



In the Matter of:

WARREN ANDREWS,

ARB CASE NO. 07-065

COMPLAINANT,

ALJ CASE NO. 2006-STA-45

v.

DATE: May 30, 2007

MAX TRANS, LLC,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL DECISION AND ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (West 2007); the Toxic Substances Control Act (TSCA), 15 U.S.C.A. § 2622 (West 1998); the Safe Drinking Water Act (SDWA), 42 U.S.C.A. § 300j-9(i) (West 2003); the Solid Waste Disposal Act (SWDA), 42 U.S.C.A. § 6971 (West 2003); the Federal Water Pollution Control Act (WPCA), 33 U.S.C.A. § 1367 (West 2001); and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.A. § 9610 (West 2005). Warren Andrews and Max Trans, LLC have agreed to settle this case, and on March 13, 2007, they filed a Mutual Release and Settlement Agreement (Agreement) with the Administrative Law Judge (ALJ).¹

¹ When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the Agreement. However, the Administrative Review Board issues final decisions in STAA cases. 29 C.F.R. § 1978.109(c)(2)(2006); *see, e.g., Bosanko v. S. Refrigerated Transp., Inc.*, ARB No. 06-155, ALJ No. 2005-STA-0043 (ARB Jan. 31, 2007). Since no party has filed an appeal under the TSCA, SDWA, SWDA, WPCA, or CERCLA, we do not review the settlement under those statutes.

The ALJ issued a Recommended Order Approving Settlement and Dismissing Complaint (R. D. & O.) on March 29, 2007. The case is now before the ARB pursuant to the automatic review provisions of 49 U.S.C.A. § 31105(b)(2)(C) and 29 C.F.R. § 1978.109(c)(1). The Board received the R. D. & O. and issued a Notice of Review and Briefing Schedule on April 23, 2007, apprising the parties of their right to submit briefs supporting or opposing the ALJ's recommended decision. Neither party filed a brief.

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."² Those regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.³

We have reviewed the Agreement and concur with the ALJ's determination that it is fair, adequate and reasonable.⁴ But, we note that the agreement encompasses the settlement of matters under laws other than the STAA.⁵ 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, thus we approve the Agreement only insofar as it pertains to Andrews's STAA claim in ARB No. 07-065.⁶

Additionally, the Agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.⁷ 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)⁸ FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.⁹ Department of Labor regulations provide specific procedures for responding to FOIA

² 29 C.F.R. § 1978.111(d)(2)(2006).

³ *Id.*

⁴ R. D. & O. at 3.

⁵ Agreement para. 1.

⁶ *See, e.g., Saporito v. GE Med. Sys.*, ARB No. 05-009, ALJ Nos. 03-CAA-1, 2, slip op. at 2 (ARB May 24, 2005).

⁷ Agreement para. 3.

⁸ 5 U.S.C.A. § 552 (West 2006).

⁹ *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).

requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information.¹⁰

Furthermore, if the provisions in paragraph 3 of the Agreement were to preclude Andrews from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.¹¹

The parties have agreed to settle Andrews’s claim. Accordingly, as construed, 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

¹⁰ 29 C.F.R. § 70 *et seq.* (2006).

¹¹ *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).