



In the Matter of:

MICHAEL BEN GRAVES,

ARB CASE NO. 14-098

COMPLAINANT,

**ALJ CASE NOS. 2014-NTS-0001
2014-NTS-0002**

v.

DATE: April 27, 2016

**MV TRANSPORTATION, INC. and
BROADSPIRE SERVICE, INC.,**

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Michael Ben Graves, *pro se*, Carson, California

For the Respondent MV Transportation:

Maya Harel, Esq.; *Seyfarth Shaw, LLP*; Los Angeles, California

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

**ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the employee protection provisions of the National Transit Systems Security Act (NTSSA), 6 U.S.C.A. § 1142 (Thomson/West Supp. 2015), and its implementing regulations, 29 C.F.R. Part 1982 (2015). Before the Administrative Review Board is Complainant Graves's appeal of a Department of Labor Administrative Law Judge's Decision

and Order (D. & O.), issued on September 20, 2014, in which the ALJ found that Complainant failed to establish that Respondent MV Transportation, Inc. retaliated against him for engaging in NTSSA-protected activity.¹

On February 23, 2016, prior to the ARB's consideration of the merits of Graves's appeal, Graves filed a Stipulation of Voluntary Dismissal with the ARB. On February 28, 2016, Graves submitted a February 5, 2016, Confidential General Release and Settlement Agreement (Settlement Agreement) between MV Transportation and Graves, signed by Graves and counsel for MV Transportation. Although the parties did not specifically request approval of the settlement agreement, the Board construes the documents as a stipulated request for dismissal of the present appeal subject to approval by the ARB of the Settlement Agreement.

The NTSSA's implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary's findings or order, the case may be settled if the participating parties agree to a settlement and, where the Board has accepted the case for review, the Board approves the settlement agreement.²

Review of the Settlement Agreement reveals that it may encompass the settlement of matters under laws other than the NTSSA. Agreement ¶¶2.3-2.6. The Board's authority over settlement agreements is limited to the statutes that are within the Board's jurisdiction as defined by the applicable delegation of authority. Therefore, the Board is restricted in its review and approval of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle the NTSSA claim over which the ARB has jurisdiction.³

Paragraph 18.4 of the Settlement Agreement provides that it shall be governed by and interpreted under the laws of the State of California. This "choice of law" provision is interpreted as not limiting the authority of the Secretary of Labor, the ARB, and any federal court with regard to any claim or issue arising under the NTSSA, which authority shall be governed in all respects by the laws and regulations of the United States.⁴

¹ The ALJ also dismissed Graves's complaint against Respondent Broadspire Services, Inc., MV Transportation's workers' compensation insurance company, having found that Broadside Services did not know of Complainant's previous protected activity and did not subject him to any adverse employment action.

² 29 C.F.R. § 1982.111(d)(2).

³ *Accord Thompson v. Norfolk Southern Ry., Co.*, ARB No. 13-032, ALJ No. 2011-FRS-015, slip op. at 2 (ARB Feb. 28, 2013); *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).

⁴ *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

Additionally, the Settlement Agreement contains confidentiality and non-disparagement clauses. Agreement ¶13. The ARB notes that the parties' submissions, including the Settlement Agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA).⁵ FOIA requires federal agencies to disclose requested records unless they are exempt from disclosure under the Act.⁶ Department of Labor regulations provide specific procedures for responding to FOIA requests and for appeals by requestors from denials of such requests.⁷ Further, if the confidentiality and non-disparagement clauses were interpreted to preclude Graves from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore constitute unacceptable "gag" provisions.

Subject to the aforementioned limitations on the ARB's jurisdiction and authority, the Administrative Review Board finds that the Settlement Agreement is fair, adequate, and reasonable. Accordingly, the Settlement Agreement is **APPROVED** and Graves's complaint and this appeal are **DISMISSED** as to all Respondents with prejudice.⁸

SO ORDERED.

E. COOPER BROWN
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

⁵ 5 U.S.C.A. § 552 (Thomson/West 1996 & Supp. 2015).

⁶ *Anderson*, ARB No. 10-070, slip op. at 2; *Norton v. Uni.-Group, Inc.*, ARB No. 08-079, ALJ Nos. 2007-STA-035, -036; slip op. at 3 (ARB May 30, 2008) (citing *Coffman v. Alyeska Pipeline Serv. Co. & Artic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 1996-TSC-005, -006; slip op. at 2 (ARB June 24, 1996)).

⁷ 29 C.F.R. § 70 *et seq.* (2015).

⁸ Although the Settlement Agreement is between Graves and MV Transportation only, and does not include Respondent Broadspire Services as a party signatory, it is noted that the Settlement Agreement expressly contemplates dismissal of the above captioned case "as to all claims and as to all parties." Agreement ¶7.1. Moreover, the Stipulation of Voluntary Dismissal requests dismissal of "all Respondent Parties."