



In the Matter of:

JAMES O’HARA,

ARB CASE NO. 04-126

COMPLAINANT,

ALJ CASE NO. 03-STA-00049

v.

DATE: September 30, 2004

A. C. HESSE CONTRACTORS, LCC,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 1997), and implementing regulations at 29 C.F.R. Part 1978 (2003). The Administrative Law Judge (ALJ) below issued a Final Order¹ recommending approval of the parties’ settlement agreement and dismissal of the complaint.

Pursuant to 29 C.F.R. § 1978.109(c), the Administrative Review Board “shall issue the final decision and order based on the record and the decision and order of the administrative law judge.” July 7, 2004, the Board issued a Notice of Review and Order to Show Cause permitting either party to show cause why the Board should not approve the ALJ’s order. Neither party objected to the ALJ’s order.

The ARB concurs with the ALJ’s determination that the parties’ settlement agreement is fair, adequate and reasonable. However, we note that the agreement encompasses the settlement of matters under laws other than the STAA. See ¶ 3 of the Confidential Agreement of Settlement and General Release. Because the Board’s authority over settlement agreements is limited to such statutes as are within the Board’s

¹ The ALJ mistakenly labeled this a “Final Order of Dismissal Approving Settlement and Dismissing the Complaint.” According to Department of Labor regulations implementing the STAA only the ARB issues “Final Decisions.” See 29 C.F.R. § 1978.109(c).

jurisdiction and is defined by the applicable statute, we approve only the terms of the agreement pertaining to James O'Hara's STAA claim. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

It is also noted that paragraph 15 provides that the agreement shall be governed and construed under the laws of New Jersey. We construe this choice of 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. *See Phillips v. Citizens' Ass'n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).

The parties have agreed to settle O'Hara's STAA claim. Accordingly, with the reservations noted above limiting our approval to the settlement of O'Hara's July 2, 2003 STAA claim and construing the choice of law provision we **APPROVE** the agreement and **DISMISS** the complaint.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge