In the Matter of:

ANDRE CLARK,

COMPLAINANT,

v.

J.H.O.C., INC., D/B/A
PREMIER TRANSPORTATION,

RESPONDENT.

ARB CASE NO. 07-087

ALJ CASE NO. 2007-STA-29

DATE: August 31, 2007

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 of 1982 (STAA)[1] and its implementing regulations.[2] The Administrative Law Judge (ALJ) below issued a Recommended Approval of Settlement Agreement and Dismissal of Case with Prejudice (R. D. & O.) on June 11, 2007.

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 [ARB or Board] . . . or

[1] 49 U.S.C.A. § 31105 (West 2007).

[2] 29 C.F.R. Part 1978 (2006).

the ALJ."[3] The regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.

Pursuant to 29 C.F.R. § 1978.109(c)(1), the Board "shall issue a final decision and order based on the record and the decision and order of the administrative law judge." In reviewing the ALJ's legal conclusions, the Board, as the Secretary's designee, acts with "all the powers [the Secretary] would have in making the initial decision . . .."[4] Therefore, the Board reviews the ALJ's legal conclusions de novo.[5]

The Board received the R. D. & O. and 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 June 25, 2007. Neither the Complainant, Andre Clark, nor the Respondent, J.H.O.C., Inc. d/b/a Premier Transportation, filed a brief with the Board.

The ARB concurs with the ALJ's determination that the parties' settlement agreement is fair, adequate and reasonable. But, we note that the Agreement encompasses the settlement of matters under laws other than the STAA.[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. Our approval is limited to this case, and we understand the settlement terms relating to release of STAA claims as pertaining only to the facts and circumstances giving rise to this case. Therefore, we approve only the terms of the Agreement pertaining to Clark's STAA claim, ARB No. 07-087, ALJ No. 2007-STA-00029.[7]

The Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.[8] 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).[9] FOIA requires Federal agencies to

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3 29 C.F.R. § 1978.111(d)(2).

4 5 U.S.C.A. § 557(b) (West 1996).

5 *See Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991).

6 *See* para. B of the Agreement.

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

8 Agreement, para. G.

9 5 U.S.C.A. § 552 (West 2006).

disclose requested records unless they are exempt from disclosure under the Act.[10] 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.[11]

Furthermore, if the provisions in paragraphs D and G of the Settlement Agreement and Release were to preclude Clark from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore constitute unacceptable "gag" provisions.[12]

Additionally, we construe paragraph N, the governing 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.[13]

The parties have agreed to settle Clark's STAA claim. Accordingly, with the reservations noted above, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

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[10] *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).

[11] 29 C.F.R. § 70 *et seq*. (2006).

[12] *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).

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