



January 20, 2016

Brindi Trailer Sales and Service, Inc.
Robert Urbina Brindi
903 Lewis Road
Meridale, NY 13806

Via UPS #1ZX1051V0198881219

Re: Brindi Sales and Service, Inc., et al/Gordon/2-0050-12-027
DOT Number 2077696

Dear Mr. Brindi:

This is to advise you that we have completed our investigation of the above referenced complaint filed by Robert Gordon (Complainant) against Brindi Trailer Sales and Service, Inc., and Robert Urbina Brindi (Respondents) on May 15, 2012, under the employee protection provisions of Section 405 of the Surface Transportation Assistance Act (STAA), 49 U.S.C. §31105 (STAA). In brief, Complainant alleges that on or about February 20, 2012, Respondents discharged him in retaliation for raising concerns to Respondents about defective equipment that Complainant had been assigned to operate, and for allowing the Pennsylvania Department of Transportation to inspect Complainant's assigned vehicle and place it out of service due to the numerous violations of safety regulations.

Following an investigation of this matter by a duly authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration, Region II, finds reasonable cause to believe that Respondents did violate 49 U.S.C. §31105, and issues the following findings:

Secretary's Findings

On May 15, 2012, Complainant filed a complaint with the Secretary of Labor alleging that Respondents retaliated against him in violation of the STAA. As this complaint was filed within 180 days of the alleged adverse action, it is timely filed.

Each Respondent is a persons within the meaning of 1 U.S.C. §1 and 49 U.S.C. §31105. Respondents are a commercial motor carrier within the meaning of 49 U.S.C. §31101. Respondents, maintain a principal place of business in Brooklyn, New York, and are engaged in transporting general commodities and freight along interstate highways.

Complainant was an employee within the meaning of 49 U.S.C. §31105. Complainant began working for Respondent, a commercial motor carrier, as an over the road truck driver in July 2011, operating tractor trailer units with gross vehicle weight ratings in excess of 10,001 pounds. In the course of his employment, Complainant directly affected commercial motor vehicle safety by driving Respondent's trucks over interstate highways in commerce transporting goods. Complainant and Respondents are therefore, covered by the STAA.

Complainant engaged in STAA protected activities. Complainant routinely drove tractor #5001 with trailer #53. Complainant began raising concerns to Respondent Robert Brindi about defective equipment on his assigned vehicle soon after he began employment in July 2011. In February 2012, Complainant submitted Drivers Vehicle Inspection Reports to Respondent on seven occasions that noted defects with the tractor and trailer, such as the brakes being out of adjustment and being ineffective, steering issues, leaking fluids, non-functioning turn indicator lights, and a cracked windshield. Despite repeated attempts to have the repairs made to the commercial motor vehicle, Respondents refused to do so. On February 20, 2012, Complainant contacted the Pennsylvania Department of Transportation Commercial Vehicle Enforcement Unit in order to request that his commercial vehicle be inspected. Complainant was instructed to drive to the inspection site near Luzerne, PA. An inspection of the vehicle resulted in 16 violations, and the vehicle was placed out of service until the necessary repairs could be made to it. This enforcement action was reported to the US Department of Transportation (US DOT). Many of the violations were the same safety hazards repeatedly reported by Complainant to Respondents. From the inspection site, Complainant immediately called Respondent Robert Urbina Brindi and informed him that he had been stopped by the Pennsylvania Department of Transportation Commercial Vehicle Enforcement Unit and the vehicle had been placed out of service. Respondent became extremely upset with Complainant for not avoiding the inspection site and summarily discharged Complainant. Complainant's participation in the inspection process is a STAA protected activity.

Complainant filed a complaint with the Secretary of Labor on May 15, 2012, alleging that Respondents retaliated against him for reporting vehicle defects to them, and for allowing his assigned vehicle to be inspected by the Pennsylvania Department of Transportation Commercial Vehicle Enforcement Unit, which resulted in the vehicle being placed out of service until the necessary repairs were made.

Respondents received initial notification of the complaint on May 25, 2012 via USPS tracking number 7009 1680 0002 2756 3781. A position statement was first submitted to OSHA on May 27, 2015. Respondent has provided several different reasons for why this occurred. Respondent Robert Brindi has asserted that his former administrative assistant had sent a position statement to someone in 2012, which he believed may have been Truckers Justice Center, Complainant's Representative. There is no evidence that The Truckers Justice Center received the position statement or that one was sent to them. On June 12, 2015, notification docketing letters were again issued to Respondents at 903 Lewis Road, Meridale, New York via USPS tracking number 7014 0150 0001 1026 1038 and 7014 0150 0001 1026 1045 along with copies of the original docket letters dated May 17, 2012, the written complaint, and a designation of representative form. Respondents finally accepted delivery of this package on June 30, 2015. On June 23, 2015 copies of what had been mailed via USPS was sent to Respondent via UPS, tracking number 1ZX10523A898018413 and via email. It appears from the UPS tracking information that this package was rerouted numerous times but never delivered. The package was returned to OSHA undelivered on July 23, 2015.

On May 27, 2015, Respondents informed OSHA that Complainant was discharged because on or about February 19, 2012, Complainant used Respondents' fuel purchasing card to make over \$700.00 in personal purchases and then abandoned his assigned vehicle. Respondents contend

they contacted the police about the matter; but that Complainant could not be located at the address he had previously provided to Respondents. Respondents have not submitted any evidence to substantiate police involvement. On June 23, 2015, Respondents asserted they did not have a copy of their original position statement they alleged to have submitted back in 2012. Respondents also claimed that their former administrative assistant informed Robert Brindi that she had been told by “the lawyers” to disregard the complaint since Complainant had been deemed an independent contractor. Complainant’s status as an employee or an independent contractor has no impact on whether or not Respondents must respond to the STAA allegation. Furthermore, evidence suggests Complainant was not an independent contractor. Respondent submitted an additional position statement dated July 7, 2015 in which they expanded upon the May 27, 2015 defense. Respondent asserted Complainant picked up a load at their Brooklyn, NY terminal on February 19, 2012 and was expected to make a delivery in Massachusetts the following day. Complainant was given \$700.00 in cash for fuel and tolls, along with a Global Positioning System (GPS). Respondent asserts that instead of making the delivery, Complainant abandoned the truck in Wilkes Barre, Pennsylvania and kept the cash and GPS.

Respondent’s assertion that Complainant abandoned his truck is not supported by the evidence. The Pennsylvania Department of Transportation Commercial Vehicle Enforcement Unit and US DOT records affirmed that the tractor trailer had been inspected and placed out of service due to the numerous safety violations. Respondent would have been required to have the vehicle towed and repaired before it could be placed on the road again. Therefore, Complainant could not have abandoned the vehicle. Furthermore, DOT’s records show the inspection as having taken place on February 20, 2012; one day after Complainant allegedly abandoned the vehicle and made \$700.00 in personal purchases.

Complainant has alleged, and there is no evidence to the contrary, that Complainant picked up the load in Brooklyn, NY on February 19, 2012. Respondent agreed Complainant could travel back to his home in Dallas, PA and make the delivery on February 20, 2012. Due to his concerns about the safety of the commercial motor vehicle, Complainant contacted the Pennsylvania Department of Transportation and learned that they had an inspection site near Luzerne, PA. Complainant went to the inspection site and Pennsylvania Department of Transportation Commercial Vehicle Enforcement Unit DOT determined there were 16 violations and that the vehicle needed to be placed out of service pending repairs. Complainant contacted Respondents to advise them of the inspection and that the vehicle had been placed out of service. Upon notification of the circumstances, Respondent Robert Brindi became extremely upset and terminated Complainant’s employment because he failed to avoid the Pennsylvania Department of Transportation Commercial Vehicle Enforcement Unit inspection site. Complainant left the GPS in the vehicle so that when Respondents towed the vehicle they would have all the appropriate equipment. Complainant found his own transportation back to his residence.

Evidence supports a finding that Complainant’s protected activities were at the very least a contributing factor in his discharge. Respondents have failed to show by clear and convincing evidence that absent Complainant’s protected activities, reporting violations of Federal Motor Carrier Safety Regulations and participating in the DOT inspection resulting in the red tagging of the vehicle, Respondents would still have terminated Complainant’s employment. Respondents’ conduct was egregious and warrants punitive damages. Despite repeated attempts to obtain Respondents’ cooperation in the investigation Respondents declined to accept

notification of the complaint or substantiate their defense. Respondents acted in a particularly reckless and callous manner when it discharged Complainant because Respondents failed to maintain the vehicle in a safe and road worthy manner. The fact that the safety hazards were so severe the Pennsylvania Department of Transportation was forced to place the vehicle out of service further demonstrates Respondents' indifference to the safety of the motoring public let alone their own employee.

Accordingly, OSHA finds that there is reasonable cause to believe that Respondents violated the STAA. OSHA hereby orders the following to remedy the violation.

ORDER

Respondents shall pay Complainant lost wages in the amount of \$32,642.60, including interest, from February 20, 2012 when he was discharged, to March 2, 2013, the approximate date that Complainant was no longer medically fit to drive a commercial motor vehicle in accordance with Federal Motor Carrier Safety Regulations.

Respondents shall pay Complainant punitive damages in the amount of \$10,000.

Respondents shall pay attorney's fees in the amount of \$3,060.02.

Respondent shall post immediately in a conspicuous place in or about Respondent's facility, including in all places where notices for employees are customarily posted, including Respondent's internal Web site for employees or emails, if Respondent customarily uses one or more of these electronic methods for communicating with employees, and maintain for a period of at least 60 consecutive days from the date of posting, the attached notice to employees, to be signed by a responsible official of Respondent and the date of actual posting to be shown thereon.

Respondents shall expunge Complainant's employment records of any references to the exercise of his rights under STAA.

Respondents shall not retaliate or discriminate against Complainant or any other employee in any manner for instituting or causing to be instituted any proceeding under or related to the STAA.

Respondents and Complainant have **30** days from receipt of these Findings to file objections and 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 Office of Administrative Law Judges
U.S. Department of Labor
800 K Street, NW, Suite 400 North
Washington, D.C. 20001-8002
Tel. (202)693-7542 / Fax (202)693-7365

With copies to:

Complainant/Respondent

OSHA Regional Administrator
201 Varick Street, Room 670
New York, NY 10014

Department of Labor, Regional Solicitor
201 Varick Street, Room 983
New York, NY 10014

Department of Labor, Associate Solicitor
Division of Fair Labor Standards
200 Constitution Avenue, NW, N-2716
Washington, D.C. 20210

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding under an 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. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of the complaint.

Complaints under the Surface Transportation Assistance Act are handled in accordance with the rules and procedures found in Title 29, Code of Federal Regulations Part 1978, a copy of which may be obtained at <http://www.osha.gov/dep/oia/whistleblower/index.html>.

Sincerely,

Robert D. Kulick
Regional Administrator

cc: Truckers Justice Center (Via UPS #1ZX1051V0199598051)
Mr. Robert Urbina Brindi & Brindi Trailer Sales and Service, Inc.
292 Scholes Street, Brooklyn, NY 11206 (Via UPS #1ZX1051V0198094221 and Hand
Delivery)
25030 Rushmore Terrace, Little Neck, NY 11362 (Via UPS #1ZX1051V0197562039)
112 Bogart Street, Brooklyn, NY 11206 (Via UPS #1ZX1051V0199388644)
375 Johnson Avenue, Brooklyn, NY 11206 (Via UPS #1ZX1051V0198139003)
US DOL/OALJ-Chief Administrative Law Judge
USDOL/SOL-Regional Solicitor, Region II
USDOT