



In the Matter of:

THOMAS CHARLES,

ARB CASE NO. 03-103

COMPLAINANT,

ALJ CASE NO. 03-STA-17

v.

DATE: April 30, 2004

HOGAN DEDICATED,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Thomas Charles, *pro se*, Ridgeville, Illinois

For the Respondent:

Daniel M. O'Keefe, Esq., Bryan Cave, LLP, St. Louis, Missouri

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the employee protection provisions of the Surface Transportation Assistance Act (STAA) of 1982, as amended, 49 U.S.C.A § 31105 (West 1997). On May 12, 2003, the parties submitted an executed Settlement Agreement and Release of claim to an Administrative Law Judge (ALJ). The ALJ approved the settlement pursuant to 29 C.F.R. § 1978.111(d)(2) (2003) and, on May 20, 2003, issued a Decision and Order Approving Settlement and Dismissing Complaint.

Pursuant to 29 C.F.R. § 1978.109(c)(2), the Administrative Review Board (ARB) issued a Notice of Review and Briefing apprising the parties of their right to submit briefs in support of or in opposition to the ALJ's decision. The Respondent submitted a June 19, 2003 letter asking that the ARB affirm the ALJ's decision. By letter received by the ARB on June 16, 2003, the Complainant asked the ARB to dismiss his appeal.

Under the regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's preliminary findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ." 29 C.F.R. § 1978.111(d)(2). The regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board, United States Department of Labor, as the case may be." *Id.*

In this case, at the time the parties reached settlement, the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. Nevertheless, pursuant to 29 C.F.R. § 1978.109(c), the ARB issues a final decision and order in this case. *Monroe v. Cumberland Transp. Corp.*, ARB No. 01-101, ALJ No. 00-STA-50 (ARB Sept. 26, 2001); *Cook v. Shaffer Trucking Inc.*, ARB No. 01-051, ALJ No. 00-STA-17 (ARB May 30, 2001).

Review of the agreement, which the parties have certified constitutes the entire settlement with respect to the Complainant's claims, *see* Settlement Agreement, ¶ 12, reveals that it may encompass the settlement of matters under laws 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 approve only the terms of the agreement pertaining to the Complainant's STAA claim. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

In this case, ¶ 7 provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions, for 12 months, ¶ 11 specifies that the agreement shall be construed and governed by the laws of the State of Missouri, and ¶ 2.c. states that the Complainant waives any causes of action arising in the future.

The ARB has held 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), 5 U.S.C.A. § 552 (1988), which requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act. *Coffman v. Alyeska Pipeline Services Co. and Arctic Slope Inspection Services*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (2003).¹

¹ Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h). *Coffman*, slip op. at 2, n.2.

Further, we construe ¶ 11's 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. *See Phillips v. Citizens' Ass'n for Sound Energy*, ALJ No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).

Finally, waiver provisions are limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *Johnson v. Transco Products, Inc.*, ALJ No. 85-ERA-7, slip op. at 2 (Sec'y Aug. 8, 1985). *See also Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

CONCLUSION

The parties properly executed the Settlement Agreement and Release on March 15 and March 21, 2003, respectively, and have asked the ARB to affirm the ALJ's decision and dismiss the complaint. Accordingly, we **APPROVE** the agreement's provisions pertaining to the Complainant's STAA claim and **DISMISS** the complaint with prejudice.

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge