



In the Matter of:

JOSEPH A. CAIMANO,

ARB CASE NO. 97-041

COMPLAINANT,

ALJ CASE NO. 95-STA-4

v.

DATE: March 7, 1997

BRINK'S, INCORPORATED,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

**ORDER DENYING RESPONDENT'S
MOTION TO WITHDRAW ORDERS**

On January 26, 1996, the Secretary issued a Decision and Order of Remand in this case, finding Brink's, Incorporated to be in violation of the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. § 31105 (1994). On August 14, 1996, the Board issued a Final Decision and Order that ordered Brink's to pay Caimano damages, interest, attorney's fees and costs in the amounts stipulated by the parties. Brink's filed an appeal of the aforesaid decisions with the United States Court of Appeals for the Second Circuit, where the case is currently pending.

On January 10, 1997, Brink's filed Respondent's Motion to Withdraw Orders, requesting that the Board issue a decision voiding the Secretary's January 26, 1996 Decision and Order of Remand, withdrawing its August 14, 1996 Final Decision and Order and dismissing Caimano's complaint with prejudice. In support of its motion, Brink's urged that granting the relief sought was necessary to "effectuate the prompt resolution of the instant matter without further resort to litigation." Respondent's Motion to Withdraw Orders at 1.^{2/} On January 22, 1997, we issued an Order to Show

^{1/} On April 17, 1996, the Secretary of Labor delegated authority to issue final agency decisions under, *inter alia*, the Surface Transportation Assistance Act and the implementing regulations, 29 C.F.R. Part 1978, to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996). Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the ARB now issues final agency decisions. 61 Fed. Reg. 19982.

^{2/} On January 21, 1997, a copy of a letter from the attorney representing the Secretary of Labor in the appeal before the Second Circuit court to the Staff Counsel for that court was submitted to this
(continued...)

Cause, concluding that none of the conditions required for the vacating of our judgment in this case had been met and providing the parties thirty days in which to demonstrate why Respondent's Motion to Withdraw Orders should not be denied. Order to Show Cause at 3-5.^{3/}

Initially, Caimano submitted a response delineating the history of the parties' settlement negotiations while the case was pending on appeal before the Second Circuit court. Complainant's Response to Order to Show Cause dated Jan. 24, 1997. In that response, Caimano indicated that he was prepared to defend his interests in this matter on appeal before the Second Circuit court and urged this Board to deny the Motion to Withdraw Orders. *Id.* at 2. Since that filing, we have received from the Clerk's Office of the Second Circuit court a stipulation that was filed on February 6, 1997 with that court, in which Caimano, Brink's and the attorney representing the Secretary agreed that Brink's appeal before the Second Circuit court would be withdrawn from active consideration by that tribunal, without prejudice to reinstatement, pending a ruling by this Board on the Respondent's Motion to Withdraw Orders. Stipulation of Feb. 6, 1997 at 1. By letter dated February 20, 1997, however, Brink's has advised this Board that further settlement negotiations have not culminated in a resolution of the matters in dispute.

^{2/}(...continued)

Board. Letter from John Shortall to Stanley A. Bass, Staff Counsel, dated Jan. 21, 1997. That letter provided clarification of certain statements that were made in the Respondent's Motion to Withdraw Orders regarding proceedings before the Second Circuit court. *Id.*

^{3/} As set forth in our Order to Show Cause, as a threshold matter the following conditions must be met before this Board will reach the merits of a motion for withdrawal of judgment: 1)The Board must have jurisdiction of the case, *see U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 115 S.Ct. 386, 393, 1993 U.S. LEXIS 7982, *21 (1994) (discussing motions for vacation of judgment under Fed.R.Civ.P. 60(b)); *Nestle Co. v. Chester's Market, Inc.*, 756 F.2d 280, 281 (2d Cir. 1985); *Agee v. Paramount Communications, Inc.*, 932 F.Supp. 85, 87 (S.D.N.Y. 1996), and cases cited therein; 2)The parties must submit a settlement agreement that meets the criteria for approval by this Board, as required by Section 29 C.F.R. § 1978.111(d)(2), *see generally Davis v. Kimstock, Inc.*, Case No. 90-STA-08, Sec. Order, Nov. 30, 1990, slip op. at 1-2 (approving terms of settlement agreement as fair, adequate and reasonable and dismissing complaint), and which would be binding on the parties if the motion to vacate the decisions issued in this case by the Secretary and this Board were granted. *See Fed.R.Civ.P. 60(b); 29 C.F.R. §§ 18.1, 1978.106(a)(1996).*

Accordingly, as the requirements for consideration by this Board of the merits of Respondent's Motion to Withdraw Orders have not been met, the aforesaid motion is DENIED.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member