



In the Matter of:

BENN C. KINGSBURY,

ARB CASE NO. 07-029

COMPLAINANT,

ALJ CASE NO. 2006-STA-00025

v.

DATE: January 31, 2007

WEST WISCONSIN TRANSPORT, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**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 (STAA) of 1982.¹ On October 30, 2006, the parties submitted a Settlement Agreement and Release of Claims signed by the Complainant, Benn Kingsbury, and the Respondent, West Wisconsin Transport, Inc., (WWT) 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 2006).

² 29 C.F.R. § 1978.111(d)(2) (2006).

³ *Id.*

When the parties reached a settlement the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On November 29, 2006, the ALJ issued a Recommended Decision and Order Approving Settlement and Dismissing Complaint. According to the STAA's implementing regulations, the Administrative Review Board (ARB or 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 decision on December 13, 2006.⁵ The Complainant replied via letter to the Board's notice on December 18, 2006, indicating that he would not file a brief with the Board. On December 27, 2006, the Respondent also informed the ARB that they would not be filing a brief. We therefore deem settlement unopposed under the terms of the Recommended Decision and Order Approving Settlement.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA⁶ and reference cases other than ARB No. 07-029, 2006-STA-00025, the case currently before the Board.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. Furthermore, it is limited to cases over which we have jurisdiction. Therefore, we approve only the terms of the agreement pertaining to the Complainant's STAA claim ARB No. 07-029, 2006-STA-00025.⁸

Furthermore, if the provisions in paragraph L of the Settlement Agreement were to preclude Kingsbury from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.⁹

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 and Release of Claims para. B.

⁷ Settlement Agreement and Release of Claims para. C.

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

⁹ *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, slip op. at 6 (ARB Nov. 10, 1997); *Connecticut Light & Power Co. v. Secretary, United States Dep't of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful

Finally, we construe paragraph N, the choice of law provision, 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.¹⁰

The parties have agreed to settle Kingsbury's STAA claim. Accordingly, with the reservations noted above limiting our approval to the settlement of Kingsbury's STAA claim, 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

discrimination by restricting complainant's ability to provide regulatory agencies with information; improper "gag" provision constituted adverse employment action).

¹⁰ *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).