



In the Matter of:

KENNETH J. WENTWORTH,
COMPLAINANT,

ARB CASE NOS. 06-080, 06-158

ALJ CASE NO. 2005-STA-13

v.

DATE: December 14, 2006

WE CARE TRANSPORTATION, LLC.,

DATE REISSUED: January 16, 2007

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 October 24, 2006, the parties submitted a Settlement Agreement and Release of Claims signed by the Complainant, Kenneth Wentworth, and the Respondent, We Care Transportation, LLC., to the Administrative Review Board (ARB or Board). 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.*

On April 4, 2006, the ALJ issued a Recommended Decision and Order (R. D. & O.). According to the STAA's implementing regulations, the ARB 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 October 6, 2006.⁵ On October 18, 2006, the Respondent filed a letter with the ARB declaring that the parties had reached a settlement shortly after the ALJ issued the R. D. & O. The Respondent also informed the Board that it would not file a brief with the ARB. Wentworth did not respond to the Board's order.

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. 06-158, 2005-STA-13, 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. 06-158, 2005-STA-13.⁸

Under the agreement, Wentworth releases We Care Transportation, Inc., from, essentially, any claims or causes of action arising out of or connected with his employment at We Care Transportation, Inc.⁹ Thus, we interpret this portion of the agreement as limiting Wentworth'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. Wentworth 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 Release of Claims para. 2(B).

⁷ Settlement Agreement and Release of Claims paras. 4, 5.

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. 4, 5.

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).

Additionally, the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.¹¹ The Board notes 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 (West 1996). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹² 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.¹³

Further, we note that paragraph 11 of the Settlement provides that the agreement shall be governed and construed under the laws of New York. We construe this 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.¹⁴

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

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

¹¹ Settlement Agreement and Release of Claims para. 6.

¹² *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996).

¹³ 29 C.F.R. § 70 *et seq.* (2006).

¹⁴ *See Phillips v. Citizens' Ass'n for Sound Energy*, No. 91-ERA-25, slip op. at 2 (Sec'y Nov. 4, 1991).