



**In the Matter of:**

**FERNANDO DEMECO WHITE,**  
**COMPLAINANT,**

**ARB CASE NO. 10-044**

**ALJ CASE NO. 2008-STA-065**

**v.**

**DATE: May 27, 2010**

**SALSON LOGISTICS, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and E. Cooper Brown, *Deputy Chief Administrative Appeals Judge***

**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)<sup>1</sup> and its implementing regulations.<sup>2</sup> On December 26, 2007, Complainant Fernando Demeco White filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that the Respondent, Salson Logistics, violated the STAA. Thereafter, OSHA denied White's STAA complaint on August 26, 2008, and White timely requested a hearing.<sup>3</sup> Prior to the scheduled hearing, the parties negotiated and executed a Settlement Agreement and

---

<sup>1</sup> 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2009).

<sup>2</sup> 29 C.F.R. Part 1978 (2009).

<sup>3</sup> See 29 C.F.R. § 1978.105.

General Release, which both White and an official for Salson Logistics, whose name is not clearly discernable, signed. The Settlement Agreement was filed with the Administrative Law Judge (ALJ) on November 19, 2009, along with a Joint Motion to Dismiss With Prejudice.

On November 23, 2009, the ALJ issued an Order Approving Settlement Agreement and Order Recommending Dismissal With Prejudice. Initially, the ALJ noted that White proceeded before the ALJ without benefit of counsel following written advice of his right to representation and the procedural requirements of the formal hearing process. But the ALJ found that White's decision to proceed pro se was made voluntarily and constitutes a knowing waiver of his right to representation.

The ALJ reviewed the parties' settlement agreement and determined that it constitutes a fair, adequate, and reasonable settlement of White's STAA complaint and is in the public interest.

The case is now before the Administrative Review Board (ARB) pursuant to the STAA's automatic review provisions.<sup>4</sup> The ARB "shall issue the final decision and order based on the record and the decision and order of the administrative law judge."<sup>5</sup>

The STAA's implementing regulations permit each party to submit a brief in support of or in opposition to the ALJ's order;<sup>6</sup> however, neither party submitted a brief. We therefore deem the settlement unopposed under its terms.

The ARB agrees with the ALJ's determination that the parties' Settlement Agreement constitutes a fair, adequate, and reasonable settlement of White's STAA complaint and none of the parties allege otherwise. We note, however, that the settlement agreement may encompass the settlement of matters under laws other than the STAA.<sup>7</sup> 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, we approve only the terms of the agreement pertaining to White's current STAA case.<sup>8</sup>

---

<sup>4</sup> 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1).

<sup>5</sup> 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).

<sup>6</sup> 29 C.F.R. § 1978.109(c)(2).

<sup>7</sup> *See* Settlement Agreement and General Release, Section 1- Release of Claims, Section 3 - Full and Final Release, Section 4 - No Known Additional Claims, Section 5 - No Liability, Section 6 - No Filing Additional Claims, and Section 8 - Payment.

<sup>8</sup> *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 provides that the parties shall keep the terms of the settlement confidential, while acknowledging that nothing in the agreement “shall affect the rights of any third parties under the federal Freedom of Information Act.”<sup>9</sup> We reiterate 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).<sup>10</sup> FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.<sup>11</sup> Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.<sup>12</sup>

Finally, the settlement agreement provides that the agreement shall be governed and construed under the laws of the state of Georgia.<sup>13</sup> We construe this choice of 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.<sup>14</sup>

The parties have indicated that the agreement constitutes the entire settlement with respect to White’s STAA claim. The ARB has reviewed the settlement agreement and finds it fair, adequate, and reasonable. Accordingly, as construed, we **APPROVE** the ALJ’s recommended order and **DISMISS** White’s complaint with prejudice.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

---

<sup>9</sup> See Settlement Agreement and General Release, Section 7- Confidentiality and Non-Disparagement.

<sup>10</sup> 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2009).

<sup>11</sup> *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006, slip op. at 2 (ARB June 24, 1996).

<sup>12</sup> 29 C.F.R. § 70 *et seq.* (2009).

<sup>13</sup> See Settlement Agreement and General Release, Section 19- Construction.

<sup>14</sup> *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).