



In the Matter of:

LUTHER CARNAHAN,

ARB CASE NO. 10-025

COMPLAINANT,

ALJ CASE NO. 2009-STA-073

v.

DATE: December 22, 2009

**ARNOLD TRANSPORTATION SERVICES,
INC. and U.S. XPRESS ENTERPRISES, INC.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C.A. § 31105 (Thomson/West 1997 & Supp. 2008), and implementing regulations at 29 C.F.R. Part 1978 (2009). On August 13, 2009, Complainant Luther Carnahan filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondents, Arnold Transportation Services and U.S. Xpress Enterprises, violated the STAA. Thereafter, OSHA denied Carnahan's STAA complaint on September 9, 2009, and Carnahan timely requested a hearing pursuant to 29 C.F.R. § 1978.105. Prior to the scheduled hearing, the parties negotiated and executed a Confidential Settlement Agreement and General Release, which both Carnahan and counsel for the Respondents, Lisa M. Pate, signed. The Confidential Settlement Agreement was filed with the Administrative Law Judge (ALJ) on November 4, 2009, along with Complainant's Unopposed Motion to Approve Settlement and Dismiss Proceeding With Prejudice.

On November 16, 2009, the ALJ issued a Recommended Order Approving Settlement. The ALJ reviewed the parties' settlement agreement and determined that it constitutes a fair, adequate, and reasonable settlement of Carnahan's STAA complaint and is in the public interest.

The Administrative Review Board "shall issue the final decision and order based on the record and the decision and order of the administrative law judge." 29 C.F.R. § 1978.109(c); *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 2000-STA-050 (ARB Sept. 26, 2001). On November 20, 2009, the Board issued a Notice of Review and Briefing Schedule permitting either party to submit briefs in support of or in opposition to the ALJ's order. Carnahan's and the Respondents' counsel responded, stating that they would not be filing a brief.

The ARB agrees with the ALJ's determination that the parties' Settlement Agreement constitutes a fair, adequate, and reasonable settlement of Carnahan's STAA complaint and none of the parties allege otherwise. We note, however, the agreement releases the Respondents "from any and all claims" under a variety of statutes, in addition to the STAA. Confidential Settlement Agreement at 2, Paragraph 4, General Release of Claims. Because the Board's authority over settlement agreements is limited to such statutes as are within the Board's jurisdiction and is defined by the applicable statute, we approve only the terms of the agreement pertaining to Carnahan's STAA claim. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

Furthermore, the agreement includes a confidentiality agreement, which notes that the settlement agreement shall be kept confidential except "as required by valid legal process or order." Confidential Settlement Agreement at 3, Paragraph 7, Confidentiality. In this regard, we note that if the confidentiality agreement were interpreted to preclude Carnahan from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy and therefore constitute an unacceptable "gag" provision. *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). Moreover, the parties are on notice that the settlement agreement becomes part of the record of the case and is subject to the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 (West 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests. 29 C.F.R. Part 70 (2009).

Additionally, we construe Paragraph 8 of the Confidential Settlement Agreement, the Governing Law and Interpretation provision, Confidential Settlement Agreement at 3, 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. *Phillips v. Citizens' Ass'n for Sound Energy*, 1991-ERA-025, slip op. at 2 (Sec'y Nov. 4, 1991).

The parties have certified that the agreement constitutes the entire settlement with respect to Carnahan's STAA claim. The ARB has reviewed the settlement agreement and finds it fair, adequate, and reasonable. Accordingly, as so construed and with the reservations noted above limiting our approval to the settlement of Carnahan's STAA claim, we **APPROVE** the ALJ's order and **DISMISS** the complaint with prejudice.

SO ORDERED.

OLIVER M. TRANSUE
Administrative Appeals Judge

WAYNE C. BEYER
Chief Administrative Appeals Judge