



In the Matter of:

CYNTHIA FERGUSON,

ARB CASE NO. 13-024

COMPLAINANT,

ALJ CASE NO. 2009-STA-047

v.

DATE: **DEC 20 2012**

NEW PRIME, INC.,

RESPONDENT.

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

*For the Complainant:*

Paul O. Taylor, Esq.; *Truckers Justice Center*, Burnsville, Minnesota

*For the Respondent:*

Charles A. Cox, III, Esq.; *Cox, Goudy, McNulty & Wallace, P.L.L.P.*; Minneapolis, Minnesota

**Before: Paul Igasaki, Chief Administrative Appeals Judge; E. Cooper Brown, Deputy Chief Administrative Appeals Judge; and Lisa Wilson Edwards, Administrative Appeals Judge:**

#### **FINAL DECISION AND ORDER AWARDING ATTORNEY'S FEES**

In this appeal, the Administrative Review Board reviews a Department of Labor Administrative Law Judge's Recommended Decision and Order awarding Complainant Cynthia Ferguson attorney's fees. For the following reasons, the Board orders the award of attorney's fees consistent with the ALJ's recommendation.

#### **PROCEDURAL HISTORY**

Ferguson filed a complaint with the Department of Labor's Occupational Safety and Health Administration alleging that the Respondent, New Prime Inc., retaliated against her in violation of the whistleblower protection provisions of the Surface Transportation Assistance Act

(STAA).<sup>1</sup> On March 15, 2010, the presiding Administrative Law Judge (ALJ) issued a Recommended Decision and Order finding in Ferguson's favor and ordering reinstatement and other relief.<sup>2</sup> On June 10, 2010, the ALJ issued a Recommended Decision and Order-Award of Attorney's Fees.<sup>3</sup> The ALJ forwarded both decisions to the Administrative Review Board (Board) for final resolution pursuant to the STAA's automatic review provisions, which at that time governed review of such decisions.<sup>4</sup>

On August 31, 2011, the Board issued a Final Decision and Order of Remand, affirming the ALJ's finding that New Prime terminated Ferguson's employment because she engaged in STAA-protected activity. The Board ordered that Ferguson be reinstated to her former employment and awarded compensatory damages. The Board vacated the ALJ's award of back pay and punitive damages and remanded these issues to the ALJ for further findings and disposition consistent with the Board's decision.<sup>5</sup> Upon remand, the ALJ issued a Decision and Order on Remand on February 9, 2012,<sup>6</sup> and upon further review the Board, on November 30, 2012, issued a Final Decision and Order affirming the ALJ's Decision and Order on Remand.<sup>7</sup>

A STAA complainant who prevails on the merits may be reimbursed for litigation costs, including attorney's fees. 49 U.S.C.A. § 31105(b)(3)(B) provides, in part, that "the Secretary [of Labor] may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint." Ferguson petitioned the ALJ for attorney's fees and costs. New Prime did not oppose the fee petition. In the June 10, 2010 Recommended Decision and Order under review, the ALJ awarded Ferguson attorney's fees in the total amount of \$29,360.85, representing 61.6 hours of attorney services provided before the ALJ, which the ALJ deemed reasonable, at the hourly rate of \$325.00, 93.5 hours of paralegal services at the hourly rate of \$100.00 (which the ALJ reduced from the \$125.00 hourly rate that Ferguson requested), and costs in the amount of \$140.85.

On September 29, 2011, Ferguson petitioned the Board to approve the ALJ's recommended order awarding attorney's fees and costs. On December 7, 2012, the Board issued

<sup>1</sup> 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010). The applicable STAA implementing regulations are found at 29 C.F.R. Part 1978 (2012).

<sup>2</sup> *Ferguson v. New Prime, Inc.*, ALJ No. 2009-STA-047 (Mar. 15, 2010).

<sup>3</sup> *Ferguson v. New Prime, Inc.*, ALJ No. 2009-STA-047 (June 10, 2010).

<sup>4</sup> 29 C.F.R. § 1978.109(a) (2010). The Department of Labor has since amended the STAA regulations. Under the amended regulations, parties must file a petition for review with the Board to obtain review of an ALJ's decision and order. 29 C.F.R. § 1978.110(a) (2012).

<sup>5</sup> *Ferguson v. New Prime, Inc.*, ARB No. 10-075, ALJ No. 2009-STA-047 (Aug. 31, 2011).

<sup>6</sup> *Ferguson v. New Prime, Inc.*, ALJ No. 2009-STA-047 (Feb. 9, 2012).

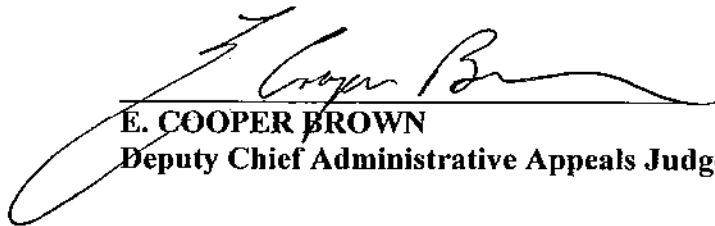
<sup>7</sup> *Ferguson v. New Prime, Inc.*, ARB No. 12-053, ALJ No. 2009-STA-047 (Nov. 30, 2012).

an Order to Show Cause whether the ALJ's recommended attorney's fee award should be summarily affirmed. New Prime has not responded to the Show Cause Order. Accordingly, we summarily affirm the ALJ's Recommended Decision and Order Awarding Attorney's Fees. The Respondent is ordered to pay Ferguson \$29,360.85, covering her legal fees and costs before the ALJ in this matter.

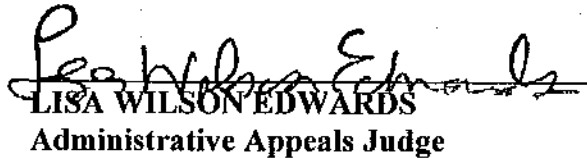
**SO ORDERED:**



**PAUL M. IGASAKI**  
Chief Administrative Appeals Judge



**E. COOPER BROWN**  
Deputy Chief Administrative Appeals Judge



**LISA WILSON EDWARDS**  
Administrative Appeals Judge

**ADMINISTRATIVE REVIEW BOARD**  
**Certificate of Service**

**ARB CASE NAME:** *Cynthia Ferguson v. New Prime, Incorporated*  
**ARB CASE NO. :** 13-024  
**ALJ CASE NO. :** 2009-STA-047  
**DOCUMENT :** ORDER

A copy of the attached document was sent to the following parties on

DEC 20 2012

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