



In the Matter of:

**ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH,**

PROSECUTING PARTY,

v.

KERRY D. FILER,

COMPLAINANT,

v.

ARCH ALUMINUM & GLASS, INC.,

RESPONDENT.

ARB CASE NO. 01-053

ALJ CASE NO. 99-STA-12

DATE: August 29, 2001

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

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

Kerry D. Filer filed a complaint alleging that Arch Aluminum & Glass, Inc. (Arch Aluminum) 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). Filer and Arch Aluminum seek approval of their settlement agreement and, with the consent of the Assistant Secretary of Labor for Occupational Safety and Health, dismissal of the case with prejudice.

BACKGROUND

On April 27, 2001, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order finding that Arch Aluminum violated the STAA when it terminated Filer's employment because Filer engaged in protected activity. The ALJ's

^{1/} This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19,979 (1996).

Recommended Decision ordered Arch Aluminum to reinstate Filer to his former position, pay him back pay with interest and expunge from its personnel records any adverse or derogatory reference to Filer's protected activities. As provided 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.

On July 17, 2001, Filer and Arch Aluminum requested the Board to approve a Consent Order of Dismissal which stated:

Upon consent of the parties, it appears to the Administrative Review Board that the parties have resolved all issues in this cause and that this cause should be dismissed with prejudice. Each party will bear its own cost and fees.

The draft order supplied to us contained no indication that the Assistant Secretary consented to entry of the Order. In response, we ordered Filer and Arch Aluminum to show cause why the Board should not deny their request for the Consent Order of Dismissal on the grounds that because the Assistant Secretary is the prosecuting party in the case, his approval of the request for the Consent Order of Dismissal is a prerequisite to the Board's entry of the Order. The Order to Show Cause also noted that pursuant to 29 C.F.R. §1978.111(d)(2), if the parties agreed to a settlement of the case, a copy of the settlement must be filed with the Board for our review and approval.

In response to the Show Cause Order, we received a letter from counsel for the Assistant Secretary indicating that the Assistant Secretary "consents to the consent order of dismissal requested by the complainant and the respondent in this case." We also received a copy of a settlement agreement signed by Filer and Arch Aluminum's Director of Human Resources.

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 clarify our interpretation of several of the provisions. Review of the agreement reveals that it encompasses the settlement of matters under laws other than the STAA. See Settlement Agreement ¶ 3(a), Exhibit A – General Release. *Accord 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-27/28 (ARB

Jan. 29, 1999). Therefore our approval of the settlement agreement extends only to those provisions relevant to the settlement of Filer's STAA claim.

In addition, Paragraph 9 of the agreement provides that the agreement will be governed by the laws of the state of Florida. We construe this provision to except the authority of the Secretary of Labor and any Federal court which shall be governed in all respects by the law and regulations of the United States. *Accord Zurenda; Nason v. Maine Yankee Atomic Power Co.*, ARB No. 98-091, ALJ No. 97-ERA-37 (ARB Mar. 20, 1998).

As so construed, we **APPROVE** the settlement and **DISMISS** this case with prejudice.

SO ORDERED.

PAUL GREENBERG
Chair

E. COOPER BROWN
Member