



**In the Matter of:**

**MICHAEL PODOLSKY,**

**ARB CASE NO. 09-022**

**COMPLAINANT,**

**ALJ CASE NO. 2008-STA-008**

**v.**

**DATE: December 22, 2008**

**HURRICANE EXPRESS, INC., KAEDON  
STEINERT, INC., HURRICANE EXPRESS  
LOGISTICS, INC., HURRICANE EXPRESS  
LEASING, INC., JONATHAN LTD., STEINERT  
EXPRESS, LLC., and KAEDON STEINERT,**

**RESPONDENTS.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

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

***For the Respondent:***

**Kaedon Steinert, *pro se*, Springdale, Arkansas**

**FINAL ORDER APPROVING SETTLEMENT  
AND DISMISSING COMPLAINT**

This case arises under Section 405 of the Surface Transportation Assistance Act of 1982 (STAA), as amended, and its implementing regulations.<sup>1</sup> Michael Podolsky filed a complaint with the Occupational Safety and Health Administration (OSHA) on August 8, 2007, alleging that Hurricane Express, Inc.; Kaedon Steinert, Inc.; Hurricane Express Logistics, Inc.; Hurricane Express Leasing, Inc.; Jonathan LTD.; Steinert Express, LLC.; and Kaedon Steinert (collectively, Hurricane) retaliated against him for his complaints concerning violations of the Department of Transportation's hours of service and safety regulations.<sup>2</sup> Hurricane countered that Podolsky was fired for misusing company funds. After an investigation, OSHA found that Hurricane did not retaliate against him for engaging in protected activity.<sup>3</sup>

Podolsky objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup> The ALJ scheduled the case for hearing, but prior to the scheduled hearing, the parties negotiated and executed a Settlement Agreement and Release (Agreement), which both Podolsky and Hurricane signed. The parties filed the Agreement with the ALJ. Thereafter, the parties executed a Memorandum of Understanding to clarify the earlier Agreement.

When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On November 10, 2008, the ALJ issued a Recommended Order Approving Settlement and Dismissing Claim. The ALJ noted that pursuant to 29 C.F.R. § 1978.111(d)(2), the parties submitted a copy of the Agreement signed by Podolsky and Hurricane.<sup>5</sup> Accordingly, the ALJ canceled the hearing and dismissed Podolsky's appeal with prejudice.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2008). The STAA was amended shortly before Podolsky filed his complaint on August 8, 2007. *See* Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). *See also* STAA's implementing regulations, 29 C.F.R. Part 1978 (2007).

<sup>2</sup> Complaint at 2; 49 C.F.R. §§ 395.3 (hours of service), 392.3 (illness and fatigue) (2007).

<sup>3</sup> OSHA's Findings and Order, at 2, Oct. 12, 2007.

<sup>4</sup> *See* 29 C.F.R. § 1978.105.

<sup>5</sup> Recommended Order at 2. 29 C.F.R. § 1978.111(d)(2) provides in relevant part:

At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board, United States Department of Labor, or the ALJ. A copy of the settlement shall be filed with the ALJ or the

Continued . . .

The case is now before the Board pursuant to the STAA's automatic review provisions.<sup>6</sup> The Board 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. Neither party submitted a brief pursuant to the Board's notice. We therefore deem the settlement unopposed under its terms.

The Board "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."<sup>7</sup> In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . . ."<sup>8</sup> Therefore, the Board reviews the ALJ's legal conclusions de novo.<sup>9</sup>

The ARB concurs with the ALJ's determination that the parties' settlement agreement is fair, adequate and reasonable. But we note that the Agreement may encompass the settlement of matters under laws other than the STAA.<sup>10</sup> 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. Our approval is limited to this case, and we understand the settlement terms relating to release of STAA claims as pertaining only to the facts and circumstances giving rise to this case. Therefore, we approve only the terms of the Agreement pertaining to Podolsky's STAA claim, ARB No. 09-022, 2008-STA-008.<sup>11</sup>

Furthermore, if the provisions in paragraph I of the Agreement or Paragraph B of the Memorandum of Understanding were to preclude Podolsky from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.<sup>12</sup>

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Administrative Review Board, United States Department of Labor as  
the case may be.

<sup>6</sup> See 49 U.S.C.A. § 31105(b)(2)(C); 29 C.F.R. § 1978.109(a),(c)(1).

<sup>7</sup> 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001).

<sup>8</sup> 5 U.S.C.A. § 557(b) (West 2008).

<sup>9</sup> See *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

<sup>10</sup> See Agreement, paras. B, C, and E.

<sup>11</sup> See *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

Continued . . .

Finally, the Agreement provides that the parties shall keep the terms of the settlement confidential.<sup>13</sup> The Board notes that the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552 (West 2007). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>14</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>15</sup>

The parties have agreed to settle Podolsky's STAA claim. Accordingly, we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

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

**WAYNE C. BEYER**  
**Administrative Appeals Judge**

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<sup>12</sup> *Connecticut Light & Power Co. v. Sec'y, U.S. Dep't of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant's ability to provide regulatory agencies with information; improper "gag" provision constituted adverse employment action); *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, slip op. at 6 (ARB Nov. 10, 1997).

<sup>13</sup> Agreement, para. I and Memorandum of Understanding, para. B.

<sup>14</sup> *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

<sup>15</sup> 29 C.F.R. § 70 *et seq.* (2007).