In the Matter of:

CARL TAYLOR, **ARB CASE NO. 06-137**

COMPLAINANT, **ALJ CASE NO. 2006-STA-19**

v. **DATE: April 30, 2007**

GREYHOUND LINES,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Carl Taylor, *pro se*, Houston, Texas

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 August 2, 2006, the parties submitted an Employee Waiver and Release of All Claims Agreement by the Complainant, Carl Taylor, and the Respondent, Greyhound Lines, to a Department of Labor Administrative Law Judge (ALJ). On August 3, 2006, the Complainant submitted a notice to the ALJ that "a settlement agreement was reached."[2] Taylor's notice was accompanied by a copy of the settlement agreement, signed by the Complainant and the Respondent.[3]

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

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1 49 U.S.C.A. § 31105 (West 1997).

2 Complainant's Motion, August 3, 2006, ALJ No. 2006-STA-19, at 1.

3 *Id.*

Administrative Review Board . . . or the ALJ."[4] 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."[5]

When the parties reached their settlement, this case was pending before the ALJ. Therefore, the ALJ appropriately reviewed the settlement agreement. On August 9, 2006, the ALJ issued a Decision and Order Recommending Approval of Settlement Agreement. According to the STAA's implementing regulations, the Administrative Review Board (ARB or Board) issues the final decision and order in this case.[6]

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 August 26, 2006.[7] The Respondent notified the Board on September 8, 2006, via letter, that it would not submit a brief, but that it supported the Settlement Agreement.

Taylor, on September 5, 2006, advised the Board that he did not want to be bound by the agreement. According to Taylor, he agreed in a "hasty manner" to issues which were "misleading and deceptive."[8]

Taylor's Attempt to Repudiate the Settlement Agreement

On August 9, 2006, the ALJ approved the settlement agreement. Since Taylor participated in the settlement process, "he is bound by his initial negotiated consent to settle the complaint until such time as the [ARB] approves or rejects the settlement."[9]

A settlement agreement is a contract and once the parties enter into it, it is binding and conclusive.[10] Like any other contract, it can be challenged upon a showing of fraud,

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4 29 C.F.R. § 1978.111(d)(2) (2006).

5 *Id.*

6 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).

7 29 C.F.R. § 1978.109(c)(2).

8 Complainant's Letter dated Sept. 5, 2006.

9 *Beliveau v. Naval Undersea Warfare Ctr.*, ARB No.99-070, ALJ No. 97-SDW-6, slip op. at 2 (ARB June 30, 1999), *citing Macktal v. Brown & Root*, ALJ No. 86-ERA-23 (Sec'y Nov. 14, 1989).

10 *Eash v. Roadway Express, Inc.*, ARB No. 99-037, ALJ No. 98-STA-28, slip op. at 8 (ARB Oct 29, 1999), *citing Carr v. Runyan*, 89 F.3d 327, 331 (7th Cir. 1996).

duress, illegality, or mutual mistake.[11] The Board has held that "an opposing party's improper conduct may render a settlement agreement voidable."[12]

The ARB will construe arguments for pro se litigants "'liberally in deference to their lack of training in the law' and with a degree of adjudicative latitude."[13] At the same time, we are charged with a duty to remain impartial; we must "refrain from becoming an advocate for the *pro se* litigant."[14] We recognize that while adjudicators must accord a pro se complainant "fair and equal treatment, [such a complainant] cannot generally be permitted to shift the burden of litigating his case to the [adjudicator], nor to avoid the risks of failure that attend his decision to forgo expert assistance."[15]

In his September 5, 2006 letter to the ARB, Taylor argues that Roadway tricked him into signing the settlement agreement. However, he proffers no evidence in support of this allegation. Taylor also alleges that he agreed to the settlement in a hasty manner. Taylor signed the settlement voluntarily and submitted it of his own volition to the ALJ. Mere regret will not make a settlement voidable. Since Taylor does not demonstrate fraud, duress, illegality, or mutual mistake; the settlement is valid.

Specifically, Taylor contends that he was not an employee at the time of the settlement, but that the settlement lists him as an employee. Due to this alleged mistake, when Greyhound issued the settlement check, taxes were withheld. Taylor contends that he should not be labeled an employee and that he is due the full $3,500.00 from the settlement. However, the settlement agreement covers incidents that arose while Taylor was an employee and all issues in the complaint deal with Taylor's tenure as an employee with Greyhound. Moreover, the agreement Taylor signed was entitled "Employee Waiver and Release of All Claims Agreement." Every time the settlement agreement refers to Taylor, it labels him as "EMPLOYEE." This reference in all caps occurs in paragraphs 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and the signature line of the settlement agreement. Further, the settlement agreement explicitly states that Taylor shall receive $3,500.00 "less applicable

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[11] *Trechak v. Am. Airlines, Inc.*, ARB No. 03-141, ALJ No. 2003-AIR-5, slip op. at 2 (ARB March 19, 2004); *see Beliveau*, ARB No.99-070.

[12] *Beliveau*, ARB No. 99-070, slip op. at 2; *see Macktal*, ALJ No. 86-ERA-23 (Sec'y Nov. 14, 1989).

[13] *Cummings v. USA Truck, Inc.*, ARB No. 04-043, ALJ No. 03-STA-47, slip op. at 2 (ARB Apr. 26, 2005), *quoting Young v. Schlumberger Oil Field Servs.*, ARB No. 00-075, ALJ No. 2000-STA-28, slip op. at 8-10 (ARB Feb. 2003), *citing Hughes v .Rowe*, 449 U.S. 5 (1980).

[14] *Id.*

[15] *Griffith v. Wackenhut Corp.*, ARB No. 98-067, ALJ No. 97-ERA-52, slip op. at 10 n.7 (ARB Feb. 29, 2000), *quoting Dozier v. Ford Motor Co.*, 702 F.2d 1189, 1194 (D.C. Cir. 1983).

withholdings."[16] The agreement clarifies that "deductions shall be made from all payments for income tax and other appropriate withholdings."[17] In no way are the dictates of the settlement, including Taylor's status as an employee or the employer's withholdings from the settlement distribution, misleading or deceptive.

Additionally, Taylor argues that Greyhound did not produce a letter of reference as required in paragraph 11 of the settlement.[18] The issue whether a settlement agreement has been breached is not a matter for the Board to determine.[19] In *Ruud*, the Board held, "Under the environmental acts, the authority to hear a suit for breach of a settlement agreement is vested in the U.S. district courts. *See e.g.*, 42 U.S.C. § 7622(e)(1*)*.[20] Where … a party claims that there has been a breach of the settlement agreement, that party should seek redress in a court of competent jurisdiction." Similarly the STAA provides, "If a person fails to comply with an order issued under subsection (b) of this section [referencing, among other forms of relief, settlements] the Secretary [of Labor] shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred."[21] Thus the federal district courts, not this Board, have jurisdiction to consider actions based on alleged settlement breaches. In this case, Taylor and Greyhound agreed to the creation of a neutral reference letter. Any contention as to the fulfillment of this requirement raises a question of breach of the settlement. Thus, we have no authority to consider that issue.

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[16] Employee Waiver and Release of All Claims Agreement, para 1.

[17] *Id.*

[18] Employee Waiver and Release of All Claims Agreement, para. 11.

[19] *Ruud v. Westinghouse Hanford Co.*, ARB Nos. 99-023, 99-028, ALJ No. 88-ERA-33, slip op. at 14 (ARB Apr. 19, 2002).

[20] 42 U.S.C.A. § 7622(e)(1) (West 2003*)* provides,

> Any person on whose behalf an order was issued under paragraph (2) of subsection (b) [referencing, among other forms of relief, settlements], may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

[21] 49 U.S.C.A. § 31105(d). Although the Secretary of Labor has delegated her authority to "act for the Secretary of Labor in review or on appeal "of matters arising under the STAA, she has not delegated her authority to bring actions to enforce STAA settlements in district court to the Board. *See* Secretary's Order No. 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002) (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board).

Finally, Taylor argues that the clause forbidding re-employment is too restrictive. Taylor alleges that due to Greyhound's market share, the settlement precludes him from seeking employment with any motor carrier. Accordingly, Taylor argues that enforcing the settlement "would be a violation of his Civil Rights not to allow hi[m] to seek employment anywhere he chose[s]." However, in his settlement agreement, Taylor freely agreed to waive "any right to reemployment, and agrees not to seek reemployment with [the Respondent], its parent company, subsidiaries, affiliates or their agents …"[22] and he has failed to even suggest how his agreement violates his Civil Rights. This argument appears to be only an after-thought and is not supported by evidence, legal authority, or analysis. Taylor has failed to provide any evidence of fraud, duress, illegality, or mutual mistake, or any other grounds that would support a finding that the settlement is voidable. We generally treat such arguments as waived.[23]

In addition, we are not aware of any case precedent holding such reemployment waivers void as against the public interest. However, a recent Tenth Circuit case upheld an insurance company's reliance on an earlier settlement agreement with a complainant in a Title VII case in which the complainant waived entitlement to any reemployment or reinstatement with the employer. The company argued successfully under the terms of the settlement agreement that the complainant's waiver of any right to future employment with the company was a legitimate, nondiscriminatory reason for rejecting her application for employment seven years later.[24] Accordingly, Taylor is bound by the terms of the agreement that the Board finds acceptable.

Review of the Settlement

Therefore, we turn to Greyhound's request for approval of the agreement and dismissal of the complaint. Review of the agreement reveals that it may encompass the settlement of matters under laws other than the STAA[25] and references cases other than ARB No. 06-137, 2006-STA-19, the case currently before the Board.[26] 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

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[22] Employee Waiver and Release of All Claims Agreement, para 11.

[23] See *Hall v. United States Army*, ARB Nos. 02-108, 03-013, ALJ No. 1997-SDW-00005, slip op. at 6 (ARB Dec. 30, 2004).

[24] *Jencks v. Modern Woodmen of America*, 479 F.3d 1261, 1266-1267 (2007).

[25] Employee Waiver and Release of All Claims Agreement, paras. 2(a), (b).

[26] Employee Waiver and Release of All Claims Agreement, paras. 2, 2(b), 2(c).

jurisdiction. Therefore, we approve only the terms of the agreement pertaining to the Complainant's STAA claim, ARB No. 06-137, 2006-STA-19.[27]

Additionally, the agreement provides that the parties shall keep the terms of the settlement confidential, with certain specified exceptions.[28] 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)[29] FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[30] 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.[31]

Further, we note that paragraph 6 of the settlement provides that the agreement shall be governed and construed under the laws of Texas. 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.[32]

So construed, we **APPROVE** the terms of the settlement agreement pertaining to Taylor's STAA claim, and **DISMISS** the complaint with prejudice.

SO ORDERED.

M. CYNTHIA DOUGLASS
Chief Administrative Appeals Judge

DAVID G. DYE
Administrative Appeals Judge

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

[28] Employee Waiver and Release of All Claims Agreement, para. 13.

[29] 5 U.S.C.A. § 552 (West 1996).

[30] *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).

[31] 29 C.F.R. § 70 *et seq*. (2006).

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