



**In the Matter of:**

**CLARK TEWS,**

**ARB CASE NO. 07-012**

**COMPLAINANT,**

**ALJ CASE NO. 06-STA-021**

**v.**

**DATE: November 30, 2006**

**DAHLKE TRAILER SALES, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT WITH PREJUDICE**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act (STAA) of 1982.<sup>1</sup> On September 22, 2006, the parties submitted a Settlement Agreement and General Release signed by the Complainant, Clark Tews, and the Respondent, Dahlke Trailer Sales, Inc., (DTS), to a Department of Labor Administrative Law Judge (ALJ). Under the 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."<sup>2</sup> 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."<sup>3</sup>

When the parties reached a settlement the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On September 28, 2006, the ALJ issued a Recommended Decision and Order Approving Settlement and Dismissing Complaint. According to the STAA's implementing regulations, the

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2006).

<sup>2</sup> 29 C.F.R. § 1978.111(d)(2) (2006).

<sup>3</sup> *Id.*

Administrative Review Board (ARB or Board) issues the final decision and order in this case.<sup>4</sup>

The Board issued a Notice of Review and Briefing Schedule apprising the parties of their right to submit briefs supporting or opposing the ALJ's recommended decision on October 20, 2006.<sup>5</sup> DTS replied to the Board's notice on November 2, 2006, and the Complainant replied November 6, 2006, both indicating that they would not file a brief with the Board. We therefore deem the settlement unopposed under the terms of the Recommended Order Approving Settlement and Dismissing Complaint.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA<sup>6</sup> and references cases other than ARB No. 07-012, 06-STA-021, the case currently before the Board.<sup>7</sup> The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable statute. Furthermore, it is limited to cases over which we have jurisdiction. Therefore, we approve only the terms of the agreement pertaining to the Complainant's STAA claim ARB No. 07-012, 06-STA-021.<sup>8</sup>

Additionally, the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.<sup>9</sup> The Board emphasizes that 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.A. § 552 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>10</sup> 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.<sup>11</sup>

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<sup>4</sup> 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 00-STA-17 (ARB May 30, 2001).

<sup>5</sup> 29 C.F.R. § 1978.109(c)(2).

<sup>6</sup> Confidential Settlement Agreement and Release para. 2.

<sup>7</sup> Confidential Settlement Agreement and Release para. 8.

<sup>8</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

<sup>9</sup> Confidential Settlement Agreement and Release para. 5.

<sup>10</sup> *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).

Finally, Paragraph 16 provides that the agreement shall be governed and construed under the laws of the state of Minnesota. 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.<sup>12</sup>

Therefore, we **APPROVE** the terms of the agreement pertaining to Tews's STAA claim, and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**DAVID G. DYE**  
**Administrative Appeals Judge**

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<sup>11</sup> 29 C.F.R. § 70 *et seq.* (2006).

<sup>12</sup> *See Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).