



In the Matter of:

THEODORE JUSTICE,

ARB CASE NO. 06-091

COMPLAINANT,

ALJ CASE NO. 2006-STA-00010

v.

DATE: February 28, 2007

CRETE CARRIER CORPORATION,

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 of 1982 (STAA)¹ and implementing regulations.² The Administrative Law Judge (ALJ) below issued a Recommended Decision and Order Approving Settlement Agreement and Dismissing Complaint (R. D. & O.).

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 [hereinafter, the "Board"] . . . or the ALJ."³ The

¹ 49 U.S.C.A. § 31105 (West 2007).

² 29 C.F.R. Part 1978 (2006).

³ 29 C.F.R. § 1978.111(d)(2).

regulations direct the parties to file a copy of the settlement with the ALJ, the Board, or United States Department of Labor.⁴

Pursuant to 29 C.F.R. § 1978.109(c), the Board “shall issue the final decision and order based on the record and the decision and order of the administrative law judge.” The Board received the R. D. & O. and 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 5, 2006. Neither the Complainant nor the Respondent responded to the Board’s order.

The Board concurs with the ALJ’s determination that the parties’ settlement agreement is fair, adequate and reasonable. But, we note that the agreement encompasses the settlement of matters under laws other than the STAA.⁵ 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. Our approval is limited to this case, and we understand the settlement terms relating to release of STAA claims as pertaining only to the facts and circumstances giving rise to this case. Therefore, we approve only the terms of the agreement pertaining to the Complainant’s STAA claim ARB No. 06-091, 2006-STA-00010.⁶

Furthermore, if the provisions in paragraph C(5) of the settlement agreement were to preclude Justice from communicating with federal or state enforcement agencies concerning alleged violations of law, they would violate public policy and therefore, constitute unacceptable “gag” provisions.⁷

⁴ See *id.*

⁵ See, e.g., para. C(2) of the Agreement.

⁶ *Fish v. H & R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56, slip op. at 2 (ARB Apr. 30, 2003).

⁷ *Ruud v. Westinghouse Hanford Co.*, ARB No. 96-087, ALJ No. 1988-ERA-33, slip op. at 6 (ARB Nov. 10, 1997); *Connecticut Light & Power Co. v. Sec’y, U.S. Dep’t of Labor*, 85 F.3d 89, 95-96 (2d Cir. 1996) (employer engaged in unlawful discrimination by restricting complainant’s ability to provide regulatory agencies with information; improper “gag” provision constituted adverse employment action).

The parties have agreed to settle Justice's STAA claim. Accordingly, with the reservations noted above limiting our approval to the settlement of Justice's STAA claim, we **APPROVE** the agreement and **DISMISS** the complaint with prejudice.

SO ORDERED.

DAVID G. DYE
Administrative Appeals Judge

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge