



In the Matter of:

JEAN-PERRIE F. CARPENTIER,

ARB CASE NO. 07-052

COMPLAINANT,

ALJ CASE NO. 2006-STA-00041

v.

DATE: April 30, 2007

**GROUNDING AIR, INC.,
J & J WAREHOUSING,
NICK EHRET AND DAVE HERZOG,**

RESPONDENTS.

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 January 31, 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

¹ 49 U.S.C.A. § 31105 (West 2007).

² 29 C.F.R. Part 1978 (2006).

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.” 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 February 12, 2007. The Complainant, Jean-Perrie F. Carpentier, replied to the Board’s Notice on March 10, 2007, indicating he did not wish to file a brief. The Respondents, Grounded Air, Inc., J&J Warehousing, Nick Ehret and Dave Herzog, 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.⁵ 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 Carpentier’s STAA claim ARB No. 07-052, 2006-STA-00041.⁶

Furthermore, if the provisions in paragraph 9 of the General Release were to preclude Carpentier from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.⁷

³ 29 C.F.R. § 1978.111(d)(2).

⁴ *See id.*

⁵ *See, e.g.*, para. 6 of the Agreement.

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

⁷ *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, 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; improper “gag” provision constituted adverse employment action).

Additionally, we construe paragraph 11, 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.⁸

The parties have agreed to settle Carpentier'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

OLIVER M. TRANSUE
Administrative Appeals Judge

⁸ *Phillips v. Citizens Ass'n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).