



In the Matter of:

LARRY Q. DAVIS,

COMPLAINANT,

v.

CYPRESS TRUCK LINES, INC.,

RESPONDENT.

ARB CASE NO. 10-136

ALJ CASE NO. 2010-STA-019

DATE: February 17, 2011

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*, and Luis A. Corchado, *Administrative Appeals Judge*

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

The Complainant, Larry Q. Davis, alleged that Cypress Truck Lines, Inc.,¹ 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 it suspended him without pay 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 Davis's alleged protected activity was not a factor in his suspension and dismissed the complaint. OSHA Findings (Jan. 8, 2010). Davis objected to OSHA's findings and requested a hearing before a Department of Labor Administrative Law

¹ The ALJ's Order Approving Settlement refers to "Cyprus Truck Lines" as the Respondent in this case. This appears to be a typographical error.

Judge (ALJ). *See* 29 C.F.R. § 1978.105. The ALJ scheduled the case for hearing, but on June 23, 2010, the Respondent’s counsel submitted a Confidential Settlement Agreement & Release of Claims (Agreement). After reviewing the terms of the Agreement, the ALJ issued an Order Approving Settlement (Order), recommending dismissal of the complaint. Order at 1.

Under the STAA’s implementing regulations, 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 Agreement.

The ALJ found that the Agreement constituted a reasonable settlement of the complaint. Order at 1. *See* 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 in this matter. We therefore deem the Agreement unopposed under its terms.

We note that while the Agreement may encompass 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 Davis’s current STAA case. *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 2000-STA-056, slip op. at 2 (ARB Apr. 30, 2003).

The Agreement provides that the parties shall keep the terms of the settlement 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).² FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.³

² 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2010).

³ *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).

Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁴

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

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

⁴ 29 C.F.R. § 70 *et seq.* (2009).