



In the Matter of:

EDWARD P. BISHOP,

ARB CASE NO. 08-100

COMPLAINANT,

ALJ CASE NO. 2008-STA-023

v.

DATE: July 31, 2008

**RISINGER BROTHERS
TRANSFER, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Paul O. Taylor, Esq., Truckers Justice Center, Burnsville, Minnesota.

For the Respondent:

Sara L. Pettinger, Esq., Scopelitis, Garvin, Light, Hanson & Feary, Chicago, Illinois

**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), 49 U.S.C.A. § 31105 (West 2007), and implementing regulations at 29 C.F.R. Part 1978 (2007).

On August 15, 2007, the Complainant, Edward P. Bishop, filed a complaint with the Department of Labor's Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Risinger Brothers Transfer, Inc., fired him in violation of the STAA. OSHA denied Bishop's complaint on December 13, 2007, and he timely requested a hearing pursuant to 29 C.F.R. § 1978.105.

Prior to the scheduled hearing, the parties negotiated and executed a Settlement Agreement and Full and Final Release of All Claims, which both Bishop and Dean Hoffman, president of Risinger, signed. The settlement agreement was filed with the Administrative Law Judge (ALJ) along with Bishop's Motion to Approve Settlement and Dismiss Complaint with Prejudice.

Under the regulations implementing the STAA, the parties may settle a case at any time after filing objections to OSHA's preliminary findings, and before those findings become final, "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board [ARB] . . . or the ALJ." 29 C.F.R. § 1978.111(d)(2).

When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On June 16, 2008, the ALJ issued a Recommended Order Approving Settlement Agreement and dismissing Bishop's complaint with prejudice. The ALJ determined that the settlement agreement constituted a fair, adequate, and reasonable settlement of Bishop's STAA complaint and was "in the public interest." Order at 2.

The case is now before the ARB pursuant to the STAA's automatic review provisions. See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(c)(1). The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge." 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050, slip op. at 2 (ARB Sept. 26, 2001).

The ARB issued a Notice of Review and Briefing Schedule permitting either party to submit briefs in support of or in opposition to the ALJ's order. Bishop responded that he would not be filing a brief and Risinger did not respond. We therefore deem the settlement unopposed under its terms.

The ARB agrees with the ALJ's determination that the parties' settlement agreement constitutes a fair, adequate, and reasonable settlement of Bishop's STAA complaint and none of the parties alleges otherwise. However, review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA. Agreement at 2.(B), 3.(E).

The ARB's authority over settlement agreements is limited to the statutes that are within our jurisdiction as defined by the applicable statute and to cases over which we have jurisdiction. *Bettner v. Crete Carrier Corp.*, ARB No. 07-093, ALJ No. 2006-STA-033, slip op. at 2 (ARB Sept. 27, 2007). Therefore, we approve only the terms of the agreement pertaining to Bishop's STAA claim, ARB No. 08-100, 2008-STA-033.

The Board finds that the settlement is fair, adequate and reasonable and in the public interest. Accordingly, with the reservations noted above limiting our approval to the settlement of Bishop's STAA claim, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge