



**In the Matter of:**

**BARBARA STOCKTON,**

**ARB CASE NO. 06-156**

**COMPLAINANT,**

**ALJ CASE NO. 2006-STA-020**

**v.**

**DATE: June 28, 2007**

**WALTER TRANSPORT, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**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 of 1982 (STAA).<sup>1</sup> The Complainant, Barbara Stockton, and the Respondent, Walter Transport, Inc., have agreed to settle this case, and they filed Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding with Prejudice with a Department of Labor Administrative Law Judge (ALJ).<sup>2</sup>

The ALJ issued a Recommended Decision and Order Approving Settlement and Dismissing Complaint (R. D. & O.). The case is now before the ARB pursuant to the STAA's automatic review provisions.<sup>3</sup> The Board received the R. D. & O. and issued a

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 2003).

<sup>2</sup> When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the Agreement. However, the Administrative Review Board issues final decisions in STAA cases. 29 C.F.R. § 1978.109(c)(2); *see, e.g., Bosanko v. S. Refrigerated Transp., Inc.*, ARB No. 06-155, ALJ No. 2005-STA-0043 (ARB Jan. 31, 2007).

<sup>3</sup> *See* 49 U.S.C.A. § 31105(b)(2)(C), 29 C.F.R. § 1978.109(c)(1) (2006).

Notice of Review and Briefing Schedule apprising the parties of their right to submit briefs supporting or opposing the ALJ's recommended decision. Neither party filed a brief, but Stockton notified the Board that she supports the R. D. & O. We therefore deem the settlement unopposed under the terms of the R. D. & O.

Under the regulations implementing the STAA, the parties may settle a case at any time after filing objections to the Assistant Secretary'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 [Board] . . . or the ALJ."<sup>4</sup> Those regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.<sup>5</sup>

We have reviewed the Agreement and concur with the ALJ's determination that it is fair, adequate and reasonable.<sup>6</sup> But, we note that the agreement encompasses the settlement of matters under laws other than the STAA.<sup>7</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. Thus, our approval is limited to this case, and we approve the Agreement only insofar as it pertains to Stockton's STAA claim in ARB No. 06-156.<sup>8</sup>

The Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.<sup>9</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).<sup>10</sup> FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>11</sup> Department of Labor regulations provide specific procedures for responding to FOIA

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<sup>4</sup> 29 C.F.R. § 1978.111(d)(2).

<sup>5</sup> *Id.*

<sup>6</sup> R. D. & O. at 2.

<sup>7</sup> Settlement Agreement and Release of All Claims (Agreement) para. B, at 2-3.

<sup>8</sup> *See, e.g., Saporito v. GE Med. Sys.*, ARB No. 05-009, ALJ Nos. 03-CAA-1, 2, slip op. at 2 (ARB May 24, 2005).

<sup>9</sup> Agreement, para. G at 4.

<sup>10</sup> 5 U.S.C.A. § 552 (West 2006).

<sup>11</sup> *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996).

requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information.<sup>12</sup>

Furthermore, if the provisions of paragraph L of the Agreement were to preclude Stockton 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>13</sup>

Finally, we construe the choice of law provision, paragraph N of the Agreement, 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.<sup>14</sup>

The parties have agreed to settle Stockton’s claim. Accordingly, as construed, we **APPROVE** the Agreement and **DISMISS** the complaint with prejudice.

**SO ORDERED.**

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

**DAVID G. DYE**  
**Administrative Appeals Judge**

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<sup>12</sup> 29 C.F.R. § 70 *et seq.* (2006).

<sup>13</sup> *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, slip op. at 6 (ARB Nov. 10, 1997); *Conn. 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).

<sup>14</sup> *Phillips v. Citizens Ass’n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).