U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

PAUL DENAULT,

COMPLAINANT,

v.

KEENAN TRANSIT CO., WILLIAM KEENAN, JOHN DOE AND MARY ROE,

RESPONDENTS.

ARB CASE NO. 07-116

ALJ CASE NO. 2007-STA-005

DATE: October 31, 2007

REISSUED: December 21, 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 Decision and Order Approving Settlement Agreement and Dismissing Complaint (R. D. & O.) on August 16, 2007.

[1] 49 U.S.C.A. § 31105 (West 2007). The STAA has been amended since Denault 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. Part 1978 (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 [Board] . . . or 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.[4]

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 . . . ."[5] The Board reviews the ALJ's legal conclusions de novo.[6]

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 September 13, 2007. Neither the Complainant, Paul Denault, nor the Respondents, Keenan Transit Co., William Keenan, John Doe, and Mary Roe, 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.[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. 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 Denault's STAA claim ARB No. 07-116, 2007-STA-005.[8]

Furthermore, if the provisions in paragraphs 2.C of the Settlement Agreement and Release were to preclude Denault from communicating with federal or state enforcement

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[3] 29 C.F.R. § 1978.111(d)(2).

[4] *See id.*

[5] 5 U.S.C.A. § 557(b) (West 1996).

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

[7] *See, e.g.*, para. 2.B of the Agreement.

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

agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable "gag" provisions.[9]

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

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

[9] *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-033, 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).