



In the Matter of:

GARY WATERS,

ARB CASE NO. 01-049

COMPLAINANT,

ALJ CASE NO. 01-STA-5

v.

DATE: August 28, 2001

PACIFIC MOTOR TRUCKING CO.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

Loyd E. Owen, Jr., Esq., *Lathrop & Gage L.C., Kansas City, Missouri*

For the Respondent:

John Ditta, *Pacific Motor Trucking Co., Milpitas, California*

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING THE CASE**

Gary Waters filed a complaint alleging that Pacific Motor Trucking Co. (Pacific Motor) violated the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended and recodified, 49 U.S.C.A. §31105 (West 1997), and the implementing regulations at 29 C.F.R. Part 1978 (2000). Pacific Motor Trucking seeks approval of a settlement agreement and dismissal of Waters' pending claim.

BACKGROUND

On March 7, 2001, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order recommending that Waters' complaint against Pacific Motor Trucking Company be dismissed on the ground that Waters had failed to establish that he had engaged in protected activity pursuant to the STAA, 49 U.S.C.A. §31105(a) (1997). As provided

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,978 §5 (May 3, 1996).

in 29 C.F.R. § 1978.109(a), the ALJ forwarded the case to the Administrative Review Board for review and to issue a final order.

Pacific Motor filed a letter with the Board on June 14, 2001, informing us that Waters has settled all claims pending against Pacific Motor and requesting us to dismiss Waters' STAA claim. Attached to the letter is a settlement document ostensibly signed by Waters on April 25, 2001, which provides in pertinent part:

In further consideration thereof, Gary Waters agrees to withdraw, dismiss or otherwise take all actions necessary to drop any and all claims pending with the United States Department of Labor, Occupational Safety and Health Administration, Office of Administrative Law Judges, or other governmental agency in connection with his claims under Section 405 of the Surface Transportation Assistance Act of 1982 (STAA), as revised, 49 U.S.C.A. §31101 et seq. and ALJ Case No. 2001-STA-00005 or ARB No. 01-049.

Pacific Motor further stated that "we expect Mr. Waters to forward a letter withdrawing his pending claim with the United States Department of Labor within the next few weeks."

Because the Board had received no letter from Waters withdrawing his claim, we issued an order requiring Waters to show cause by August 16, 2001, why the Board should not approve the settlement of his claim in accordance with 29 C.F.R. §1978.111(d)(2) (2000) and dismiss his STAA case as provided in the settlement. Waters has filed no response to the Board's show cause order. Accordingly, we shall construe his silence as an indication that he has agreed to the settlement and that the case should be dismissed if the agreement is reviewed and approved.

DISCUSSION

Pursuant to STAA §31105(b)(2)(C), "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's preliminary findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ." 29 C.F.R. §1978.111(d)(2). The regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board as the case may be." *Id.* In this case, at the time the parties reached a settlement, the ALJ had issued the Recommended Decision and forwarded the case to this Board. Therefore, we are the appropriate body to review the settlement agreement.

We find the overall settlement terms to be reasonable, but we note that the settlement agreement encompasses the settlement of matters under laws other than the STAA. Our authority to review this settlement agreement is limited to the statutes within our jurisdiction and is defined by the applicable statute. *Accord Ass't Sec'y & Zurenda v. Corporate Express Delivery Sys., Inc.*, ARB No. 00-041, ALJ No. 1999-STA-30 (ARB Mar. 31, 2000); *Webb v. Numanco, L.L.C.*, ARB

No. 98-149; ALJ Nos. 98-ERA-27, 98-ERA-27, 28 (ARB Jan. 29, 1999). We have therefore restricted our review of the settlement agreement to ascertaining only whether the terms of the agreement fairly, adequately and reasonably settle Waters' allegations that Pacific Motor violated the STAA.

CONCLUSION

We find that the agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we **APPROVE** the agreement and dismiss the case.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member