



In the Matter of:

**ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND
HEALTH,**

ARB CASE NO. 08-005

ALJ CASE NO. 06-STA-016

PROSECUTING PARTY,

DATE: October 31, 2007

and

FERNANDO WHITE,

COMPLAINANT,

v.

NATURALLY FRESH, INC.,

RESPONDENT,

and

**TRUSTEE OF THE BANKRUPTCY ESTATE
OF FERNANDO DEMECO WHITE,**

PARTY-IN-INTEREST.

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 September 19, 2007, the Assistant Secretary of Labor for Occupational Safety and Health filed, on behalf of the parties, a Report of Settlement and Motion to Dismiss (R. & M.), including a copy of the parties' settlement agreement, to a Department of Labor Administrative Law Judge (ALJ). The settlement was signed by the Complainant, Fernando White, the Respondent, Naturally Fresh, Inc., and the Assistant Secretary of Labor for Occupational Safety and Health. 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

When the parties reached a settlement the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On September 24, 2007, the ALJ issued a Recommended Order Approving Settlement. 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 October 11, 2007.⁵ On October 22, 2007, the Respondent filed a letter with the Board stating that it supported the settlement and it would not be filing a brief. The Complainant did not respond to the Board's notice. We therefore deem settlement unopposed under the terms of the Recommended Order Approving Settlement and Dismissing Complaint.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA and references cases other than ARB No. 08-005, ALJ

¹ 49 U.S.C.A. § 31105 (West 2007). The STAA has been amended since White filed his complaint. See Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007). Even if the amendments were applicable to this complaint, they would not affect our decision.

² 29 C.F.R. § 1978.111(d)(2) (2007).

³ *Id.*

⁴ 29 C.F.R. § 1978.109(c)(2); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 2000-STA-017 (ARB May 30, 2001).

⁵ 29 C.F.R. § 1978.109(c)(2).

No. 06-STA-0016, the case currently before the Board.⁶ 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. 08-005, ALJ No. 06-STA-0016.⁷

The Board finds that the settlement is adequate and reasonable. Accordingly, with the reservations noted above limiting our approval to the settlement of White'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

⁶ Settlement and Full and Final Release of All Claims, para. 5.

⁷ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).