

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

CLIFTON VOLLENDORF,

ARB CASE NO. 2024-0011

COMPLAINANT,

ALJ CASE NO. 2022-STA-00068

ALJ WILLOW EDEN FORT

v.

DATE: July 30, 2024

BLUE NORTHERN DISTRIBUTING,

RESPONDENT.

Appearances:

For the Complainant:

Clifton Vollendorf, *Pro Se*, Eau Claire, Wisconsin

For the Respondent:

**Stephen L. Weld, Esq. and Blake Edward Herbison, Esq., *Weld Riley*,
S.C., Eau Claire, Wisconsin**

**Before WARREN, THOMPSON, and ROLFE, Administrative Appeals
Judges**

**DECISION AND ORDER APPROVING SETTLEMENT AND DISMISSING
CASE WITH PREJUDICE**

PER CURIAM:

This case arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), and its applicable implementing regulations.¹ Clifton Vollendorf (Complainant) filed a whistleblower complaint with the Occupational Safety and Health Administration (OSHA), alleging that Blue Northern Distributing (Respondent) retaliated against him in violation of the

¹ 49 U.S.C. § 31105(a); 29 C.F.R. Part 1978 (2024).

STAA.² On December 20, 2023, the ALJ issued a Decision and Order finding in Complainant’s favor.³ Respondent filed a timely petition for review with the Administrative Review Board (Board).

On May 29, 2024, the Respondent filed Respondent’s Notice of Settlement (Notice) in which they notified the Board that the parties reached an agreement to resolve this case and that they intended to file a motion to dismiss.⁴ On July 24, 2024, Complainant filed the signed Release and Resignation Agreement (Agreement).

The STAA’s implementing regulations provide that a case may be settled “if the participating parties agree to a settlement and the settlement is approved . . . by the ARB, if the ARB has accepted the case for review.”⁵ We review settlements submitted under the STAA to determine if they are fair, adequate, and reasonable, and that they do not contravene the public interest.⁶

The Agreement encompasses the settlement of any and all claims Complainant had or could have had against Respondent up to the date of the settlement arising out of Complainant’s employment with Respondent.⁷ The Board’s authority over settlement agreements is limited to statutes that are within the Board’s jurisdiction as defined by the applicable delegation of authority.⁸ Therefore, we have restricted our review of the Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this STAA case.⁹

The Agreement contains a non-disparagement clause.¹⁰ If the non-disparagement clause was interpreted to preclude Complainant from communicating with federal or state enforcement agencies concerning alleged violations of law, it would violate public policy, as it would contain an unacceptable

² Decision and Order (D. & O.) at 1.

³ *Id.* at 19-21.

⁴ Notice at 1.

⁵ 29 C.F.R. § 1978.111(d)(2).

⁶ *Raziano v. Albertsons, LLC*, ARB No. 2023-0010, ALJ Nos. 2020-STA-00084, -00085, -00086, -00088, slip op. at 3 (ARB Feb. 16, 2023) (citations omitted).

⁷ Agreement at ¶10.

⁸ Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board (Secretary’s discretionary review of ARB decisions)), 85 Fed. Reg. 13186 (Mar. 6, 2020); *see Hendrix v. CSX Transp., Inc.*, ARB No. 2023-0033, ALJ No. 2020-FRS-00076, slip op. at 2 (ARB July 13, 2023) (citations omitted).

⁹ *See Hendrix*, ARB No. 2023-0033, slip op. at 2 (citation omitted).

¹⁰ Agreement at ¶7.

“gag provision.”¹¹ We construe such language as allowing Complainant, either voluntarily or pursuant to an order or subpoena, to communicate with or provide information to state and federal authorities about suspected violations of law involving Respondent. This is evidenced in the Agreement’s “Agency Cooperation” provision, which specifies that “[n]o part of this Agreement is intended to or shall interfere with [Complainant’s] right to participate in a proceeding with any appropriate federal, state or local government agency enforcing discrimination laws, nor shall this Agreement prohibit [Complainant] from cooperating with any such agency in its investigation.”¹²

After careful review of the Agreement, the Board concludes the Agreement is fair, adequate, and reasonable, and does not contravene the public interest. Accordingly, we **APPROVE** the Agreement, and **DISMISS** the complaint with prejudice.¹³

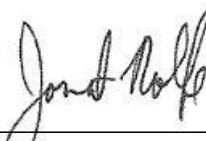
SO ORDERED.



IVEY S. WARREN
Administrative Appeals Judge



ANGELA W. THOMPSON
Administrative Appeals Judge



JONATHAN ROLFE
Administrative Appeals Judge

¹¹ *Hendrix*, ARB No. 2023-0033, slip op. at 3 (citations omitted) (applying same public policy consideration to other whistleblower statute settlements).

¹² Agreement at ¶13.

¹³ See 29 C.F.R. 1978.111(e) (“Any settlement approved by the Assistant Secretary, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to 49 U.S.C. 31105(e).”).