

No. _____

**In The
Supreme Court of the United
States**

Adriano Kruel Budri,

Petitioner,

v.

**Administrative Review Board,
United States Department of Labor,**

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for 5th Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

- 1) Whether the Panel of the U. S. Court of Appeals for 5th Circuit has provided legal guidance about the safety related issue of logging time for repair a commercial motor vehicle in the category on duty not driving time status regulated by the transportation regulations and under coverage of the protected activity provision of the 49 U.S.C.A. §31105(a)(I)(C) of the STAA (Surface Transportation Assistance Act)?

RELATED CASES

There is not related cases found and concerning the question of law and fact in this particular safety related issue of logging time for repair a commercial motor vehicle in the category on duty not driving time status regulated by the transportation regulations and under coverage of the protected activity provision of the 49 U.S.C.A. §31105(a)(I)(C) of the STAA (Surface Transportation Assistance Act) for commercial driver employee protection provisions.

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App.1: The Court of Appeals for 5th Circuit denied the Petition for Review and silenced about the logging time for repair a commercial motor vehicle in the category on duty not driving time status as safety related issue and being a mandatory HOS (Hours of Service) for transportation regulations under the protection within the meaning of 49 U.S.C.A. §31105(a)(I)(C). A1

App.2: The Court of Appeals for 5th Circuit denied the Petition for Panel Rehearing and silenced about the logging time for repair a commercial motor vehicle in the category on duty not driving time status as safety related issue and being a mandatory HOS (Hours of Service) for transportation regulations under the protection within the meaning of 49 U.S.C.A. §31105(a)(I)(C). A6

App.3: The decision and order of the Administrative Review Board of U.S. DOL has issued an opinion about the logging time for repair a commercial motor vehicle in the category on duty not driving time status that is a protected activity within the meaning of 49 U.S.C.A. §31105(a)(I)(C), and it is a genuine issue for trial as safety related and when a commercial driver employee has accurately logged the daily service hours and in compliance with the mandatory HOS (Hours of Service) regulated by the transportation regulations. A7

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OPINIONS BELOW Cont.

on duty not driving time status in the mandatory HOS (Hours of Service) is “*an employer’s choice*” and it is not a protected activity under the STAA. **A15**

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JURISDICTION

The Panel of the Court of Appeals for 5th Circuit denied a discretionary review of the final administrative decision order issued by the ARB (Administrative Review Board) of U. S. DOL and entered a decision and order on April 9, 2019. *Budri v. Admin. Review Bd.*, No. 18-60579 (5th Cir. Apr. 9, 2019) (per curiam) (unpublished) (2019 U.S. App. LEXIS 10419).

The Panel of the Court of Appeals for 5th Circuit denied a Petition for Panel Rehearing for a discretionary review of the final administrative decision order of ARB (Administrative Review Board) of U.S. DOL and entered a decision and order on April 29, 2019,

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. 1254(1) and for a discretionary review about the applicability of the federal statutory STAA (Surface Transportation Assistance Act) provision: 49 U.S.C.A. §31105(a)(I)(C) and when the commercial driver employee has accurately reported hours on duty under the protected activity of the STAA as a safety related matter and being a genuine issue for trial.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Surface Transportation Assistance Act (STAA)

49 U.S.C. §31105 Employee protections:

(C) The employee accurately reports hours on duty pursuant to chapter 315.

49 CFR §395.2 definitions: On-duty time is all time from when a driver begins to work or is required to be in readiness to work until the driver is relieved from work and all responsibility for performing work. On-duty time includes: All time repairing, obtaining assistance, or remaining in attendance upon a disabled Commercial Motor Vehicle (CMV).

INTRODUCTION

In order to promote protection for Commercial Truck Drivers CDL Class A Employees in the United States, Congress enacted the Surface Transportation Assistant Act, and to avoid abuse from commercial motor carrier employers about the violation of the daily HOS (Hours of Service) and other safety issues related with the commercial motor vehicle safety regulations in interstate and intrastate commerce.

STATEMENT OF FACTS

On January 25, 2017, Petitioner was hired as an intrastate commercial truck driver CDL Class A in Texas as full time employee from the commercial motor carrier employer FIRSTFLEET, INC.

In his period of the safety sensitive function employment, the petitioner has noticed safety violations regarding the current FMCSR, and the Texas Administrative Code enforced by the Texas Department of Public Safety for intrastate

commercial truck drivers CDL Class A in the State of Texas.

In the administrative complaint filed before the agency Occupational Safety and Health Administration (OSHA) of the U. S. Department of Labor, Petitioner has alleged protected activities under the federal statutory Surface Transportation Assistance Act (STAA), Complaint No: *OSHA-FIRSTFLEET, INC (DOT#313891)/BUDRI/4-1760-17-060*.

OSHA as agency in charge of the U.S. DOL to enforce the statute STAA has admitted in the investigation findings report about the HOS (Hours of Service) violation reported by the Petitioner, but dismissed the petitioner's administrative complaint and noticed a time frame within 30 days to the petitioner to file a *de novo* administrative complaint before the Office of the Administrative Law Judges of U. S. Department of Labor and with the right for discovery and one evidentiary hearing.

Petitioner has filed a *de novo* administrative complaint within 30 days time frame permitted by the federal statute STAA.

The Administrative Law Judge Larry W. Price has been assigned for *de novo* administrative complaint and having concluded in his summary decision and without a evidentiary hearing recorded occurred that the petitioner had engaged in certain protected activities during the course of the employment with the commercial motor carrier FIRSTFLEET, INC, but having the ALJ abused of his discretion of

concerning the interpretation of the mandatory HOS (Hours of Service) rule for Commercial Truck Driver employees and in flagrant collision with the current mandatory HOS (Hours of Service) regulated by the agency Federal Motor Carrier Safety Administration (FMCSA) of U.S. Department of Transportation for interstate commerce and by the Texas Administrative Code and enforced by the Texas Department of Public Safety for intrastate commerce in the State of Texas.

The ALJ has written in his summary decision that the mandatory HOS (Hours of Service) for commercial driver employees is an "*employer's choice*" as a "*Company Policy*" for the specific categories: Off Duty Time Status and On Duty Not Driving Time Status, and misleading the interpretation of one federal regulatory guidance issued by the FMCSA on 04/04/1977 for meal stops as off duty time status in order for a commercial motor vehicle (CMV) driver to record meal and other routine stops made during a work shift as off-duty time.

The federal regulatory guidance 62 Fed. Reg. 16370, 16422 has been issued to clarify the break time status for interstate commercial drivers as off duty time status and when a commercial driver shows fatigue or simply stop for a meal stop for 30 minutes as a break time status and having to log as off duty time status that specific period of the time and if the commercial truck driver is working in interstate commerce.

The ALJ Larry W. Price has misled the safety related mandatory HOS (Hour of Service) category for on duty not driving time status for all time repairing a commercial motor vehicle, and that is a mandatory in federal and state transportation regulation and not being "*an employer's choice*" as "*Company Policy*".

With the ALJ's misleading summary decision and dismissed *de novo* the administrative complaint, then the petitioner had 30 days permitted of the time frame from the date of ALJ's "D & O" issued and to file an Administrative Petition for Review before the Administrative Review Board. The petitioner has filed in a timely manner before the Administrative Review Board of United States Department of Labor, one Administrative Petition for Review.

The Panel of the ARB (Administrative Review Board) has granted the Petition for Review and having affirmed in a discretionary administrative review the overall ALJ's decision, but having disagreed in relation the ALJ's decision of logging time for repair a commercial motor vehicle in the safety related category on duty not driving time status.

The ARB has categorically stated that is a safety related and one genuine issue for trial and that the commercial driver employee was under the protective activity by the STAA49 U.S.C.A. §31105(a)(I)(C) provision and when he has raised valid safety concerns in a workplace discussion with the supervisor about the mandatory HOS (Hours of

Service) in Texas and for intrastate commercial driver employees.

Considering the flagrant discrepancy opinions and issued from (02) two administrative adjudicatory agencies of U. S. DOL about the protected activity provision of the 49 U.S.C.A. §31105(a)(I)(C) and having been enacted by the Congress and under the coverage of the federal statutory STAA provision, then the Petitioner sought a discretionary review before the Court of Appeals for 5th Circuit, which denied a Petition for Review and not having issued a legal guidance about the logging time for repair a commercial motor vehicle in the category on duty not driving time status as safety related and being a genuine issue for trial under the protected activity of the statute STAA for commercial driver employee protection provisions.

ARGUMENT

Petitioner asks this Court to grant the Petition for a Writ of Certiorari to reason that commercial driver employee who logs accurately the daily mandatory HOS (Hours of Service) is a safety related matter and a genuine issue for trial and it is a protected activity under the STAA provision 49 U.S.C.A. §31105(a)(I)(C) for interstate and intrastate commerce transportation regulations for commercial truck drivers.

The FMCSA for interstate commerce and the Texas Administrative Code for intrastate commerce specific clearly what means the category on duty time in the 49 CFR §395.2 definitions:

On-duty time is all time from when a driver begins to work or is required to be in readiness to work until the driver is relieved from work and all responsibility for performing work.

On-duty time includes: All time repairing, obtaining assistance, or remaining in attendance upon a disabled Commercial Motor Vehicle (CMV).

The category on duty time is identical from the Federal Motor Carrier Safety Administration regulation for interstate commerce and from the Texas Administrative Code as regulation for intrastate commerce.

On 05/04/2017, In the Matter of *Shawn Jennings, Complainant v. McLane Company, Inc, Respondent*, ALJ Case No. 2017-STA-00009, one Decision and Order has been dated, issued and assigned by the ALJ Larry W. Price of the United States Department of Labor, and involving directly the federal statute STAA (Surface Transportation Assistance Act) and the mandatory HOS (Hours of Service) for commercial driver employees with a private commercial motor carrier employer in the trucking employment business. The ALJ Larry W. Price has issued the following opinion ("D & O") on the page number 2 about the mandatory HOS (Hour of Service) for commercial driver employees with that commercial motor carrier employer called McLane Company.

III. UNDISPUTED MATERIAL FACTS As to Element (2), the undisputed material facts are these:

1. As a commercial motor carrier, Respondent must comply with the Department of Transportation Federal Motor Carrier Safety Administration's hours-of-service regulations. These regulations require a carrier's drivers to record their duty status on their driving logs.

In resume, the ALJ Larry W. Price has admitted in his Decision and Order's opinion issued and dated on 05/04/2017 as undisputed material facts that an commercial motor carrier as employer and respondent must comply with the transportation regulations for HOS (Hour of Service) and that is not ... *"an Employer's Choice" as a mere "an Company Policy" and much less "an Fleet Manager's Choice"...*, and it is in fact a mandatory transportation regulation and for public safety matter and being a protected activity for commercial driver employees under the federal statute STAA (Surface Transportation Assistance Act).

On 02/08/2018, in the Matter of *Adriano Budri, Complainant, v. FIRSTFLEET, INC, Respondent*, ALJ Case Number: 2017-STA-00086, also assigned by the ALJ Larry W. Price, the ALJ has changed drastically his Decision and Order opinion about the mandatory HOS (Hour of Service) for commercial driver employees and having misled a federal guidance dated on 04/04/1977, and when did not exist in that time the ELD (Electronic Logging Device) installed in the truck's cabs for mandatory electronic driver's daily hours of service logs as a mandatory transportation regulations prescribed by

U. S. DOT and FMCSA for interstate commercial drivers and from the State Transportation Regulations for intrastate commercial drivers and having been recognized by the U. S. Court of Appeals for the 7th Circuit in Decision and Order dated on 10/31/2016, See: *Owner-Operator Independent Drivers Association, Inc., Mark Elrod, and Richard Pingel, Petitioners, v. United States Department of Transportation et al., Respondents*, Case No. 15-3756, and from on petition for review of the final rule of the Federal Motor Carrier Safety Administration. FMCSA-2010-0167.

Below an excerpt text from the ALJ Larry W. Price's Decision & Order on the page number 7 for protected activity:

The Logging of Time Spent in Maintenance: Complainant had a discussion with Humphreys regarding logging his time while repairs were being completed on his vehicle. The issue discussed was whether Complainant should log in as "*On Duty Not Driving*" or as "*Off Duty*" and whether Texas or U. S. DOT regulations governed. As noted in *Blackann v. Roadway Express, Inc.*, ARB Case No. 02-115 (Jun. 30, 2004), federal guidance provides that "*it is the employer's choice whether the driver shall record stops made during a tour of duty as off-duty time.*" 62 Fed. Reg. 16370, 16422 (Apr. 4, 1977). The ARB held that this dispute involved *company policy, not any conduct that is protected by the Act*. On appeal, the Sixth Circuit affirmed the ARB, stating the ARB correctly noted that the regulations explicitly leave it to the employer to determine the manner of recording tour of duty time and that Roadway's time

log policies did not force Blackann to violate any federal regulation. *Blackann v. Roadway Express, Inc.*, 159 Fed. Appx. 704 (6th Cir. 2005). I find that Complainant's discussion with Humphreys regarding logging his time was not protected activity.

On 06/19/2018, In the Matter of *Adriano Budri, Complainant v. FIRSTFLEET, INC, Respondent*, ARB Case No. 18-025, the Panel of Administrative Review Board of United States Department of Labor has disagreed with the ALJ Larry W. Price's Decision & Order about the Logging of Time Spent in Maintenance was not protected activity. The Panel of ARB has stated clearly that is protected activity and it is strictly regulated by the transportation regulations and it is a genuine issue and it is a safety related matter and under the protected activity of the federal statutory STAA (Surface Transportation Assistance Act) for commercial driver employee protection provisions.

Below an excerpt text of the Final Decision & Order and issued by the ARB of U.S. DOL, and dated on 06/19/2018, on the page number 2 for causation, footnote number 5.

The ALJ held that Budri engaged in protected activity on January 30, 2017 when he reported a burned out bulb but that the evidence regarding Budri's February 8, 2017 discussion about how to log time while waiting for repairs did not constitute protected activity. We disagree with the latter finding. In the course of his discussion with his manager about how to log time, Budri insisted that

the direction he was given regarding logging time violated state or federal transportation regulations.

Department of Transportation regulations limit the hours of service for drivers and to ensure compliance drivers are required to record their duty status for each 24 hour period. 49 C.F.R. Part 395.8 (2017). Because hours of service are strictly regulated and the regulations distinguish between off-duty and on-duty (not driving), complaints about *how* a driver records driving time, it seems to us, are safety related. Also, STAA provides that a driver is protected when he “accurately reports hours on duty pursuant to chapter 315.” 49 U.S.C.A. § 31105 (a)(1)(C). We find that the evidence regarding Budri’s discussion about logging time presents a genuine issue for trial as to whether it constituted protected activity.

On April 9, 2019, about the denial of the petition for review, the Panel of the U. S. COA for 5th Circuit kept silenced and not having issued an opinion and much less a legal guidance for lower courts about the Logging of Time Spent in Maintenance and if it is a protected activity or not for commercial driver employees pursuant to chapter 315. 49 U.S.C.A. § 31105 (a)(1)(C) of the federal statute STAA (Surface Transportation Assistance Act) and being a mandatory transportation regulation for interstate and intrastate commerce.

On April 29, 2019, about the denial of the petition for panel rehearing, the Panel of the U. S. COA for 5th Circuit for more one time kept silenced and not having issued an opinion and much less a legal

guidance for lower courts about the Logging of Time Spent in Maintenance and if it is a protected activity or not pursuant to chapter 315. 49 U.S.C.A. § 31105 (a)(1)(C) of the federal statute STAA (Surface Transportation Assistance Act) and being a mandatory transportation regulation for interstate and intrastate commerce.

It is clear that the Administrative Law Judge Larry W. Price of the United States Department of Labor and located at Covington District Office in Louisiana need a legal guidance from the Supreme Court of the United States and concerning the mandatory HOS (Hour of Service) as protected activity for commercial driver employee protection provisions of the federal statute STAA (Surface Transportation Assistance Act) and when a Fleet Manager of the FIRSTFLEET, INC, as a private commercial motor carrier employer, the respondent violates flagrantly the mandatory HOS (Hour of Service) and illegally enticed and induced the commercial driver employee to violate the daily mandatory HOS (Hour of Service) in the category On Duty Not Driving Time Status for All Time Repairing a Commercial Motor Vehicle, and that is strictly regulated by the transportation regulations from the federal government and state governments, and not being in any way an "*employer's choice*" the category On Duty Not Driving Time Status for All Time Repairing a Commercial Motor Vehicle, and not having been the commercial driver employee relieved for the job by the employer and during his daily On Duty Working Activity Journey.

CONCLUSION

Petitioner respectfully requests that the Supreme Court should grant this Writ for Certiorari and to provide legal guidance for the lower courts about the federal statute STAA (Surface Transportation Assistance Act) of the 49 U.S.C.A. §31105(a)(I)(C), and whose provision is a safety related matter, also an genuine issue for trial, and a protected activity for commercial truck driver employees that are victims of the abuse, misuse and arbitrary illegal orders given from fleet managers of the private commercial motor carrier employers and that affect directly the safety livelihood of the commercial truck driver employees. Also, the legal guidance would be properly addressed to the Occupational, Safety and Health Administration, Office of Administrative Law Judges, and the Administrative Review Board of the United States Department of Labor.

Dated: 08/12/2019

Respectfully submitted

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