliner was unsafe to drive was not credible. The ALJ found instead that Mr. Leaks' real reason for refusing to work was because he was angry about being directed to drive the unfamiliar model tractor. Moreover, the ALJ determined that no reasonable person would have believed that the vague gear issue Mr. Leaks complained about constituted a violation of "a regulation, standard, or order of the United States related to commercial motor vehicle safety, health, or security," nor did it give Mr. Leaks a "reasonable apprehension of serious injury to himself or the public," as required by the STAA. For these reasons, the ALJ found that Mr. Leaks did not engage in protected activity and dismissed complaint.

Mr. Leaks appealed the ALJ decision to the ARB, which found that substantial evidence supported the ALJ's findings. The ARB therefore upheld the order dismissing the complaint.

Establishing Retaliation Under the STAA

While the ARB's decision in *Leaks* is brief, it sheds some light on the evidence required to establish a

violation of the STAA anti-retaliation provision. Specifically, a STAA complainant's refusal to drive will not constitute protected activity based solely on vague allegations of feeling "unsafe." Rather, his concerns about trucking safety must either relate more specifically to a violation of some commercial motor vehicle safety law or amount to a "reasonable apprehension of serious injury to himself or the public."

DOL and federal courts have recognized protected activity where transportation workers have raised more detailed concerns about safety and faced retaliation as a result. For instance, in August 2016, the Tenth Circuit Court of Appeals affirmed an ARB decision finding that a truck driver had a "reasonable apprehension of serious injury" when he abandoned his truck with non-functioning heat and frozen brakes during subzero conditions. A July 2016 decision by the ARB also found that a driver had engaged in protected activity when he refused to drive his truck into blizzard conditions. Mechanical or environmental conditions such as these are sufficient to cause a driver to have a "reasonable apprehension of serious injury." As *Leaks* shows, vague reports about "gears grinding" – particularly when coupled with an ALJ determination that the complainant's testimony was not credible – will not pass muster.