



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

STARTRAN, INC.,

Respondent.

OSHRC Docket No. 02-1140

AMALGAMATED TRANSIT UNION,
LOCAL 1091,

Authorized Employee
Representative.

APPEARANCES:

Howard M. Radzely, Solicitor; Joseph M. Woodward, Associate Solicitor; Alexander Fernández, Deputy Associate Solicitor; Daniel J. Mick, Counsel for Regional Trial Litigation; Mark J. Lerner, Attorney; U.S. Department of Labor, Washington, DC
For the Complainant

John J. Franco Jr., Esq.; Jeffrey C. Londa, Esq.; Ogletree, Deakins, Nash, Smoak & Stewart, P.C., San Antonio, TX
For the Respondent

Dr. William J. Kweder, Union Secretary; Joneth Wyatt, President; Amalgamated Transit Union, Local 1091, Austin, TX
For Authorized Employee Representative

REMAND ORDER

Before: THOMPSON, Chairman; ROGERS, Commissioner.

BY THE COMMISSION:

This case is before the Commission on remand from the United States Court of Appeals for the Fifth Circuit. *StarTran, Inc. v. Chao*, 22 BNA OSHC 1283 (5th Cir. 2008) (unpublished opinion). On appeal, the court reviewed the decision by the Commission to affirm a citation alleging a violation of 29 C.F.R. §1904.40. *StarTran, Inc.*, 21 BNA OSHC 1730 (No. 02-1140,

2006). In an unpublished opinion dated August 11, 2008, the court affirmed the Commission's decision in part and remanded in part.

By mandate dated October 3, 2008, the court has remanded the case to the Commission. We, in turn, remand this case for further proceedings consistent with the court's opinion.
SO ORDERED.

/s/ _____

Horace A. Thompson III
Chairman

/s/ _____

Thomasina V. Rogers
Commissioner

Dated: October 10, 2008