



In the Matter of:

MICHAEL WOODLEY,

ARB CASE NO. 08-036

COMPLAINANT,

ALJ CASE NO. 2007-STA-026

v.

DATE: February 26, 2008

THE SYGMA NETWORK, 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 1982.¹ On December 28, 2007, the Complainant, Michael Woodley, submitted “Complainant’s Withdrawal Request Pursuant to 29 C.F.R. § 1978.111(d)(2)” and “Settlement Agreement and Release” which was signed by Woodley, and the President-Chief Operating Officer of the Respondent, Sygma Network, Inc., 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.”² The regulations direct the parties to file a copy of the

¹ 49 U.S.C.A. § 31105 (West 2007).

² 29 C.F.R. § 1978.111(d)(2) (2007).

settlement “with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be.”³

When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On January 3, 2008, the ALJ issued a Recommended Decision and Order Approving Settlement Agreement and Dismissing Complaint. According to the STAA’s implementing regulations, the Administrative Review Board (ARB or Board) issues the final decision and order in this case.⁴

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 January 23, 2008.⁵ Neither party responded to the notice. We therefore deem the settlement unopposed under the terms of the Settlement Agreement and Release.

Review of the agreement reveals that it encompasses the settlement of matters under laws other than the STAA⁶ and references cases other than ARB No. 08-036, 2007-STA-026, the case currently before the Board.⁷ 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. 08-036, 2007-STA-026.⁸

Additionally, the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.⁹ The Board notes 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 2007). FOIA requires Federal agencies to disclose requested records unless they are exempt

³ *Id.*

⁴ 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 2000-STA-017 (ARB May 30, 2001).

⁵ 29 C.F.R. § 1978.109(c)(2).

⁶ Settlement Agreement and Release paras. 1, 6.

⁷ *Id.* at para. 1.

⁸ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

⁹ Settlement Agreement and Release para. 9.

from disclosure under the Act.¹⁰ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹¹

Furthermore, if the provisions in paragraph 8 of the Settlement Agreement and Release were to preclude Woodley from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.¹²

As construed, the Board finds that the settlement is fair, adequate, and reasonable. Accordingly, with the reservations noted above limiting our approval to the settlement of Woodley’s STAA claim, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹⁰ *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, 6, slip op. at 2 (ARB June 24, 1996).

¹¹ 29 C.F.R. § 70 *et seq.* (2007).

¹² *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997); *Connecticut Light & Power Co. v. Sec’y, U.S. 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).