



**In the Matter of:**

**MARK E. HOWICK,**

**ARB CASE NO. 02-049**

**COMPLAINANT,**

**ALJ CASE NO. 00-STA-32**

**v.**

**DATE: September 26, 2002**

**EXPERIENCE HENDRIX, L.L.C.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD<sup>1</sup>**

**Appearances:**

*For the Complainant:*

**Mark E. Howick, *Pro se*, Dayton, Ohio**

*For the Respondent:*

**Scott L. Fredericksen, Esq., Kathryn Wagner Keith, Esq., *Stoel Rives, L.L.P.*, Seattle, Washington**

## **FINAL ORDER DISMISSING APPEAL**

### **Background**

The Surface Transportation Assistance Act (STAA), 49 U.S.C.A. § 31105 (West 1997), and its implementing regulations at 29 C.F.R. Part 1978 (2001) require the Administrative Review Board (ARB) to review this case to determine whether the Administrative Law Judge (ALJ) acted properly in dismissing the case and approving the settlement agreement. The ARB finds that the ALJ acted properly, and we dismiss this case.

Pursuant to 29 C.F.R. § 1978.106, a Department of Labor ALJ held a hearing in this case from March 27 – March 29, 2001. During Experience Hendrix, L.L.C's cross-examination of Mark Howick, Howick's counsel requested the ALJ to adjourn the hearing to give the parties the

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<sup>1</sup> This appeal has been assigned to a panel of two Board members, as authorized by Secretary's Order 2-96. 61 Fed. Reg. 19, 978 § 5 (May 3, 1996).

opportunity to negotiate a settlement. Hearing Transcript (“T.”) at 818-819. When the ALJ recommenced the hearing, Howick rested his case and the parties informed the ALJ that they had reached a settlement. *Id.* at 819. Counsel for Experience Hendrix recited the terms of the settlement into the record, and Howick testified that he agreed to its terms. *Id.* at 820-825. Counsel for Experience Hendrix agreed to reduce the settlement to writing. *Id.* at 823, 825. The ALJ found, “Based on the representations of the parties and subject to receiving the documents, with [sic] which evidence the settlement, I will enter a dismissal per 29 C.F.R. 1978.111(d)(2).” *Id.* at 826.

On October 31, 2001, the ALJ issued an order directing the parties “to either submit a signed settlement agreement, as indicated at the formal hearing of the instant case, or show cause why this matter should not be rescheduled for hearing.” Experience Hendrix responded that the parties had settled the case and that the ALJ should dismiss it. Order Dismissing Case and Approving Settlement Agreement (“ALJ dismissal”) at 1. Howick argued that the ALJ should refuse to approve the settlement and should not dismiss the case because he had entered into the settlement under duress. *Id.* On February 8, 2002, the ALJ entered an “Order Dismissing Case and Approving Settlement Agreement.” The ALJ found that Howick had failed to prove that Experience Hendrix or its counsel had taken “any actions . . . which placed the complainant under duress.” *Id.* at 2. The ALJ also found that the settlement was fair, adequate and reasonable. *Id.* at 3. Accordingly the ALJ approved the settlement and dismissed the case with prejudice. *Id.* at 4.

Pursuant to 29 C.F.R. § 1978.109(c)(2), the ARB issued a Notice of Review and Briefing Schedule. In response Howick filed a Notice of Appeal and Request for an Extension of Time. Experience Hendrix also requested an extension of time to file its brief. The ARB granted both motions. Experience Hendrix subsequently filed a brief in support of the ALJ’s dismissal order. Howick did not file a brief. Instead on May 22, 2002, the ARB received Howick’s “Written Withdrawal of Objections to ALJ’s Order and Findings and Notice of Execution of Settlement Agreement.” In this document, Howick states that he withdraws all objections to the ALJ’s Order Dismissing Case and Approving Settlement Agreement and that he has executed the parties’ settlement agreement and has received the settlement funds for which the settlement’s terms provide.

### **Discussion**

Pursuant to STAA § 31105(b)(2)(C), “[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.” Under 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.” 29 C.F.R. § 1978.111(d)(2). The regulations direct the parties to file a copy of the settlement “with the ALJ or the Administrative Review Board as the case may be.” *Id.* In this case, at the time the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. However, pursuant to 29 C.F.R. § 1978.109(c), the ARB, must, nevertheless, issue

a final decision and order in this case. *Monroe v. Cumberland Transportation Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 00-STA-17 (ARB May 30, 2001).

### **Conclusion**

Pursuant to 29 C.F.R. § 1978.111(c), Howick has withdrawn his objections to the ALJ's order. Accordingly, we **AFFIRM** the ALJ's Order Dismissing Case and Approving Settlement Agreement and, in accordance with the settlement agreement, we **DISMISS** this case with prejudice.

**SO ORDERED.**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**