



In the Matter of:

THOMAS F. CALMEYN,

ARB CASE NO. 06-066

COMPLAINANT,

ALJ CASE NO. 2005-STA-0055

v.

DATE: December 13, 2006

**THE BOISE TRANSPORTATION CO.
d/b/a BCT, INC.,**

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

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

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act (STAA) of 1982.¹ On February 15, 2006, the parties submitted a Settlement Agreement and General Release signed by the Complainant, Thomas Calmeyn, and the Respondent, Boise Transportation Co. (BCT), to a Department of Labor Administrative Law Judge (ALJ). 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.”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.”³

¹ 49 U.S.C.A. § 31105 (West 2006).

² 29 C.F.R. § 1978.111(d)(2) (2006).

³ *Id.*

When the parties reached a settlement the case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On February 27, 2006, the ALJ issued a Recommended Order Approving Settlement and Dismissing Complaint. According to the STAA's implementing regulations, the Administrative Review Board (ARB or Board) issues the final decision and order in this case.⁴

The Board issued a Notice of Review and Briefing Schedule apprising the parties of their right to submit briefs supporting or opposing the ALJ's recommended decision on March 7, 2006.⁵ The Complainant replied via fax and letter to the Board's notice on March 30, 2006, indicating that it would not file a brief with the Board. BCT did not respond to the Board's order. We therefore deem the settlement unopposed under the terms of the Recommended Order Approving Settlement.

Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA⁶ and references cases other than ARB No. 06-066, 2005-STA-0055, the case currently before the Board.⁷ 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. Furthermore, it is limited to cases over which we have jurisdiction. Therefore, we approve only the terms of the agreement pertaining to the Complainant's STAA claim ARB No. 06-066, 2005-STA-0055.⁸

Under the agreement, Calmeyn releases BCT from, essentially, any claims or causes of action arising out of or connected with his employment at BCT.⁹ Thus, we interpret this portion of the agreement as limiting Calmeyn's right to sue on claims or causes of action arising only out of facts, or any set of facts, occurring before the date of the settlement agreement. Calmeyn does not waive claims or causes of action that may accrue after the signing of the agreement.¹⁰

⁴ 29 C.F.R. § 1978.109(c)(2); *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).

⁵ 29 C.F.R. § 1978.109(c)(2).

⁶ Settlement Agreement and General Release of All Claims para. 3(a), (b).

⁷ Settlement Agreement and Release of All Claims para. 9.

⁸ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

⁹ Settlement Agreement and Release of All Claims paras. 3, 9.

¹⁰ See *Bittner v. Fuel Economy Contracting Co.*, No. 88-ERA-22, slip op. at 2 (Sec'y June 28, 1990); *Johnson v. Transco Prods., Inc.*, 85-ERA-7 (Sec'y Aug. 8, 1985).

Therefore, we **APPROVE** the terms of the agreement pertaining to Calmeyn's STAA claim, and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge