



In the Matter of:

GERALD FISH,

ARB CASE NO. 01-071

COMPLAINANT,

ALJ CASE NO. 00-STA-56

v.

DATE: April 30, 2003

H and R TRANSFER,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Gerald Fish, *pro se*, Audubon, Minnesota

For the Respondent:

Richard Henderson, Esq., *Nilles, Hansen & Davies, Ltd.*, Moorhead, Minnesota

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), as amended, 49 U.S.C. § 31105 (2000). Gerald Fish filed a complaint alleging that H & R Transfer fired him in retaliation for engaging in activity protected by the STAA. On June 27, 2001, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) concluding that Fish failed to prove that H & R Transfer violated the STAA. As provided in 29 C.F.R. § 1978.109(a) (2002), the ALJ forwarded the case to the Administrative Review Board (Board) to review and issue a final order.

On November 18, 2002, the parties submitted a Settlement Agreement and General Release and requested the ARB to approve the settlement and dismiss the complaint. The request for approval is based on this Settlement Agreement and General Release, an agreement

entered into by the parties. For the reasons set out below, we approve the Settlement Agreement and General Release.

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 R. D. & O. and forwarded the case to this Board. Therefore, we are the appropriate body to review the settlement agreement. *Fitzgerald v. Interactive Logistics, Inc.*, ARB No. 03-018, ALJ No. 2001-STA-52, slip op. at 2 (ARB Jan. 10, 2003).

Furthermore, the Board requires that all parties requesting settlement approval provide the settlement documentation for any other alleged claims arising from the same factual circumstances forming the basis of the federal claim, or certify that the parties have not entered into other such settlement agreements. See *Biddy v. Alyeska Pipeline Service Company*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996). Accordingly, the parties have certified that the agreement constitutes the entire and only settlement agreement with respect to the Complainant’s claims. See Settlement Agreement, ¶ 5.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA. See Settlement Agreement, ¶¶ 1, 4. The Board’s authority over settlement agreements is limited to such statutes as are within the Board’s jurisdiction and is defined by the applicable statute. Therefore, we approve only the terms of the agreement pertaining to the Complainant’s STAA claim. *Poulos v. Ambassador Fuel Oil Co., Inc.*, 86-CAA-1, slip op. at 2. (Sec’y Nov. 2, 1987).

Paragraph 5 of the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. We have held, “The parties’ submissions, including the agreement become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.” *Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996).

Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests

of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (2002).¹

CONCLUSION

The parties have agreed to settle the Complainant's STAA claim. Accordingly, we **APPROVE** the agreement and **DISMISS THE COMPLAINT**. See Settlement Agreement, ¶ 4.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹ “Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).” *Coffman*, slip op. at n.2.