



In the Matter of:

KEITH FLOYD,

ARB CASE NO. 04-106

COMPLAINANT,

ALJ CASE NO. 2003-STA-52

v.

DATE: July 22, 2004

BAVARIAN MOTOR TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Christopher Bergstrom, Farhat & Story, P.C., East Lansing, Michigan

For the Respondent:

Lawrence J. Murphy, Varnum, Riddering, Schmidt, & Howlett, Kalamazoo, Michigan

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

BACKGROUND

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act (STAA) of 1982, 49 U.S.C.A. § 31105 (West 1997), and implementing regulations at 29 C.F.R. Part 1978 (2003). The parties submitted a "Settlement Agreement and Full and Final Release of All Claims," seeking approval of the settlement and dismissal of the complaint. The Administrative Law Judge (ALJ) issued a Decision and Order Approving Settlement Agreement and Dismissing Complaint that recommended that we approve the parties' agreement and dismiss the complaint with prejudice.

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 case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. However, pursuant to 29 C.F.R. § 1978.109(c), the Administrative Review Board, must, nevertheless, issue a final decision and order. *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50, slip op. at 2 (ARB Sept. 26, 2001). The parties have not filed objections to the ALJ’s Order.

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 Serv. Co.*, ARB Nos. 96-109, 97-015, ALJ No. 95-TSC-7, slip op. at 3 (ARB Dec. 3, 1996). Here, the parties have certified that the agreement constitutes the entire settlement agreement with respect to the Complainant’s claims. *See Settlement Agreement*, para. 2.

The agreement encompasses the settlement of matters under laws other than the STAA. *See* para. 2(A). But 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. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB April 30, 2003).

Under paragraph (2) A of the agreement, Floyd releases BMT from, essentially, any claims or causes of action arising out of or connected with his employment at BMT. Thus, we interpret this portion of the agreement as limiting Floyd’s right to sue on claims or causes of action arising only out of facts, or any set of facts, occurring before the date of the settlement agreement. Floyd does not waive claims or causes of action that may accrue after the signing of the agreement. *See Johnson v. Transco Products, Inc.*, 85-ERA-7 (Sec’y Aug. 8, 1985). *See also Alexander v. Gardner – Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

Paragraphs (4) and (5) of the agreement provide that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. We again emphasize that “[t]he 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.A. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.” *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, 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 (2003).¹

Finally, Paragraph (11) provides that the agreement shall be governed and construed under the laws of Michigan. We construe this choice of law provision as not limiting the authority of the Secretary of Labor and any Federal court, which shall be governed in all respects by the laws and regulations of the United States. *See Phillips v. Citizens' Ass'n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).

CONCLUSION

The parties have agreed to settle the Complainant's STAA claim. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief 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 2, n.2.