



In the Matter of:

THERON K. CARTER,

ARB CASE NO. 10-038

COMPLAINANT,

ALJ CASE NO. 2010-STA-040

v.

DATE: November 17, 2010

**EQUITY TRANSPORTATION
COMPANY INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge* and Joanne Royce,
*Administrative Appeals Judge***

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

The Complainant, Theron K. Carter, alleged that Equity Transportation Company, Inc. (Equity), violated the employee protection provisions of the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended and re-codified, and its implementing regulations, when Equity terminated his employment in retaliation for protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2010).

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that a preponderance of the evidence supported Equity's position that Carter's protected activity was not a contributing factor in Carter's loss of job opportunity, but rather was a result of a legitimate business decision that supports job abandonment. OSHA Findings (Apr. 2, 2010). Thus, OSHA dismissed the complaint.

Carter objected to OSHA's findings and requested a hearing before a Department of Labor (DOL) Administrative Law Judge (ALJ). *See* 29 C.F.R. § 1978.105. The ALJ scheduled the case for hearing, but on July 15, 2010, the ALJ continued the hearing date because Carter requested that he appoint a settlement judge in the matter. Equity did not oppose appointment of a settlement judge. On August 10, 2010, the settlement judge notified the ALJ that the parties settled the matter. The settlement agreement was submitted to the ALJ, and on August 19, 2010, he entered a Recommended Order Approving Settlement.

Under the regulations implementing the STAA, the parties may settle a case at any time after filing objections to OSHA'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 the ALJ." 29 C.F.R. § 1978.111(d)(2). When the parties reached a settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement.

The ALJ issued an Order approving the settlement and dismissing the complaint, finding that the agreement constituted a fair, adequate, and reasonable settlement of the complaint. 28 C.F.R. § 1978.111(d)(2); *see also Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001 (Sec'y Nov. 2, 1987)(Secretary limited review of a settlement agreement to whether the terms of the settlement are a fair, adequate, and reasonable settlement of the complainant's allegations that the respondent violated the STAA).

The case is now before the ARB pursuant to the STAA's automatic review provisions. 49 U.S.C.A. § 31105(b)(2)(C); *see* 29 C.F.R. § 1978.109(c)(1). The ARB "shall issue a 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, slip op. at 2 (ARB Sept. 26, 2001). Although the ARB issued a Notice of Review and Briefing Schedule permitting each party to submit a brief in support of or in opposition to the ALJ's order, neither party submitted a brief. We therefore deem the settlement unopposed under its terms.

In reviewing the settlement, we note initially that while the parties' Settlement Agreement and Release encompasses the resolution of matters under statutes other than the STAA, 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 only approve the terms of the agreement pertaining to Carter's current STAA case, ARB No. 10-138, ALJ No. 2010-STAA-040.¹

Further, the Separation Agreement and General Release provides that the release shall be construed in accordance with the laws of the State of Michigan. Settlement Agreement and Release at para. 8. 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

¹ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000- STA-056, slip op. at 2 (ARB Apr. 30, 2003).

regulations of the United States.²

We have carefully reviewed the parties' Settlement Agreement and Release and agree with the ALJ that it constitutes a fair, adequate, and reasonable settlement of Carter's STAA complaint. Accordingly, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

² *Trucker v. St. Cloud Meat & Provisions, Inc.*, ARB No. 08-080, ALJ No. 2008-STA-023, slip op. at 3 (ARB May 30, 2008).