



In the Matter of:

MARK NILSEN,

COMPLAINANT,

v.

PALCO AIR CARGO, INC.,

RESPONDENT.

ARB CASE NO. 02-061

ALJ CASE NO. 01-STA-50

DATE: August 27, 2003

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Frederick B. Feinberg, Esq., The Bennett Law Firm, P.A., Portland, Maine

For the Respondent:

Lawrence Winger, Esq., Portland, Maine

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended, 49 U.S.C. § 31105 (2000). Complainant Mark Nilsen filed a complaint alleging that Respondent Palco Air Cargo fired him in retaliation for engaging in activity protected by the STAA. Nilsen seeks approval of a settlement and withdrawal of his appeal. We approve the settlement and dismiss Nilsen's claim with prejudice.

BACKGROUND

On March 22, 2002, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) concluding that Nilsen failed to prove that Palco Air Cargo 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 August 12, 2003, Nilsen advised the Board that the

parties had settled the case and requested to withdraw his appeal. On August 20, 2003, Nilsen submitted the signed Settlement Agreement to the Board. The agreement provides that it constitutes the complete agreement between the parties.

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, United States Department of Labor 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).

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 Waters v. Pacific Motor Trucking Co.*, ARB No. 01-049, ALJ No. 01-STA-5, slip. op. at 3 (Aug. 28, 2001); *Ass't Sec'y v. Corporate Express Delivery Sys., Inc.* (Zurenda), ARB No. 00-041, ALJ No. 99-STA-30, slip op. at 2 (ARB Mar. 31, 2000). We have therefore restricted our review of the settlement agreement to ascertaining only whether the terms of the agreement fairly, adequately and reasonably settle Nilsen's allegations that Palco violated the STAA.

CONCLUSION AND ORDER

We find that the agreement, as so construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, we **APPROVE** the agreement and withdrawal of Nilsen's appeal, and **DISMISS** the case with prejudice.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge