



In the Matter of:

DANIEL DAVIS,

ARB CASE NO. 08-098

COMPLAINANT,

ALJ CASE NO. 2008-STA-048

v.

DATE: July 31, 2008

ECOSCAPE SOLUTIONS GROUP,

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 May 27, 2008, counsel for the Respondent, on behalf of the parties, filed with a Department of Labor Administrative Law Judge (ALJ), a Confidential Settlement Agreement signed by the parties and a Certificate of Satisfaction and Notice of Dismissal (“Request for Dismissal of Complaint”) signed by the Complainant. 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) (2007).

³ *Id.*

When the parties reached a settlement the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On June 16, 2008, the ALJ issued a Recommended Order Approving Settlement and recommended that the Administrative Review Board (ARB or Board) dismiss the complaint with prejudice. According to the STAA's implementing regulations, the ARB issues the final decision and order in this case.⁴

On June 20, 2008, 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.⁵ Complainant Daniel Davis did not respond to the Board's notice; Respondent Ecoscape Solutions Group advised the Board that the company did not wish to file a brief. We therefore deem the settlement unopposed under the terms of the Recommended Decision and Order Approving Settlement Agreement.

In the Recommended Order, the ALJ noted that the agreement may encompass the settlement of matters under laws other than the STAA.⁶ The ALJ and 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. Therefore, the ALJ correctly approved only the terms of the agreement pertaining to the Complainant's STAA claim ARB No. 08-098, ALJ No. 2008-STA-048.⁷

The ALJ also noted that the parties purported to file their settlement agreement "under seal" but that the agreement may be subject to release under the Freedom of Information Act (FOIA).⁸ He therefore directed that "a notice shall be prominently placed on the case record noting the parties' request and directing that OALJ [Office of Administrative Law Judges] follow the procedures set forth in 29 C.F.R. § 70.26 if a FOIA request is received by this office which encompasses the agreement."⁹ We find the

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 See 29 C.F.R. § 1978.109(c)(2).

⁶ Recommended Order Approving Settlement, n.1. See Settlement Agreement and Release para. 3, 5.

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

⁸ 5 U.S.C.A. § 522 (2008).

⁹ Recommended Order Approving Settlement at 2.

recommended notice to be consonant with our decision in *Bettner v. Crete Carrier Corp.*¹⁰

Finally, the ALJ conditioned his recommendation of approval on the understanding that the parties' settlement agreement would not "be read as restricting Complainant's ability to voluntarily communicate with, and provide information to, any state or federal government agencies" and that the choice-of-law provision in the agreement would not limit the authority of the Secretary of Labor or any Federal court. We find these restrictions on the ALJ's Recommended Approval of Settlement also in compliance with controlling precedent.¹¹

The Board finds that the settlement is fair, adequate and reasonable and in the public interest. Accordingly, with the reservations noted above limiting our approval to the settlement of Davis's STAA claim, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

¹⁰ ARB No. 07-093, ALJ No. 2007-STA-033, slip op. n.11 (Sept. 27, 2007); *see also* 29 C.F.R. § 70 *et seq.* (2006).

¹¹ *See Rulo v. Western Livestock Express, Inc.*, ARB No.08-054, ALJ No. 2007-STA-030, slip op. at 3 (ARB Apr. 23, 2008); *Bettner*, slip op. at 2