



**In the Matter of:**

**MARVIN STANDLEY,**

**ARB CASE NO. 07-026**

**COMPLAINANT,**

**ALJ CASE NO. 2006-STA-00039**

**v.**

**DATE: January 31, 2007**

**URM FOODS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearance:**

***For the Respondent:***

**Michael J. Hines, Esq., *Lukins & Annis, P.S.*, Spokane, Washington**

**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 of 1982 (STAA)<sup>1</sup> and implementing regulations.<sup>2</sup> The Administrative Law Judge (ALJ) below issued a Recommended Decision and Order Approving Settlement Agreement and Dismissing Complaint (R. D. & O.).

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

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

<sup>2</sup> 29 C.F.R. Part 1978 (West 2006).

the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board [hereinafter, the “Board”] . . . or the ALJ.”<sup>3</sup> The regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.<sup>4</sup>

Pursuant to 29 C.F.R. § 1978.109(c), the Board “shall issue the final decision and order based on the record and the decision and order of the administrative law judge.” The Board received the R. D. & O. and 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 November 20, 2006. The Respondent replied to the Board’s notice on November 28, 2006. The Complainant did not respond to the Board’s order.

The ARB concurs with the ALJ’s determination that the parties’ settlement agreement is fair, adequate and reasonable. But, we note that the agreement encompasses the settlement of matters under laws other than the STAA.<sup>5</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. Our approval is limited to this case, and we understand the settlement terms relating to release of STAA claims as pertaining only to the facts and circumstances giving rise to this case. Therefore, we approve only the terms of the agreement pertaining to the Complainant’s STAA claim ARB No. 07-026, 2006-STA-00039.<sup>6</sup>

Furthermore, if the provisions in paragraph 2 of the General Release were to preclude Standley from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.<sup>7</sup>

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<sup>3</sup> 29 C.F.R. § 1978.111(d)(2).

<sup>4</sup> *See id.*

<sup>5</sup> *See, e.g.*, para. 2 of the Agreement.

<sup>6</sup> *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

<sup>7</sup> *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, slip op. at 6 (ARB Nov. 10, 1997); *Connecticut Light & Power Co. v. Secretary, United States Dep’t of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant’s ability to provide regulatory agencies with information; improper “gag” provision constituted adverse employment action).

Additionally, we construe paragraph 13, the governing 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>8</sup>

The parties have agreed to settle Standley's STAA claim. Accordingly, with the reservations noted above limiting our approval to the settlement of Standley's STAA claim, we **APPROVE** the agreement 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>8</sup> *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).