

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Yusim v. Department of Labor

645 F. App'x 967 (11th Cir. 2016) · Decided March 16, 2016

SUMMARY

The Eleventh Circuit reviewed a petition challenging the Department of Labor Administrative Review Board’s handling of a retaliation complaint under the Surface Transportation Assistance Act. The court held that it lacked jurisdiction to review the Department’s discretionary refusal to intervene in the petitioner’s bankruptcy-related efforts. It also upheld dismissal of the retaliation complaint because the former employer was no longer operating or able to provide relief authorized by the statute.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Eleventh Circuit                                                                                                                                                                                                                                                                  |
| WRITING FOR THE COURT | Per curiam; Anderson; Rosenbaum; Wilson                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | March 16, 2016                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Petition for review of an Administrative Review Board order affirming an Administrative Law Judge's dismissal of a retaliation complaint under the Surface Transportation Assistance Act.                                                                                                                                |
| STANDARD OF REVIEW    | Under the Administrative Procedure Act, the court reviews the ARB's legal conclusions for whether they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, and reviews factual findings for substantial evidence. The court reviews its own subject-matter jurisdiction de novo. |
| PRECEDENTIAL VALUE    | Nonprecedential unpublished Eleventh Circuit decision                                                                                                                                                                                                                                                                    |
| PARTIES               | Michael Yusim v. United States Department of Labor                                                                                                                                                                                                                                                                       |

TOPICS

- judicial review of agency action
- administrative procedure act
- retaliation
- whistleblower
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the Eleventh Circuit had APA jurisdiction to review the Department of Labor's refusal to intervene in Yusim's efforts to withdraw the reference of his STAA claim from the bankruptcy court.
2. Whether the ARB's dismissal of Yusim's STAA retaliation complaint was arbitrary, capricious, an abuse of discretion, or otherwise contrary to law because the employer was no longer operating and lacked assets from which statutory relief could be paid.
3. Whether the STAA authorized the Department of Labor or ARB to grant declaratory relief stating that Yusim accurately reported his hours.

## HOLDINGS

1. The court lacked APA jurisdiction to review the Department of Labor's decision not to intervene because intervention was not a discrete action that the agency was legally required to take.
2. The ARB's dismissal was not arbitrary, capricious, an abuse of discretion, or otherwise contrary to law because Midnight Sun was no longer operating as a business, had no assets from which damages could be paid, and therefore could not be an employer under the STAA at the time of the ARB's decision.
3. The STAA did not authorize the Department of Labor to provide the requested declaratory relief.

## KEY QUOTATIONS

*"We lack jurisdiction under the APA to review the Department of Labor's decision not to intervene in Yusim's attempts to withdraw the reference of his STAA claim from a bankruptcy court because it was not a discrete action that the agency was required to perform by law." (969)*

*"The ARB could not provide any of the relief authorized under § 31105(b)(3) once Midnight Sun was no longer operating as a business and had no assets from which damages could be paid." (969)*

## FACTUAL BACKGROUND

Yusim alleged that his former employer, Midnight Sun Tours, discharged him in retaliation for accurately reporting his hours on duty, in violation of the STAA. Midnight Sun later declared bankruptcy, ceased operating as a business, and had no assets from which damages could be paid. Yusim sought the Department of Labor's intervention in efforts to withdraw the reference of his STAA claim from the bankruptcy court and argued that the ARB should decide the merits and provide declaratory relief.

## PROCEDURAL HISTORY

Yusim filed a retaliation complaint under the STAA. After OSHA issued written findings, the matter proceeded through the Department of Labor's administrative process, and an ALJ dismissed the complaint. The Department of Labor's Administrative Review Board affirmed. Yusim petitioned the Eleventh Circuit for review, challenging both the Department's refusal to intervene in his efforts to withdraw the bankruptcy reference and the dismissal of his STAA complaint.

## DISPOSITION

dismissed

## CASES CITED

- Koch Foods, Inc. v. Secretary, U.S. Department of Labor, 712 F.3d 476, 480 (11th Cir. 2013)
- Alexis v. U.S. Attorney General, 431 F.3d 1291, 1293 (11th Cir. 2005)
- Fanin v. U.S. Department of Veterans Affairs, 572 F.3d 868, 877-78 (11th Cir. 2009)

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/elevanth-circuit/2016/yusim-v-department-of-labor-bokky5i0>