



In the Matter of:

DANIEL J. GREEN,

ARB CASE NO. 05-049

COMPLAINANT,

ALJ CASE NO. 2004-STA-27

v.

DATE: March 30, 2006

THOMPSON, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Respondent:

Daniel J. Doetzel, Esq., Bobroff, Hesse, Lindmark & Martone, St. Louis, Missouri

**FINAL DECISION AND ORDER APPROVING SETTLEMENT AND
DISMISSING COMPLAINT WITH PREJUDICE**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended.¹ On January 18, 2005, the Respondent, Thompson, Inc., submitted a settlement agreement to a Department of Labor Administrative Law Judge (ALJ). Under the 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."² The regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be."³

¹ 49 U.S.C.A. § 31105 (West 1997).

² 29 C.F.R. § 1978.111(d)(2) (2005).

³ *Id.*

The case was pending before the ALJ when the parties reached a settlement; therefore, the ALJ appropriately reviewed the settlement agreement. On January 25, 2005, the ALJ issued a Recommended Order Approving Settlement and Mutual Release of All Claims. According to the STAA's implementing regulations, the Administrative Review Board issues the final decision and order in this case.⁴

The Board issued a Notice of Review and Briefing Schedule apprising the parties of their right to submit briefs supporting or opposing the ALJ's recommended order.⁵ The Complainant did not respond to the Board's notice. On February 8, 2005, the Respondent advised the Board that it did not intend to file a brief.

The parties certified that the agreement constitutes the entire settlement with respect to the Complainant's claims.⁶ Review of the agreement reveals that it may encompass 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. Therefore, we approve only the terms of the agreement pertaining to the Complainant's STAA claim.⁸

Furthermore, the Board specifically does not endorse the Respondent's agreement "not to pursue or otherwise cooperate with any criminal prosecution of [the Complainant] associated with any conduct or actions occurring in connection with ... [the Complainant's] employment with [the Respondent]."⁹ An agreement not to cooperate with a criminal prosecution is contrary to public policy and such terms are unenforceable.¹⁰ We note that the settlement agreement includes a severability clause that provides, "If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement

⁴ 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. 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).

⁵ 29 C.F.R. § 1978.109(c)(2).

⁶ Settlement Agreement ¶ 11.

⁷ Settlement Agreement ¶¶ 1, 2, 5.

⁸ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

⁹ Settlement Agreement ¶ 2.

¹⁰ See *Fomby-Denson v. Dep't of Army*, 247 F.3d 1366, 1378-1379 (Fed.Cir., May 3, 2001).

shall remain in full force and effect and shall in no way be affected, impaired or invalidated.”¹¹

Finally, while paragraph 10 of the settlement agreement identifies the laws of the State of Missouri as controlling, we construe this paragraph 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.¹²

With the above-noted exceptions, the Board finds the settlement agreement fair, adequate and reasonable. As so construed, we **APPROVE** the terms of the agreement pertaining to Green’s STAA claim and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

¹¹ Settlement Agreement ¶ 10.

¹² See *Phillips v. Citizens’ Ass’n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).