



In the Matter of:

KELVIN W. STALLION,

ARB CASE NO. 07-066

COMPLAINANT,

ALJ CASE NO. 06-STA-46

v.

DATE: May 31, 2007

LCT TRANSPORTATION SERVICES,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL ORDER APPROVING SETTLEMENT AND DISMISSING COMPLAINT

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 1997), and implementing regulations at 29 C.F.R. Part 1978 (2006). On May 30, 2006, Complainant Kelvin W. Stallion filed a complaint with the Occupational Health and Safety Administration (OSHA) alleging that the Respondent violated the STAA. Thereafter, OSHA initially denied Stallion's STAA complaint on August 17, 2006, and Stallion timely requested a hearing pursuant to 29 C.F.R. § 1978.105. At the hearing held on December 12, 2006, the ALJ determined that, in consideration of a payment of \$1000.00 to Stallion from the Respondent, the parties agreed to settle the case and that Stallion agreed to do so "freely and voluntarily." Hearing Transcript at 6-7. Subsequently, the parties submitted a "Release" to the ALJ, as well as a "Joint Stipulation To Dismiss" which was signed by both parties. On April 11, 2007, the Administrative Law Judge (ALJ) issued a Recommended Order Approving Settlement, Complainant's Withdrawal Of Objections And Complainant's Dismissal Of Claim. Based on the facts revealed at the hearing, the ALJ's Order approved the parties' settlement agreement and dismissed the complaint with prejudice.

The Administrative Review Board "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. 00-STA-

50 (ARB Sept. 26, 2001). On April 24, 2007, 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. None of the parties filed a response with the Board.

The ARB agrees with the ALJ's determination that the parties' settlement agreement was reached freely and voluntarily and none of the parties allege that the settlement agreement is not a fair, adequate and reasonable settlement of the complaint. We note that the agreement releases Respondent "from any and all claims." See Release at 1. Because the Board's authority over settlement agreements is limited to such statutes as are within the Board's jurisdiction and is defined by the applicable statute, we approve only the terms of the agreement pertaining to Stallion's STAA claim. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

Furthermore, we note that the agreement includes a confidentiality agreement. See Release at 3. If the confidentiality agreement were interpreted to preclude Stallion from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable "gag" provision. *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). Moreover, the parties are on notice that the settlement agreement becomes part of the record of the case and is subject to the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 (West 2006). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. 29 C.F.R. § 70 *et seq.* (2006).

The parties have certified that the agreement constitutes the entire settlement with respect to Stallion's STAA claim. The ARB has reviewed the settlement agreement and finds it fair, adequate and reasonable. Accordingly, with the reservations noted above limiting our approval to the settlement of Stallion's STAA claim, we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge