



In the Matter of:

**ASSISTANT SECRETARY FOR
OCCUPATIONAL SAFETY AND
HEALTH, UNITED STATES
DEPARTMENT OF LABOR,**

ARB CASE NO. 99-029

ALJ CASE NO. 98-STA-4

DATE: January 29, 1999

PROSECUTING PARTY

and

DOUGLAS SWANK,

COMPLAINANT,

v.

**FOUR WINDS, INC. d/b/a
PEOPLE'S CHOICE
TRANSPORTATION, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Douglas Swank, *pro se*

For the Department of Labor:

Henry L. Solano, Esq., Joseph M. Woodward, Esq., Donald G. Shalhoub, Esq., Daniel J. Mick, Esq., Mark J. Lerner, Esq., Peter J. Vassalo, Esq.,
U.S. Department of Labor, Washington, D.C.

For the Respondent:

Bradley N. Shefrin, Esq.
Hayes, Phillips & Maloney, P.C., Denver, Colorado

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the employee protection provision of the Surface Transportation Assistance Act of 1982 (STAA), as amended, 49 U.S.C. §31105 (1994). The parties submitted a “Stipulation and Settlement Agreement” to the Board seeking approval of the settlement and dismissal of the complaint.

Under rules implementing the STAA, a case may be settled at any time after the filing of objections to the Assistant Secretary’s 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.* The parties reached a settlement agreement in this case *after* the ALJ had issued his Recommended Decision and Order and forwarded the case to this Board for consideration. Therefore, the case is before the Board, and we are the appropriate body to review the settlement agreement.

The request for approval is based on an agreement entered into by the parties. We review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. *See, e.g., Bettner v. Daymark Foods, Inc.*, ARB Case No. 98-124, ALJ Case No. 97-STA-73, Final Order Approving Settlement and Dismissing Complaint, Aug. 10, 1998.

We find that the settlement agreement is a fair, adequate, and reasonable settlement of the complaint. Accordingly, we **APPROVE** the agreement and **DISMISS THE COMPLAINT WITH PREJUDICE**.

SO ORDERED.

PAUL GREENBERG
Chair

E. COOPER BROWN
Member

CYNTHIA L. ATTWOOD
Acting Member