FEATURE ARTICLE

Better Safe Than Sorry — Keep STAA in Mind in Discharges for False Safety Claims

By Ian Hunter

Transportation employers are often confronted with incidents involving drivers who make frivolous claims that their units are undriveable for safety reasons. While a typical employer response may be to terminate such drivers, employers should not forget that drivers have special remedies under the **Federal Surface Transportation Assistance Act ("STAA").** Without proper planning, these remedies can disrupt normal discharge timing, create new legal proceedings, and possibly require reinstatement of an otherwise dischargeable employee.

For example, assume that a truck driver registers a complaint with the company's safety department stating that the motor vehicle assigned to him is defective. Shortly thereafter, he files a complaint with the U.S. Department of Transportation contending that the equipment operated by the company violates specific safety requirements set forth in the Motor Carrier Safety Regulations. After these developments, the company examines the equipment and concludes that the truck driver is erroneous in his contention. After a discussion with the company, the truck driver refuses to drive the equipment and is discharged for refusal to perform work.

The truck driver then files a complaint with the U.S. Dept. of Labor ("DOL") alleging that his termination was in retaliation for his safety complaints and violated STAA §405. After an investigation by the DOL, it concludes there is reasonable cause to believe that the truck driver was discharged in violation of the STAA. It issues an order compelling the company to reinstate the employee in advance of an evidentiary hearing involving the incident. As a result, the company is forced to reinstate the truck driver pending further proceedings before the DOL.

These hypothetical circumstances should prompt all covered transportation employers to recognize that STAA §405 was designed to protect employees from being discharged for refusing to operate a motor vehicle that does not comply with applicable state and federal safety regulations or in retaliation for filing complaints alleging such non-compliance. Moreover, it is immaterial whether these complaints are filed internally or with a federal or state agency.

STAA §405 provides for an initial investigation of an employee's discharge by the DOL. **Upon finding "reasonable cause" to believe that the employee was discharged in violation of the Act, the DOL is required to issue an order directing the employer to reinstate the employee.** It is only then that the employer may request an evidentiary hearing and a final decision from the DOL.

However, this request **does <u>not</u> operate to stay the preliminary order of reinstatement.** Employers considering a discharge involving a frivolous unsafe equipment claim should be sure that their position on safe equipment is ironclad. Otherwise, the DOL may decide to reinstate the driver on a preliminary basis and require that his employment continue while it conducts a possibly lengthy evidentiary hearing to determine the merits of the employer's contention that its unit was not unsafe.

STAA §405 applies to all transportation employers engaged in interstate commerce and covers represented and non-represented employees. With a union, an employer's successful defense of a grievance filed under a collective bargaining agreement will not preclude the DOL from compelling a preliminary reinstatement of the employee pending a final evidentiary hearing.

Employers should be fully aware of STAA §405 before electing to discipline employees who 1) protest operating motor vehicle equipment as unsafe, 2) refuse to transport hazardous materials, or 3) file complaints concerning these subject matters before the disciplinary action is taken.

ROAD REPORT

compensation law.]

Consumers County Insurance v P.W. & Sons Trucking,5th Circuit, 2002

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■ **REVOCATION FOR FALSE LOGS** A federal court ordered a trucking company to relinquish its DOT number and operating authority as part of a penalty for knowingly accepting falsified driver logs and defacing toll receipts.

L&M Trucking Corp., U.S. District Court, Maine, 2002

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■ **HUSBAND-WIFE NOT IN CONCERT** Communications between a husband-wife driver team in refusing an allegedly overweight load do not fall into the category of *"concerted activity"* within the exclusive jurisdiction of the NLRB. The husband and wife were permitted to go forward with a suit for wrongful discharge.

Williams v Watkins Motor Lines, 8th Circuit, 2002

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■ **BUS CLEANING NOT "VEHICLE OPERATION"** Where a worker was injured when a bus door closed on him while he was cleaning the bus, the Michigan Supreme Court held that the injury did not occur in connection with the operation of the vehicle so as to bar liability by a municipal transportation authority.

Chandler v County of Muskegon, Michigan Supreme Court, 2002

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■ **LATE DELIVERY DAMAGES** A trucking company's failure to deliver Christmas cards to a retailer in time for the holidays had the effect of making the goods worthless, even though they were not damaged. The shipper was not required to attempt to resell the goods as a precondition to recovering their invoice value.

Paper Magic v JB Hunt Transport, 3rd Circuit, 2003

ON THE DOCK

■ **FAULTY WEIGHT LAW SIGNS** Southeast Michigan communities have become increasingly lax in placing weight restriction signs at intersections **far from the line of sight of truck operators** and then issuing tickets when non-local operators inadvertently turn onto the restricted streets. D&F has been challenging such tickets with photographic evidence to obtain substantial reductions in truck overweight penalties.

D&F Attorney: Neill Riddell

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■ **SECONDARY PICKETING** When picketing against an Ohio rail unloader spread to an alternate unloading site and threatened to block ex-rail auto deliveries by a unionized D&F client, D&F responded by seeking injunctions against the secondary picketing, both in federal court and from the NLRB, and by creating a "reserve gate" operation at a third location. Result: No service interruption, immediate operating problems ended, and the NLRB preparing unfair labor practice charges against the picketing union.

D&F Attorneys: Read Cone, Bob Mercado

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■ **ENVIRONMENTAL TRANSPORTER AUDIT** D&F is reviewing issues of potential legal liability for transporters of hazardous materials and hazardous waste, during transport, and at delivery sites. Pre-notification of such environmental audits may limit potential fines, and properly conducting the audit can prevent the use of the audit results by opposing parties in future environmental litigation.

D&F Attorney: Jim O'Brien