



In the Matter of:

DWIGHT TOLAND,

ARB CASE NO. 06-109

COMPLAINANT,

ALJ CASE NO. 2005-STA-00054

v.

DATE: November 30, 2006

PRO DRIVERS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

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) issued a Recommended Order Approving Settlement on May 23, 2006, approving the parties' general release and settlement agreement and dismissing the complaint with prejudice.

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 2006).

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 ALJ Recommended Order 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 June 14, 2006. The Respondent replied to the Board’s notice on June 22, 2006, indicating that it would not file a brief with the Board. Toland did not respond to the Board’s order.

The ARB 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. 06-109, 2005-STA-00054.⁶

Furthermore, if the confidentiality provisions in paragraph 7 of the release and agreement were to preclude Toland 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

Additionally, we construe paragraph 15, the governing 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.⁸

⁴ See *id.*

⁵ See, e.g., paras. 5, 8, and 9 of the General Release.

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 (ARB Nov. 10, 1997); *Connecticut Light & Power Co. v. Secretary, United States 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).

⁸ *Phillips v. Citizens’ Ass’n for Sound Energy*, 1991-ERA-25, slip op. at 2 (Sec’y Nov. 4, 1991).

Finally, the Respondent's letter dated May 15, 2005 [sic], requested that the settlement agreement and release be filed under seal. We note that the record in this case, including the settlement agreement and release, is subject to the applicable provisions of the Freedom of Information Act (FOIA).⁹ The manner in which the Department, as a Federal agency, is required to respond to FOIA requests is set out in the Department's regulations.¹⁰

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

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

⁹ 5 U.S.C.A. § 552 (West 1996). *Coffman v. Alyeska Pipeline Serv. Co. & Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996)

¹⁰ 29 C.F.R. § 70 *et seq.* (2006).