



In the Matter of:

JOHNNY HAYES,

ARB CASE NO. 08-056

COMPLAINANT,

ALJ CASE NO. 2007-STA-045

v.

DATE: April 14, 2008

**FABRAL, d/b/a MOUNTAIN METALS
MANUFACTURING,**

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 of 1982 (STAA)¹ and its implementing regulations.² The Administrative Law Judge (ALJ) below issued a Recommended Decision and Order Approving Settlement Agreement and Dismissing Complaint (R. D. & O.) on February 19, 2008.

¹ 49 U.S.C.A. § 31105 (West 2008). The STAA has been amended since Hayes filed his complaint. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). We need not decide here whether the amendments are applicable to this complaint because even if the amendments were applicable to this complaint, they are not implicated by the settlement at issue here and thus, would not affect our decision.

² 29 C.F.R. Part 1978 (2007).

Under the regulations implementing the STAA, the parties may settle a case at any time after filing objections to the Assistant Secretary's preliminary findings, and before those findings become final, "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board [Board] . . . or the ALJ."³ The regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.⁴

Pursuant to 29 C.F.R. § 1978.109(c)(1), the Board "shall issue a final decision and order based on the record and the decision and order of the administrative law judge." In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision"⁵ Therefore, the Board reviews the ALJ's legal conclusions de novo.⁶

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 March 5, 2008. Neither the Complainant, Johnny Hayes, nor the Respondent, Fabral, filed a brief with the Board.

The ARB concurs with the ALJ's determination that the parties' settlement agreement is fair, adequate and reasonable. But, we note, as did the ALJ, that the Agreement encompasses the settlement of matters under laws other than the STAA.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. 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 Hayes's STAA claim ARB No. 08-056, 2007-STA-045.⁸

Furthermore, if the provisions in paragraph C of the Settlement Agreement and Release were to preclude Hayes from communicating with federal or state enforcement agencies

³ 29 C.F.R. § 1978.111(d)(2).

⁴ *See id.*

⁵ 5 U.S.C.A. § 557(b) (West 2008).

⁶ *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

⁷ *See, e.g.*, Settlement Agreement and Request to Dismiss Complaint, para. B.

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

concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.⁹

Finally, the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.¹⁰ As the ALJ noted, the parties’ submissions, including the agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).¹¹ FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹² Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.¹³

The parties have agreed to settle Hayes’s STAA claim. Accordingly, with the reservations noted above, 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

⁹ See *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997); *Conn. 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).

¹⁰ Settlement Agreement and Request to Dismiss Complaint, para. C.

¹¹ 5 U.S.C.A. § 552 (West 2007).

¹² *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).

¹³ 29 C.F.R. § 70 *et seq.* (2007).