



In the Matter of:

**DAVID HAMILTON
and LINDA BUNCH,**

COMPLAINANTS,

v.

TRI-NATIONAL, INC.,

RESPONDENT.

ARB CASE NO. 10-100

**ALJ CASE NOS. 2009-STA-012
2009-STA-013**

DATE: July 22, 2010

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 Complainants, David Hamilton and Linda Bunch, alleged that Tri-National, Inc. 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 Tri-National terminated their employment in retaliation for protected activities. 49 U.S.C.A. § 31105 (Thomson/West Supp. 2010); 29 C.F.R. Part 1978 (2009).

Following an investigation of the complaint, the Occupational Safety and Health Administration (OSHA) found that a preponderance of the evidence indicated that the Complainants' protected activities were not a contributing or motivating factor in their discharges and dismissed the complaints. OSHA Findings (Dec. 9, 2008).

Hamilton and Bunch 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 May 3, 2010, the Complainants submitted a Joint Stipulation of Dismissal that was signed by counsel for the parties and which notified the ALJ that they had settled the matter and stipulated to the dismissal with prejudice as to all claims asserted in the matter.

The ALJ issued a Recommended Decision and Order (R. D. & O.) dismissing the complaints, stating that the Complainants filed a Joint Stipulation of Dismissal in which they stated that all the parties agreed that all of the matters had been settled and that each party was to bear its own attorneys' fees and costs.¹ R. D. & O. at 1. The STAA's implementing regulations provide that 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)(emphasis added). Nevertheless, the ALJ neither requested nor reviewed the parties' settlement agreement.

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).

Upon review of the record it became apparent that the parties had not submitted their settlement agreements for approval pursuant to 29 C.F.R. § 1978.111(d)(2). Accordingly, the Board ordered the parties to submit their settlement agreements for review. The parties submitted executed settlement agreements to the Board on July 1, 2010.

We review the settlement to determine whether it is fair, adequate, and reasonable. *See Poulos v. Ambassador Fuel Oil Co.*, 1986-CAA-001, slip op. at 2 (Sec'y Order 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).

We note that while the settlement agreement encompasses the settlement 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 Bunch's and Hamilton's current STAA cases. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

We also note that while the Full Release and Negotiated Settlement Agreements provide that the settlement terms will be confidential, the parties' submissions, including the Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA). 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2010). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Coffman v.*

¹ *But see* Full Release and Settlement Agreements at 1 para. 1(a).

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). Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests. 29 C.F.R. § 70 *et seq.* (2009).

We have carefully reviewed the parties' releases and settlement agreements and find that they constitute fair, adequate, and reasonable settlements of Bunch's and Hamilton's STAA complaints and are not contrary to the public interest. Accordingly, we **APPROVE** the agreements and **DISMISS** the complaints with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge